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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Diego Gas & Electric Company (U 902 E) for Authorization to Recover Unforeseen Liability Insurance Premium and Deductible Expense Increases as a Z-Factor Event.	)))))	A.09-08-019 (Filed August 31, 2009)

OPENING BRIEF OF UTILITY CONSUMERS' ACTION NETWORK (UCAN)

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I. EXECUTIVE SUMMARY

A. Introduction / Background

On August 31, 2009, SDG&E filed an application with the Commission for authorization to recover $29 million in its revenue requirement for the increased liability premium expense incurred during 2009 as a Z-Factor event. The company asserts that this cost pass-through is legally justified because the insurance premiums constitute a Z-factor exception to its general rate case allowed revenues. It also seeks authorization to book into a memorandum for future recovery through an advice letter process any insurance premiums and deductible expenses above those currently authorized in rates. The $29 million revenue requirement request is based upon:

1) SDG&E's insurance premium increase from the 2008 authorized level of $4.5 million to the 2009 actual level of $47 million;

2) the allocation of premium expenses between general liability and wildfire liability;

3) the allocation of 22.6 percent of the wildfire premium expenses to FERC-jurisdictional rates; and

4) the application of a $5 million deductible under the Z-Factor mechanism.

B. Why SDG&E's Application Should be Rejected

UCAN submits that SDG&E should not be allowed to recover any of the $29 million in revenue and that it should not be permitted to book a memorandum for future recovery through an advice letter process any insurance premiums and deductible expenses. UCAN's argument is predicated upon two main arguments. First, that the costs for which SDG&E seeks recovery do not meet Z-factor criteria and thus, as a matter of law, should not be permitted.

Second, UCAN explains that even if the request met Z-factor criteria, SDG&E failed to mitigate the impacts of the 2007 wildfires upon its liability insurance premiums. UCAN presented the expert testimony of an independent expert who has spent his career advising large corporations, including Pacific Gas & Electric, on general liability insurance procurement. He has reviewed SDG&E's procurement strategies and found them to be deficient. Based upon SDG&E's failure to make a compelling showing and the testimony of UCAN's witness, Robert Sulpizio, the Commission should find that SDG&E didn't take the necessary steps to mitigate the insurance premium increases. In fact, Mr. Sulpizio presented an alternative financing arrangement that would have substantially mitigated the insurance price hikes. SDG&E rejected it as infeasible without having conducted a feasibility study nor documenting any alternative analysis. (Exhibit 12, Pages 5-6).

Finally, UCAN suggests that not only did SDG&E fail to mitigate but, in at least one notable instance, SDG&E exacerbated the price hikes by creating a false impression of future wildfire damages.

In general, SDG&E's case hinges almost solely upon a relatively inexperienced junior manager who largely presents hearsay testimony about Sempra's efforts to secure liability insurance after the 2007 wildfires. UCAN notes that SDG&E had an opportunity to present testimony by its senior insurance manager, Jim Lathers, but didn't. SDG&E also failed to offer testimony of its insurance broker, Joe Phillips. Nor did SDG&E offer any other independent evaluator of insurance procurement to support the factual contentions of Mr. DeBont. The quality of SDG&E's showing is also highly compromised by the absence of any written documentation memorializing discussions with underwriters. (Exhibit 12, questions 13, 16, and 17). UCAN's expert was astounded that Sempra conducted no feasibility study nor had any documented analysis of alternative risk transfers (ART), such as CAT bonds. (Exhibit 10, p. 15) When he conducted his own, admittedly rough, calculations, UCAN's expert found that if an alternative program had been used to replace the AEGIS $35 million primary layer, the first year premium would have been $3.5 million (10% of $35 million) compared to $12.4 million. (Exhibit 10, Attachment C).

SDG&E obscured this potential savings by re-allocating the premiums between the General and Wildfire Liability towers, contending that the premium for the primary $35 million of wildfire liability was $4 million versus $8.4 million for the General Liability. It also argued that the alternative plan, while having some attraction, offered inadequate capacity. However, the object of Mr. Sulpizio's calculations was to demonstrate that SDG&E was not compelled to use the AEGIS primary $35 million layer at an exorbitant cost. Sempra could have utilized the ART plan for a primary layer of $35 million, or even $50 million or more and, even after building in a loss in year 2, would have been able to stabilize their cost over a 5 year period. Accordingly, a large portion of the premium increase could have been avoided had Sempra seriously pursued non-traditional insurance strategies.

The record is replete with instances in which Sempra/SDG&E had an opportunity to control or influence underwriters' perception of risk but didn't. And it adopted a strategy that over-relied upon a single insurer and upon traditional insurance strategies. As noted by UCAN's expert:

> The traditional insurance market upon which SDG&E has relied is too small and too thinly capitalized to offer any assurance of long term stability in insurance costs. SDG&E's insurance strategy was unduly risky, comparable to solely relying upon an electricity or natural gas spot market for the purchase of those energy commodities. As the state learned painfully in 2000-2001, reliance upon a spot market—whether it be energy or insurance—is ill-advised. (Exhibit 10, Page 14).

