

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA



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In the Matter of the Application of San Diego Gas & Electric Company (U 902 E) for Approval of its Proposals for Dynamic Pricing and Recovery of Incremental Expenditures Requires for Implementation.

A.10-07-009
(Filed July 6, 2010)

DISABILITY RIGHTS ADVOCATES' PROTEST TO APPLICATION OF
SAN DIEGO GAS & ELECTRIC COMPANY FOR APPROVAL OF PROPSALS FOR
DYNAMIC PRICING AND RECOVERY OF INCREMENTAL EXPENDITURES
REQUIRED FOR IMPLEMENTATION

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I. INTRODUCTION

Pursuant to Rule 2.6 of the California Public Utilities Commission's Rules of Practice and Procedure, Disability Rights Advocates ("DisabRA") protests the Application of San Diego Gas & Electric Company ("SDG&E") (U 902 E) For Approval of its Proposals for Dynamic Pricing and Recovery of Incremental Expenditures Required for Implementation (A.10-07-009) filed on July 6, 2010. The Commission should deny SDG&E's Application unless and until it is amended to ensure that the utility is prepared to provide important customer communications and information regarding its proposed rate program – PeakShift at Home ("PSH") – in ways that are accessible to people with disabilities. PSH is a dynamic pricing rate proposed as an optional rate for residential customers in this Application.

SDG&E's Application and supporting testimony regarding its proposal to implement and promote PSH rely heavily on customer outreach and education, yet the proposal makes virtually no mention of accessible communication and educational materials.¹ However, substantial numbers of utility customers have disabilities that affect their ability to use standard forms of communication. According to the statistics available through the American Community Survey, in 2008 (the most recent year for which statistics are available), 2% ($\pm 0.05\%$) of the California population was identified as having a vision disability. The same survey found that 2.9% ($\pm 0.06\%$) of the California population was identified as having a hearing disability.² These statistics were

¹ The one reference to accessibility addresses the utility's efforts to ensure that its website is usable by people who use screenreaders. See Application of San Diego Gas & Electric Company (U 902 E) for Approval of Its Proposals for Dynamic Pricing and Recovery of Incremental Expenditures Required for Implementation ("Application"); Prepared Direct Testimony of William G. Saxe, Chapter 3, San Diego Gas & Electric Company ("Testimony"), July 6, 2010, at WGS-A-6 (citing "accessibility of website" as an area in which it will conduct customer research). While DisabRA is pleased that this is included, we note that SDG&E is obligated to ensure that its website is accessible based on a prior agreement with DisabRA in its most recent general rate case; see Memorandum of Understanding between Disability Rights Advocates and San Diego Gas and Electric Company and Southern California Gas Company, Section 4, approved by the Commission in D. 08-07-046, August 1, 2008.

² See <http://www.ilr.cornell.edu/edi/disabilitystatistics/reports/acs.cfm?statistic=1>.

calculated by the Cornell University Employment and Disability Institute using the U.S. Census Bureau's 2008 American Community Survey (ACS) Public Use Microdata Sample (PUMS) data.³

SDG&E must have a plan to ensure that these customers are not excluded from the PSH program because of the utility's failure to reach them with information. Thus, SDG&E must provide a plan as part of the application process to explain how it will effectively communicate with its disabled customers about PSH, including plans to ensure that this group of customers is included in the design of the program, that they are aware of how to participate in the program, and that they can be effectively notified of event days called "ReduceYourUse Days"⁴ in which they can lower their utility bill by decreasing their energy use during certain periods of time.

II. BACKGROUND

DisabRA's concerns regarding effective communication with disabled customers are not new to SDG&E or Sempra. In fact, DisabRA is currently engaged in ongoing dialogue with SDG&E in other proceedings regarding efforts to improve communications access in compliance with state and federal law. At this time, DisabRA and Sempra have initiated discussions regarding accessible communications issues to be addressed in the utility's upcoming General Rate Case; these issues are also under discussion in R.10-02-005, the pending proceeding regarding service disconnections, in which DisabRA has been working to ensure that communications regarding the risk of service disconnection are provided in accessible formats. DisabRA has also raised similar issues in multiple past proceedings and has obtained a number of Commission decisions regarding the

³ Erickson, W., Lee, C., von Schraeder, S. (2010, March 17). Disability Statistics from the 2008 American Community Survey (ACS). Ithaca, NY: Cornell University Rehabilitation Research and Training Center on Disability Demographics and Statistics (StatsRRTC). Retrieved Aug 06, 2010 from www.disabilitystatistics.org.