Ultimately, the evidentiary record demonstrates that the liability insurance costs were under SDG&E's control but that the utility didn't have sufficient incentive to act aggressively to mitigate costs. This application presents to the Commission a graphic example of how the existence of the Z-factor sends a perverse incentive to utilities to engage in high-risk, short-term strategies for managing risk. Rather than explore and utilize the kind of risk management strategies that other corporations use, Sempra/SDG&E rolled the dice with traditional insurance strategies with the expectation that if the gamble failed, its customers would foot the cost. This case presents the Commission with an opportunity to realign incentives in order to send an important and overdue message to SDG&E that its customers are not guarantors and the Commission will not protect the Sempra Utilities from their own business miscalculations.

II. ANALYSIS OF THE LAW

Two Commission cases serve to refine the Z-factor analysis first established in D.89-10-031 as part of the indexing mechanism to adjust for costs associated with exogenous events. These cases D. 94-06-011, *Application of GTE California Incorporated* and *In the Matter of the Application of Pacific Bell* articulated and detailed nine factors for determining whether an event qualifies for Z-factor treatment. Among those factors that a utility must establish are that the "costs are clearly beyond utility management's control," "the costs are not a normal cost of doing business," and "the costs have a major impact on the utility's overall costs."

UCAN has conducted a thorough examination of the law relating to the application of Z-factors. As will be described below, the insurance costs raised by SDG&E were not beyond the company's control, they were normal costs of doing business, and did not have a major impact upon SDG&E's overall costs.

A. Costs Were Not Clearly beyond SDG&E's Control

Mr. Schavrien, in his direct testimony, asserts that SDG&E cannot control the price and availability of coverage of liability insurance and thus the cost is beyond SDG&E control. (Exhibit 1, page 9). He further clarifies SDG&E position on the issue in his rebuttal testimony where he states, "The issue here…is whether or not it (SDG&E) could have prevented the outcome that was actually experienced." (Exhibit 2, Page 4). Mr. Schavrien, however, is incorrect as he fails to acknowledge how the Commission has applied this criterion, which is highlighted by his failure to cite to any decisions to support his conclusions.

The Commission when it first articulated the nine Z-factor criteria in D.94-06-011 held that to determine whether the costs of an event are clearly beyond management's control the issue is not just whether the cost is within management's control, but rather whether it is within the "utility's ability to control the impact of an event." (D.94-06-011; 55 CPUC 2d 1; 1994 Cal. PUC Lexis 456, *95).

The two considerations are (1) whether circumstances impose specific objectively determinable costs or (2) whether circumstances wholly limit the utility's response to the event. (D.94-06-011; 55 CPUC 2d 1, 1994 Cal. PUC Lexis 456, *95).

SDG&E is not "wholly" limited in its response to the event. SDG&E cannot completely control the cost of its liability insurance, but as demonstrated below, it has the discretion to comparison shop for the best price and can negotiate the level of insurance coverage and deductibles it might pay.

The Commission provided detailed analysis of the "cost beyond management's control" criterion in two decisions. In the first, D.00-01-021, Order Instituting Investigation on the Commission's own motion to consider policies and procedures applicable to the possible over-assessment by the State Board of Equalization of property owned by Commission regulated utilities, the Commission determined that the cost impacts from a property tax settlement were not eligible for Z-factor treatment. This resulted in Pac Bell and GTEC no longer needing to collect rates subject to refund or maintain property tax memorandum account. While this decision involves telecommunication companies and the proceeding involves an energy utility, the majority of Commission analysis of the Z-factor criteria occurs through its Z-factor analysis of telecom applications.

The Commission, in making its determination in D.00-01-021, found that the property tax costs were influenced by a settlement agreement entered into by the parties in the proceeding. The parties by entering into a settlement agreement could exercise its discretion to comparison shop for the best deal they could litigate or negotiate to their financial advantage. Further, the utility exercised its managerial prerogative to negotiate and sign a compromise. As the settlement agreement impacted the costs, the Commission determined that the costs were not beyond management's control and were not eligible for Z-factor treatment. When a utility negotiates a settlement it is essentially entering into and agreeing to be bound by a contract. This decision is thus a close parallel to SDG&E claim for Z-factor treatment as it involves SDG&E binding itself to a contract which impacts its cost. Arguably SDG&E has more control to impact the cost because it is the explicit contract setting the costs, where as in D.00-01-021, the utilities tax related costs were indirectly impacted by the utility negotiated and accepted settlement agreement.

In the second case, D.00-12-032, *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service; Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service*, the Commission considered Limited Exogenous (LE)-Factor recovery which developed as a way to limit the approved Z-factors for telecommunication companies. All of the same Z-factor elements applied to make a determination of LE-Factor recovery. D. 00-12-032 is applicable to this proceeding because of the significant parallels between the NRF and energy ratemaking proceeding. In D.00-12-032, the Commission interprets the "Costs Beyond Management Controls" criterion as established in D.94-06-011 asserting that granting PEP recovery would defeat the purpose of the NRF which was to preserve the utility's incentive to manage costs by holding the utility financially responsible for the outcome of its management actions. Here, it is clear that SDG&E is exercising its managerial prerogative when it negotiates for liability insurance. SDG&E is not mandated to have specific liability insurance coverage levels. Management chooses to obtain liability insurance and exercises its discretion in determining whether the value of the insurance exceeds the cost in obtaining the insurance. Allowing SDG&E to recover increased insurance costs removes its incentive to negotiate and obtain the best price for insurance.