⁴ Application at 3.

importance of accessible forms of communication.⁵ However, SDG&E's Application does not reflect the lessons from any of these prior or pending matters.

As DisabRA has previously articulated before the Commission and specifically to SDG&E, California utilities, like all businesses in California, have obligations under state and federal law to ensure they can communicate effectively with people with disabilities. In the Americans with Disabilities Act ("ADA"), which is incorporated into state law through the Unruh Civil Rights Act, this is expressed through an obligation to use auxiliary aids and services as needed to ensure accessible communications.⁶ California businesses, including utilities, also have an independent state law obligation to communicate with their customers in an accessible manner under both the Unruh Civil Rights Act, California Civil Code section 51 *et seq.* and the Disabled Persons Act ("DPA"), California Civil Code section 54 *et seq.*⁷ These issues regarding accessible communication must be addressed by SDG&E in implementing PSH and conducting all associated consumer outreach and education.

⁵ See, e.g., D.10-01-026, mailed January 21, 2010, at 14 (requiring that educational materials about emergency backup power capabilities of telecommunications equipment be provided "in type size big enough to comfortably read" and that these materials also be made available in large print, Braille or audio format for customers who are visually impaired); D.08-11-031, mailed November 6, 2008, at 72-75 (requiring utilities to target their education and outreach efforts for the CARE and LIEE low-income assistance programs to customers with disabilities, and stating that "[t]he utilities shall ensure accessible ME&O for CARE and LIEE by providing alternate formats for communications"); D.06-12-038, mailed December 14, 2006, at 14-15 (requiring in the context of LIEE program implementation that the utilities' TTY customer service numbers "be answered in the same manner and with the same efficiency" as standard voice calls and directing the utilities "to include in outreach materials at TTY number that is presented with the same prominence as other contact numbers"); D.07-07-047 at 15 (adopting DisabRA's proposals to maximize accessibility of bills in the context of PG&E's application to modify its billing format).

⁶ 42 U.S.C. § 12182(b)(2)(A)(iii). See also *Martin v. Metropolitan Atlanta Rapid Transit Authority*, 255 F. Supp. 2d 1362, 1377 (N.D. Ga. 2002) (interpreting language in the ADA's implementing regulations as requiring that a transit agency publish its schedules in accessible formats).

⁷ See *Nat'l Fed. of the Blind v. Target Corp.*, 582 F. Supp. 2d 1185, 1196 (N.D. Cal. 2007) (holding that Target was required by both the Unruh Act and the DPA to make information on its website accessible to people with visual disabilities who use screen reader technology).

III. SDG&E MUST BE PREPARED TO COMMUNICATE EFFECTIVELY WITH CUSTOMERS WITH DISABILITIES

SDG&E notes in its Application that customer education is a vital aspect of its new proposed rate, which will take substantial focus to be successful: “[b]ecause residential customers are less familiar with the concept of time-variant energy pricing, SDG&E believes educating these customers on this concept will take time.”⁸ Furthermore, SDG&E is aware that its proposed “rate designs . . . are substantially different from, and more complex than, the current flat rate structure for SDG&E customers,” thus it asserts that “implementation of the requested rates will require significant customer support and education to ensure that customers have the opportunity to be informed of their new dynamic pricing options.”⁹ Finally, the utility notes the need (and requests cost recovery) to “ensure that *all* customers have the information and support necessary” to choose an appropriate rate program.¹⁰ The need for adequate customer support and education is particularly vital for customers whose disabilities affect their ability to use standard forms of communication. Not only are these customers difficult to reach, but they may also have a reduced ability to shift their energy usage and may therefore need more time to determine how they can effectively participate in PSH. However, there is no plan to ensure that these customers receive education and support except for the single mention of web accessibility noted above. Until SDG&E develops plans to effectively communicate with customers with disabilities, it cannot successfully implement its program, and the Application should be rejected.

To ensure effective communication, the utility must use three general techniques. First, it must specifically engage in targeted outreach to people with disabilities so that it communicates with them regarding all aspects of PSH design and implementation.

⁸ Testimony at WGS-7, lines 12-13.

⁹ Application at 5-6.

¹⁰ Application at 8 (emphasis added).