SDG&E asserts it did everything possible to attempt to lower the insurance costs. Specifically, it claims that because it could not increase the level of available insurance or completely prevent an increase in premium and deductible expenses the costs are outside of its control. (Exhibit 2, Page 4). SDG&E is incorrect as UCAN's expert's testimony shows that SDG&E's management could have taken numerous other actions to minimize its costs. A failure to act to affect change is not the same as an inability to affect change despite action.

As is noted by UCAN's expert, SDG&E did not discuss the inverse condemnation doctrine with underwriters. (Exhibit 10, page 6 citing Exhibit 3). Nor did SDG&E discuss the pending wildfire litigation with the underwriters or bring a legal expert to the underwriting negotiations. (Exhibit 10, pages 6-7 citing Deposition of Maury DeBont).

Mr. DeBont in his rebuttal testimony attempts to refute these claims drawn from his testimony and deposition by asserting that he was only referring to the negotiation period where SDG&E did not participate in discussion or raise the above issues. However, he now claims that there is a renewal period, which appears to encompass a larger time frame (though no actual period is stated) where Sempra's former Director of Risk Management met with AEGIS and other underwriters and raised the issues of inverse condemnation and the wildfire litigation with them. (Exhibit 4, Pages 3-4). We note that SDG&E has provided little if any information concerning these meetings or their content or explained how the meetings did or did not have any impact on the amount of insurance that the underwriters eventually provided and the premiums offered. Without such information SDG&E is not in a position to claim that it had no impact on costs. Further, Mr. DeBont's rebuttal indicates that at the point in time SDG&E met with underwriters they did not understand, appreciate or ask questions concerning inverse condemnation. (Exhibit 4, Page 3).

As will be explained in greater depth in Section III, SDG&E had an opportunity to shape underwriters understanding of inverse condemnation and the litigation and to maintain an open dialogue concerning understanding, progress, and questions. Sempra chose not to maintain that open communication and underwriters were left to understand the impact of inverse condemnation and litigation without the guidance of the entity directly involved and affected. Sempra claims that it made this decision because it felt underwriters were already participating in the claims process and did not want to highlight inverse condemnation and rather claims to have discussed SDG&E strategy to mitigate its wildfire exposure and improve its risk profile. (Exhibit 4, Page 4). While, it is questionable whether this was a reasonable decision, it was still a decision that SDG&E management made and in doing so impacted the decisions being made by underwriters to offer insurance and set premium rates. SDG&E is again showing that these costs, similar to costs associated with natural disasters, may not be completely within their control, but that there are various actions they can and should take to mitigate and limit those costs which suggests these costs should be ineligible for Z-factor treatment.

SDG&E also failed to discuss its loss history during the negotiations, for which Mr. DeBont was unaware of any period in which the primary underwriter AEGIS had ever loss money on the SDG&E account. (Exhibit 10, page 7 citing Deposition of Maury DeBont). Again, it is worth noting that Mr. DeBont in his rebuttal testimony clarifies that he just does not know whether AEGIS loses money or not when insuring SDG&E because they take actions such as investing premiums it receives from SDG&E, which he would include in such a determination. However, he asserts that AEGIS likely does not make money on the premiums alone because SDG&E has made countless claims for non-wildfire losses resulting in a near 100% loss ratio for the last 10 years. (Exhibit 4, Pages 5-6). SDG&E does not explain why it does not consider this history of a near 100% loss ratio as also impacting its rate increase and reduction in available insurance. However, this further information again highlights a decision management made with whether or not to discuss information with its insurers because the potential impact it believes such information has on the premiums set by the insurer demonstrating the impact and control SDG&E management has over these costs.

SDG&E had the opportunity to discuss these issues with its underwriters. It was management's decision to raise or not raise these issues which likely impacted the premium rate offered and the amount of available insurance. Where Sempra failed to act or chose to withhold information it was acting to control information and impact costs, it is indicative of an ability to control costs.

SDG&E's management also made a series of other decisions which likely impacted the terms of its insurance contract. First, SDG&E took a hands-off approach to negotiating, allowing the brokers to negotiate. (Exhibit 10, citing Deposition of Maury DeBont, page 110). Though SDG&E disputes its lack of involvement by distinguishing between the renewal period and the negotiation period and its decision to be involved in one aspect but not the other, Sempra still concedes that it had very limited interaction with its underwriters with only a few meetings occurring at conferences and informational meetings and it provides no clear information concerning any meetings that took place, who was involved, and the actual information discussed in those meetings. (Exhibit 4, Pages 2-4). Additionally, Sempra should have been involved in the process from start to finish, as Mr. Sulpizio explains, the client is best able to educate insurers about the potential risks and risk offsets facing the company and that AEGIS has traditionally dealt directly with its insureds who are in fact owners of the Company, and he has found success in having clients actively participating in renewal negotiations. (Exhibit 10, Page 7). SDG&E failure to involve itself directly in these negotiations likely resulted in higher premium costs.

Second, SDG&E failed to raise the potential it may be indemnified for any liability relating to the Guejito fire and potentially indemnified for a portion of the damages they were required to pay. As Mr. Sulpizio explains, such potential "would have had a positive influence on underwriters pricing decisions." (Exhibit 10, Page 8). This fact is particularly significant when you note that SDG&E asserted that "payback" was one of the factors in their premium increase. (Exhibit 10, Page 9).

Third, SDG&E management failed to obtain written analysis of alternatives risk transfer (ART) mechanisms and alternative financing strategy. Without written analysis SDG&E would not have been able to make effect conclusions regarding the cost of the alternatives. (Exhibit 10, Page 15). Mr. DeBont in his rebuttal testimony claims that written analysis is unnecessary and it can rely on the oral opinion of brokers (Exhibit 4, Page 10), but this does not obviate the fact that alternatives are not viable without such analysis or to claim management was not in control of the decision to evaluate alternative forms of insurance and compare their costs and value in deciding the correct amount to pay in excess of the amount it had just determined less than one year prior was the correct and reasonable amount to pay.

Fourth, SDG&E simply failed to consider the possibility of retaining the risk, rather than accept AEGIS terms. SDG&E made a decision to accept a premium of $12.4 million for a net amount of 5.1 million of insurance in excess of a $5 million deductible. SDG&E has made a decision to obtain a specific insurance policy even though given the costs; foregoing insurance (if this was indeed the only option) was a viable alternative decision. (Exhibit 10, Page 10). Irrespective of the options available, SDG&E had the opportunity to negotiate and independently agreed to the premium increases. SDG&E also had the option to not obtain the insurance at all. In making these decisions SDG&E is controlling the financial impact of its insurance costs. (See D.00-12-032; 2000 Cal. PUC Lexis 7, *15).

Fifth, SDG&E/Sempra has maintained an unduly risky insurance strategy relying on the tradition insurance market which is too small and thinly capitalized to offer any assurance of long term stability in insurance costs. In failing to diversify its holding SDG&E exposed itself to relatively high risk and inadequately prepared itself for the common cyclical swings on the insurance market. (Exhibit 10, Pages 11-14).

Finally, Sempra made a specific decision to accept the insurance offered by AEGIS. As Mr. DeBont acknowledges in his rebuttal testimony, Sempra informed AEGIS that there may be a point where the costs would be deemed too expensive and would no longer represent an acceptable risk transfer. (Exhibit 4, Page 6). In this, SDG&E is acknowledging that liability insurance may be a normal cost of doing business, but at the end of the day it is still a choice where SDG&E's best decision may be to accept the risk, rather than pay for costly insurance. SDG&E is, however insufficiently or unreasonably, making a cost assessment of what it can incur; decisions which SDG&E must be held financially responsible less SDG&E lose its incentive to determine the value of the insurance and find *the best value at the lowest cost* (as per the direction of the Commission in D. 00-12-032; 2000 Cal. PUC Lexis 966, *16).

UCAN submits that SDG&E should not be able to recoup these costs as a Z-Factor because its holding company proxy (Sempra) failed to properly consider its available alternatives and made a number of negotiation decisions which likely impacted the decision of the underwriters. SDG&E fails to satisfy the "cost beyond management control" criteria for, as discussed above, its management's discretion and control was instrumental in the insurance obtainment process (as per D.00-01-021; 2000 Cal PUC 7, *13). Because SDG&E had the opportunity (whether it exercised it or not) to comparison shop and negotiate the best deal available, the Commission can find that this circumstance fails the Z-factor test.   The facts in this case, as discussed in Chapter III below, also support a legal finding that SDG&E failed an opportunity to mitigate the rate increases and thus also fails the Z-factor test. Thus just as the financial impact of the settlement agreement discussed in D.00-01-021 was within management's control, the financial impact of its negotiated liability insurance policy is within SDG&E management's control

Not to be overlooked, SDG&E must be held financially responsible for the outcome of its management's action otherwise the utility loses all incentive to manage costs. (See, D. 00-12-032; 2000 Cal. PUC Lexis 966, *16). As shown by UCAN, SDG&E/Sempra had few, if any, incentives to manage its insurance costs and assumed that these fire-related insurance costs would be passed through to ratepayers prior to the next General Rate Case.

B. Risk management is a normal cost of doing business

SDG&E claims that to qualify as something that is not a normal cost of doing business "the costs imposed by the event must not be the result of general economic conditions but must result from factors which specifically impact the utility," Mr. Schavrien, on behalf of SDG&E, alleges a number of "factors" which in his interpretation make SDG&E unique to insurers thus making its insurance costs unique. (Exhibit 1, page 10).

However, SDG&E is misconstruing how the Commission considered the normal cost of doing business in D.94-06-011. Mr. Schavrien's reference to general economic conditions is not discussed as part of the determination as to whether costs are a normal part of doing business, but rather whether those costs are exogenous.

In the decision relied upon by SDG&E, the Commission is actually quoting its decision in D. 89-10-031, listing a number of factors which do not qualify as Z-Factors when its states, "On the other hand, cost changes due to labor strikes or contracts, normal costs of doing business (including costs of complying with existing regulatory requirements), or general economic conditions would be excluded." (D.94-06-011; 55 Cal. PUC 2d 1, 1994 Cal PUC Lexis 456, *91).