Second, it must maximize the accessibility of all standard forms of communication used to reach customers about PSH. Third, it should engage a consultant who is knowledgeable regarding accessible communications to work in an ongoing manner to ensure that education and outreach efforts can reach the broadest customer base. As SDG&E notes in its testimony, “PSH can only be implemented successfully with customer involvement”¹¹ in all aspects of the program, and these three techniques should be broadly incorporated into all aspects of the implementation process.

A. SDG&E Must Address the Needs of People with Disabilities in All Phases of its Proposed PSH Program

In its testimony, the utility describes three phases for its proposed new rate: pre-implementation, implementation, and post-implementation; for each of these phases, SDG&E’s testimony describes various forms of customer communication, including customer research, direct communications, media, and other channels. SDG&E must ensure that it designs and implements all aspects of its outreach and education campaigns so that it can successfully reach customers who cannot access standard forms of communication. Throughout, the utility should specifically target the disability community and work to ensure that the accessibility of the standard educational campaign is maximized. To do so, and to improve its efforts over time, it should work with a consultant who has expertise in accessible communication throughout the development and implementation of its new rate program.

B. SDG&E’s Customer Research Must be Accessible

SDG&E indicates that “customer involvement in designing, testing and refining the outreach and education campaign is vital to the success of PSH. For this reason, SDG&E’s research activities will seek customer input and participation during every

¹¹ Testimony at WGS-23, lines 18-19.

stage of the outreach and education campaign.”¹² However, the utility does not propose to seek involvement from disabled customers to address their unique communications needs. SDG&E must specifically include customers whose disabilities affect their ability use standard communication in order to determine how well SDG&E is serving the needs of this customer base.

Through all stages of its proposal, SDG&E plans to use focus groups to obtain customer perspectives and feedback. SDG&E must take steps to ensure that people with disabilities are included in focus groups and other research efforts that make up its proposed research activities. In order to ensure participation in such focus groups by people with disabilities, SDG&E will have to reach out to the disability community to encourage participation. Some options for this outreach include working through disability-oriented CBOs, advertising for focus group participants through disability-oriented media and listservs, and engaging an expert in targeting the disability community to develop other options. SDG&E should use targeted outreach to the disability community to develop specialized focus groups of people with a broad range of disabilities, to understand how they access information from the utility, to understand what kinds of accommodations and alternate formats they use, and to give input on SDG&E’s plans for PSH.

Additionally, the standard focus groups and customer studies must be conducted so as to be accessible. For example, SDG&E must be prepared to provide a sign language interpreter for a deaf focus group participant or alternate formats for printed materials for a blind focus group participant. Similarly, the utility must be prepared to conduct phone surveys using alternative technology such as TTY or relay service.¹³

¹² Testimony at WGS-27, lines 22-25.

¹³ TTY machines (also known as TDD machines or teletext devices for the deaf) are communications devices that people who are deaf or have hearing impairments can use instead of talking on a telephone. A TTY user has a machine which resembles a computer and is connected to the telephone network. The user types his or her message to a recipient, who must also have a TTY, and this message is transmitted over the TTY line. The message then appears as text on the recipient’s TTY machine. The recipient may then

Finally, lessons learned from disabled participants through this research must be adopted so that future communications are accessible and effective, and satisfaction metrics must include specific review of the experiences of the disability community so that SDG&E can determine how well it is reaching disabled customers for PSH, and if necessary make changes to improve communication and participation.

C. SDG&E's Use of Media Must be Accessible

In order to educate customers about PSH and recruit them to opt in to the program, SDG&E indicates that it will utilize paid media outlets. In addition to standard media channels, SDG&E must specifically target media sources likely to reach its disabled customers. The Application and Testimony contain no such proposal. SDG&E should utilize communications channels used by people with disabilities, including targeted media, newsletters, and listservs maintained by disability-oriented organizations, social networking websites, and other targeted mechanisms. In addition, the utility must maximize the accessibility of its standard media outreach. Examples of actions to maximize accessibility might include layouts of print advertisements that provide key information in large print and provide TTY numbers and notations that relay calls are accepted. Similarly, any broadcast advertisements or public service announcements should be captioned, and internet videos should provide transcripts and/or sign language

respond. While TTYs were once the dominant form of telecommunication for people who cannot use standard voice telephone equipment, the use of this technology is in decline, while other forms of telecommunication, including text-based communication (email, instant messaging, and other forms of text message) and relay services, are gaining in popularity. Many individuals now use some form of telecommunications relay service calls, which occur primarily via an internet connection, whether on a computer, handheld device, or other interface. In an IP relay call, a deaf person types his or her side of the conversation using a keyboard. Someone at a commercial relay service reads the typed text to the intended call recipient and types that person's voice responses so the deaf person can understand them. For video relay calls, a deaf person uses a webcam or other video device to engage in a two-way sign language conversation with an interpreter, who then speaks to the other party to the call. Either type of call requires an intermediary who can interpret the voice response by typing or signing it to the deaf person participating in the call. While TTY machines remain vital for a segment of the deaf/hard-of-hearing community, much of the deaf community would be left out of outreach efforts that only target TTY users since so many use relay instead of TTY.

versions. Again, a consultant with expertise in accessible communication can provide additional ideas and can adjust direct media efforts over time to improve effective communication with disabled customers.