However, when the Commission discusses the normal costs criterion it is determining whether cost should no longer be treated as a normal cost of doing business if the cost is increased by an *exogenous* event, holding that the mere fact that a normal business cost is increasing does not make them eligible for Z-Factor treatment. (D.94-06-011; 55 Cal. PUC 2d 1, 1994 Cal. PUC Lexis 456, *98).

In this proceeding, SDG&E concedes that obtaining liability insurance is a normal cost of doing business. (See Exhibit 2, Page 5, "Adequate liability insurance is a necessary part of doing business in providing electric service to customers").

In D.94-12-025, *Toward Utility Rate Normalization, vs. Pacific Bell,* the Commission issued a decision where the Commission held in abeyance Pacific Bell's request for to treat intervenor funding as part of a Z-Factor filing. The Commission further evaluated whether increases or decreases in costs should result in not treating the costs as normal costs of doing business. The Commission noted that normal costs of doing business are pre-calculated in NRFs and that those calculations are at best estimates and will in some years be higher and in others be lower. Here, the costs for liability insurance are also pre-calculated estimates that amount in variations from year to year. Costs which are already recovered in revenue may be higher than the amount included in the rates in some years and in other years may be lower. (D.94-12-025; 57 Cal. PUC 2d 708). Merely because the costs are higher does not automatically turn these costs into non-normal costs of doing business.

Further there is no indication that the insurance increases at least in part do not affect the entire industry. The insurance market as a whole is subject to extremely cyclical behavior. When losses are high, underwriting capacity shrinks driving up prices. These cycles occur regularly in both the California and national insurance markets. SDG&E has benefitted from a somewhat more competitive insurance market driven by substantially unused capacity and relatively stable catastrophe loss experience. (Exhibit 10, Page 11). The cyclical nature of the insurance market indicates that costs will vary over periods of years. The increased costs SDG&E is incurring are not proportionally different from any of the increased costs that any other corporations and even individuals face following an increase in the number of liability claims made to the insurer and an increase in the perceived risk of insuring the corporation. The increases may be high, but that does not make them unique costs. We note that PG&E experienced a reduction in limits purchased and higher premiums and its exposure to wildfires is very limited. (Exhibit 10, Page 20).

SDG&E has not sufficiently differentiated the costs that are already accounted for in its rate settings, the increases that impact the entire insurance industry, and the costs that impact California IOUs from the costs, which SDG&E suggests are not a normal part of doing business. The likely reason for this failure to distinguish costs is that these costs are in fact a normal cost of doing business. The total increase may not have been anticipated by SDG&E, but that only indicates that SDG&E failed to properly analyze changes in the insurance market and the impact the fires may have on its rates. It is not an indication that anything about these costs are unique or outside its normal costs of doing business.

Finally, we note that SDG&E has not presented evidence or legal justification for its decision to procure the same levels of insurance protection annually. There is simply no mandate for the utility to procure insurance for the same coverage level as the previous years in the same manner that it had in previous years. General rate cases do not bind the utility to uniform risk management practices throughout the pendency of the rate case period.

C. The insurance costs do not have a major impact on SDG&E's overall costs

An alleged Z-factor event must have a major impact on a utility's overall costs to be eligible for Z-factor treatment. (D.94-06-011; 55 Cal. PUC 2d 1; 1994 Cal. PUC Lexis 456, *105). Mr. Schavrien asserts that its calculated cost of liability insurance has a major impact on SDG&E overall costs. (Exhibit 1, Page 13).

Contrary to SDG&E's claim, insurance premium costs totaling $47 million do not have a major impact on SDG&E's overall costs. Mr. Schavrien claims that this amount has an 8 percent impact on SDG&E net operating income and over a 10 percent impact on its total administrative & general expenses reported in 2008. (Exhibit 1, page 13). However, this is not the standard that the Commission has established for determining cost impacts. SDG&E must show that the costs have a major impact on SDG&E's *overall* costs, not some subsection of its computed costs. (D.94-06-011; 55 Cal. PUC 2d 1; 1994 Cal. PUC Lexis 456 *104-105). D.08-07-046 approved SDG&E's application for authority to update its revenue requirements. SDG&E was granted a revenue requirement of $1.361 billion. (D.08-07-046, Page 1). Thus the insurance costs are actually 3.5% of SDG&E overall costs, not 8%.

Additionally, using the $47 million total is actually excessive as SDG&E already had set aside at least $4.5 million to pay for liability insurance suggesting the calculation should be based on the difference between $42.5 million and SDG&E overall costs which is closer to a 3% impact on SDG&E overall costs.

Also, the acceptance of this percentage depends on accepting Sempra's allocation methodology based on the exposure potential. Sempra has offered but not substantiated the particular allocation of overall general liability premiums to wildfire-specific premiums. It presented no testimony by its insurers for the basis of this allocation nor the methodology by which the Commission could confirm the legitimacy of this allocation.

III. SDG&E's FAILURE TO MITIGATE PREMIUM COST INCREASES

As discussed in Chapter II, the insurance premium costs sought by SDG&E do not meet Z-factor criteria. Yet, even if the Commission were to find that they do meet the Z-factor criteria, the Commission cannot award the relief sought by SDG&E because the company failed to mitigate its losses. Indeed, using the analogy advanced by Mr. Schavrien during cross-examination, if postage costs were to increase, SDG&E would still have an obligation to mitigate the impact of those postage increases by non-mail strategies such as on-line bill delivery and payment systems. (RT at p. 59). Similarly, SDG&E had an obligation to mitigate the insurance premium increases. (*See Generally* California Public Utilities Code Section 451, "All charges demanded or received by any public utility…shall be just and reasonable").

Toward this end, UCAN presented Robert Sulpizio to offer to the Commission an independent assessment from an expert whose expertise and experience in insurance procurement dwarfs that of SDG&E's expert witness (DeBont). Mr. Sulpizio's observations, as set forth in the Exhibit 10 summary, are:

(1) SDG&E failed to adequately address the concerns of the underwriters during the negotiation process by failing to meet directly with AEGIS and failing to discuss the wildfire liability claims or the inverse condemnation doctrine with underwriters despite

claiming that that the liability claims and the doctrine were the primary causes for the increased premiums and reduced coverage.

(2) SDG&E accepted unreasonable terms offered by its primary underwriter AEGIS.

(3) SDG&E failed to thoroughly explore alternatives to the traditional insurance market and develop sufficient information for making a rational decision between plans.

(4) SDG&E failed to develop an alternative insurance plan following the 2007 fires despite history and other factors indicating that such an event would trigger a reduction in available coverage and an increase in price. (Exhibit 10, Pages 4-5).

As will be set forth below, Mr. Sulpizio's observations are credible and thoughtful. SDG&E's efforts to rebut Mr. Sulpizio are largely based upon a strategy of mischaracterizing Mr. Sulpizio's statements followed by an attack of the distorted statement. This tactic is largely exposed in Exhibit 12 - the written cross-examination of Mr. DeBont.

> The list of Mr. DeBont's mischaracterizations is relatively significant. For example, Mr. DeBont rebuts an assertion that a use of a broker is "uncommon" and that SDG&E should be dealing directly with underwriters. Of course, Mr. Sulpizio never made nor implied such assertions. And SDG&E concedes in its responses to Exhibit 12, numbers 2 & 3 that Mr. Sulpizio never made such a statement. Instead, the company implied this assertion from Mr. Sulpizio's statement that:
>
> In my experience, the client is best able to educate insurers about the potential risks and risk offsets facing the company. Thus, it was surprising to me that SDG&E adopted a relatively hands-off approach to its negotiations.......Given the seriousness of the issues involved in the renewal and their potential impact upon SDG&E, it was not prudent that Mr. DeBont relegated the negotiation process to an intermediary. (Exhibit 10, Page 7).

Yet again, SDG&E characterizes Mr. Sulpizio as having asserted that SDG&E should have focused on the wildfire liability claims and inverse condemnation *instead* of risk mitigation efforts. (Exhibit 4, Page 4). When asked about this in Exhibit 11, question 7, SDG&E justifies this assertion by referencing "**On page four, third paragraph, starting with "In summary"; and page six, section 1, paragraphs one, two and three."** In Exhibit 10, at page 4, Mr. Sulpizio actually says nothing of the sort. Mr. Sulpizio says:

> In summary, I have pointed out that SDG&E did not adequately address the concerns of underwriters during the negotiation process. The Company's Risk Manager testified to

> the effect that he did not personally meet with the Company's primary insurer, AEGIS. Further, in his meetings with excess liability underwriters, he acknowledged and SDG&E's documentary evidence shows that that no one from Sempra discussed the issues of SDG&E's 2007 wildfire liability claims or the inverse condemnation doctrine which were identified by the company as the principal reasons for their increase in premiums and deductible.

SDG&E chose to substitute the word "instead" for Mr. Sulpizio's clear "as well as". Then it castigates Mr. Sulpizio for the resulting nonsensical claim that SDG&E should not have raised risk mitigation efforts with underwriters. This tactic continues, as set forth in Exhibit 12 at questions 6, 8, 9, 10, 14 and 15. In each case, a review of Mr. Sulpizio's testimony does not support the contorted meaning ascribed to it by SDG&E.

Alternatively, SDG&E attacks Mr. Sulpizio's statements as being unfounded when, in fact, he relied upon statements from Mr. DeBont himself. For example, at page MD-3 line 3 of Exhibit 4, Mr. DeBont states that Mr. Sulpizio is "similarly mistaken in his assumption that SDG&E did not meet with the Company's primary insurer, AEGIS." When asked about this, Mr. DeBont replied:

> Please confirm that you did not interact with AEGIS during the renewal process in 2009? **ANSWER: I did *interact* with AEGIS during the 2009 renewal process, as did Mr. Lathers, who was the Director of Risk Management during the 2009 renewal. Our interaction was to differing degrees as well.**

In fact, Mr. DeBont lied. In his deposition, he said that he had not interacted with AEGIS and Mr. Sulpizio relied upon that statement. In Exhibit 11, at page 114 (See Appendix B to Exhibit 10, lines 18-22),

> Q. Is it true that you -- that you and Mr. Lathers interacted with AEGIS on behalf of Sempra?
>
> A. No. That interaction is typically is with the insurance brokers, and I did not myself interact with Mr. Madden during the renewal process.