D. Direct Customer Communications Must Be Accessible

As noted above, the Commission has previously required utilities, including SDG&E, to maximize the accessibility of various written communications. SDG&E is well aware of DisabRA’s ongoing concerns regarding accessibility of educational material, including material provided through bill inserts, and should provide information on how it plans to address accessibility of its written material.

Specifically, SDG&E should design its standard direct mail and print recruitment materials to maximize accessibility, and it should also be aware of customers who will need to receive materials in formats specifically tailored to their disability. For example, any customer who currently receives his or her utility bill in large print should also receive all customer PSH education and recruitment materials in the same format. Customer service representatives (“CSRs”) should also be prepared to respond to customer inquiries based on the limited amount of information provided in large print.

E. Online Material Must Be Accessible

SDG&E proposes to substantially rely on its website to convey information to its customers about PSH. For instance, SDG&E indicates that it will launch website enhancements that include “educational material, online tools, video tutorials on PSH and other rate options available to customers, along with web analytics to track use of education and video components.”¹⁴ This will involve adding new content to the website so that customers can become more efficient users of this program. The utility will also provide web-based tools for customers to better understand PSH and its effect on their

¹⁴ Testimony at WGS-A-3.

bills, to make informed decisions between rates, and to manage their energy consumption to get the most advantage from their chosen rate structure. In order to ensure that these tools and resources are available to customers with vision disabilities, SDG&E must ensure that all new website content are fully accessible to those who use screenreaders.

SDG&E is separately obligated to make its website accessible and appears to be on track in meeting its commitments. While this is appreciated, it is not sufficient, given that many customers, including a high proportion of persons with disabilities have limited or no internet access.

F. ReduceYourUse Day Notifications Must Be Accessible

SDG&E's Application states that notifying customers of ReduceYourUse Days will require rapid turnaround between identification of the event day and communicating this to customers, who may choose to receive notification via email, text message, or alphanumeric pager by 3 p.m. the day before an event day.¹⁵ By allowing customers to select their preferred mode of notification, SDG&E effectively supports accessible communications. To the extent that SDG&E will use text messages, for example, this may be the ideal format for delivering information to certain customers who are deaf. DisabRA strongly supports sending as much customer information as possible in the customer's preferred mode of communication. To be effective, however, this notification must follow effective outreach so that customers know to select a preferred format.

G. SDG&E Must Train Its Employees About Accessible Communication

SDG&E plans to train its customer service representatives and program staff who work with PSH to prepare them for contact with customers.¹⁶ This training must include information on effective communication with customers who have disabilities that affect their ability to use standard forms of communication. For example, CSRs must be

¹⁵ Testimony at WGS-17, lines 6-8.

¹⁶ Testimony at WGS-A-5.

prepared to respond to TTY calls and calls made through telecommunications relay services. The CPUC has previously required that the utilities' TTY lines be answered in the same manner and with the same degree of efficiency as their voice telephone lines.¹⁷ This standard should be maintained. Similarly, CSRs should be prepared to accept and respond to relay calls, without any penalty for the fact that such calls generally take longer than standard voice calls. Other customers may prefer to ask questions via email or other text-based mechanism. SDG&E should be prepared to provide responses to customer inquiries using these alternative technologies. Finally, customers who cannot read standard materials may call with more questions about the program because they have limited information; CSRs should be prepared to go through information regarding the program in detail, or to provide information in alternative formats accessible to the customer.

IV. CONCLUSION

The pending Application fails – almost entirely – to take the communications needs of people with disabilities into account at any step of the proposed PSH program. Before any Dynamic Pricing Application is granted, SDG&E should provide an adequate plan to incorporate the communications needs of people with disabilities into all three phases of its outreach and education campaign.

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Respectfully submitted,

_____/s/_____

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¹⁷ D.06-12-038 at 14-15.

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