SDG&E does this frequently. It criticizes Mr. Sulpizio for assuming that the AEGIS' Sempra account was profitable. Mr. Sulpizio relied upon Mr. DeBont's statement in a deposition that went:

Q. During those 10 years are you aware of years in which AEGIS lost money in its account with Sempra/SDG&E?

A. I'm not aware, no. (Exhibit 10, Appendix B, p. 114 of deposition).

When SDG&E is confronted with this fact, it responds:

a. Please confirm that in your deposition you stated that in your ten years of experience with SDG&E, you were not aware of any years prior to 2007 in which AEGIS ever lost money on the SDG&E account.
ANSWER: My deposition response was based upon the fact that neither I nor Mr. Sulpizio know if AEGIS "lost" (or made) money on SDG&E's account since we do not know how their underwriting and investment income offsets underwriting losses in any of the prior ten years.

b. Please state whether you believe it was unreasonable for Mr. Sulpizio to rely upon your assertion in your deposition?
ANSWER: Yes it was unreasonable as Mr. Sulpizio should have read the entire line of questioning in the deposition testimony in order to understand the context of the statement made. Combined with his understanding of the insurance industry, he would have come to a more appropriate and reasonable conclusion. (See Exhibit 12, questions 8a 7&8b)

Yet, there is nothing else in the deposition transcript on this topic.

Similar sophistry is found at page MD-5, line 25: where Mr. DeBont contends that SDG&E had a "nearly 100% loss ratio for the prior 10 years for non-wildfire third party liability losses." When UCAN challenges SDG&E and asks whether Mr. DeBont is stating that AEGIS never made money on the SDG&E account in the prior 10 years, his answer is a sphinx-link: **I am not making any such statement.** (Exhibit 12, question 10).

Rather than directly address the findings offered by Mr. Sulpizio, SDG&E relies upon a most disingenuous form of sophistry to rebut its own contorted interpretation of UCAN's expert testimony. As set forth below, in each of the primary recommendations and findings made by Mr. Sulpizio, SDG&E attacks stalking horses rather than address and prove deficiencies in his testimony. As a result, the actual factual and expert assertions made by UCAN remain largely uncontested or rebutted by anything in the record.

A. Sempra's negotiation process was deficient

1. Sulpizio's Findings

Mr. Sulpizio posits that the client is best able to educate insurers about the potential risks and risk offsets facing the company. Thus, he was surprised by Sempra's hands-off approach to its negotiations. (Exhibit 10, Page 7). He notes that AEGIS has traditionally dealt directly with its insureds who are owners of the Company. (Id). He finds that when clients actively participate in renewal negotiations it is successful in driving down premiums because the client is best able to tell their own story in a persuasive fashion. (Id).

He also is concerned by Sempra's failure to discuss wildfire litigation in their meetings with underwriters. If the company had truly believed that the legal doctrine of inverse condemnation was so critical to the result of SDG&E's renewal negotiations, it was imprudent to have excluded a legal expert as part of the team making presentations to underwriters in March 2009. (Exhibit 10, Page 6).

2. SDG&E's Refutation

SDG&E attempts to refute Mr. Sulpizio's claims by creating two distinct (but likely overlapping) periods: the renewal period and the negotiation period. SDG&E now claims that SDG&E did meet with AEGIS and other underwriters during the renewal period, but that during the negotiation period only its highly experienced broker met with AEGIS and other underwriters, though SDG&E works closely with its broker during the process. (Exhibit 4, Page 3).

SDG&E points to three meeting its former Director of Risk Management had with AEGIS during 2008 and 2009, claiming that those meeting involved discussion of the status of and any known details relating to the 2007 wildfire losses. He also pointed to a meeting in 2008 that the former Director had with all insurance markets discussing the 2007 wildfires and addressing how inverse condemnation might apply to civil suits. Mr. DeBont claims though that underwriters did not ask many questions or understand inverse condemnation at that point.

(Exhibit 4, Page 3). He then claims SDG&E had no reason to discuss the issues in the future as the underwriters understood the concept and felt its time would be better spent explaining how SDG&E intends to mitigate its wildfire exposure rather than discuss inverse condemnation or the wildfire litigation and attempt to put any type of positive spin on anything. (Exhibit 4, Page 4). Notably, Mr. DeBont does not provide or cite to any documentation to support his claims; he just says the meetings occurred.

3. Discussion

Notwithstanding SDG&E's rebuttal, Mr. Sulpizio's negotiation process testimony gives strength to the argument that the costs were not clearly beyond SDG&E's control. Mr. Sulpizio argues SDG&E management did not do everything possible as it claims and demonstrates this by showing that Sempra did not discuss the issues of inverse condemnation and the 2007 wildfires with underwriters. (Exhibit 10, Page 4). SDG&E's response is essentially: "you misunderstood my testimony I was referring to the negotiation period, not the renewal period, during the renewal period we of course discussed inverse condemnation and the wildfires, but tried not to raise it since it looks bad for us." (Exhibit 4, Page 4). This is unresponsive to Mr. Sulpizio's underlying claim.

Moreover, SDG&E attempts to shoehorn in discussions that occurred in 2008 when, in fact, they are irrelevant and outside the scope of Mr. Sulpizio's testimony -- which properly focused upon the 2009 negotiations with underwriters. In 2008, SDG&E admits that it saw no rate increase.

As noted above, SDG&E contorts, rather than responds to this criticism. It falsely alleges that Mr. Sulpizio sought to exclude discussion of risk mitigation. (Exhibit 4, Page 4). And it falsely suggests Mr. Sulpizio argues that SDG&E should have excluded brokers from meetings with underwriters. (Exhibit 4, Page 2). As described above, both statements are perversions of Mr. Sulpizio's testimony.

B. Sempra accepted unreasonable terms of coverage from AEGIS

1. Sulpizio's Findings

Mr. Sulpizio points out that SDG&E acceded to terms offered by AEGIS that were not reasonable by the standard of past experience and unrealistic as to future loss expectations notwithstanding the existence of 2007 wildfire liability claims. (Exhibit 10, Page 4). He found that Sempra failed to emphasize the company's loss history despite testimony from Mr. DeBont that he was unaware of any period in the ten years prior to 2007, where Aegis ever lost money on the Sempra account. (Exhibit 10, Page 7). He also raised concerns that Sempra failed to consider alternative coverage structure (Exhibit 10, Page 9-10), reasonable insurance alternatives, (Exhibit 10, page 11-14) and alternative strategies (Exhibit 10, page 14-18).

2. SDG&E's Refutation

SDG&E attempts to refute Mr. Sulpizio's claim by having Mr. DeBont now assert that when he said that he was unaware of any period in the ten years prior to 2007, where Aegis ever lost money on the Sempra account, what he meant was that he does not know whether AEGIS ever lost money because insurers make or lose money based on premiums they earn plus investment income which are offset by funds paid out for losses. (Exhibit 4, Page 4). SDG&E now claims that it had a near 100% loss ratio for the prior 10 years for *non-wildfire third party liability losses*. (Exhibit 4, page 5). SDG&E concludes that coupling its near 100% loss ratio with its 3 wildfire claims to AEGIS for $105 million in losses would lead any insurance professional to conclude the terms offered by AEGIS were an economically viable risk transfer option and that looking forward any reasonable insurance profession would conclude that due to inverse condemnation and climate/weather condition in SDG&E's service territory, future loss expectations are not good. (Exhibit 4, Pages 5-6).

SDG&E also asserts that despite its poor positioning that it did not merely accede to unreasonable terms, but had its insurance broker (Marsh) negotiate coverage terms and conditions and pricing over many months before finagling acceptable terms. (Exhibit 4, Page 6).

SDG&E also claims to have informed AEGIS that coverage could be priced at a level where it would be deemed too expensive and would no longer represent an acceptable risk transfer. (Id).

3. Discussion

SDG&E's rebuttal actually affirms three important points in this proceeding: (1) these costs are a normal cost of doing business, (2) these costs are not beyond SDG&E control, and (3) SDG&E will always accede to the demands of insurers such as AEGIS if increased insurance costs are given Z-Factor treatment.

SDG&E adds a new wrinkle to its claim of increased cost. SDG&E now points to its near 100% loss ratio for at least the 10 years prior to 2007 for non-wildfire liability claims as part of AEGIS's justification for increasing insurance costs. (Exhibit 4, Page 5). First, it is misleading for SDG&E to refer to loss ratio as non-wildfire liability claims because by its own admission prior to the 2009-2010 renewal period, wildfire liability was included in SDG&E general liability insurance coverage, along with other third party liability risk exposures. (Exhibit 4, Page 9). Second, SDG&E does not assert this as part of its Z-Factor claim likely because this has been accounted for yearly by AEGIS when negotiating liability insurance contributing to the fact that these costs are a part of the normal cost of doing business and that the wildfires and inverse condemnation are not the only elements contributing to increased insurance costs.

SDG&E claims that its broker negotiated in consultation and at the direction of Sempra with AEGIS over many months. (Exhibit 4, Page 6). The fact that AEGIS was willing to negotiate suggests that SDG&E is not just a price-taker with little ability to influence costs. Price-takers are individuals with no options such as SDG&E's ratepayers who have to accept SDG&E's rate or with limited exception forego electricity. SDG&E as it readily admits is accepting terms it considers "economically viable" (Exhibit 4, Page 5). SDG&E's claim is counter intuitive to its Z-factor argument, economic viability suggests it has sufficient revenue to cover the proposed costs, if SDG&E truly believed the option was economically viable it would not be attempting to obtain Z-factor treatment for the increased costs. Indeed, in perhaps SDG&E's most ominous statement, it claims to have warned AEGIS that there may be a time when AEGIS would price coverage to a level where it would be deemed too expensive and would no longer represent an acceptable risk transfer. (Exhibit 4, Page 6). If the Commission, however, were to grant Z-factor treatment for increased insurance costs, SDG&E may never reach that unacceptable cost because it has ratepayers to cover the additional costs. Thus, AEGIS's coverage will always be "economically viable" for SDG&E regardless of the available alternatives.

SDG&E does not refute Mr. Sulpizio's claim that the terms were unreasonable, instead it attempts to confuse the very core issues by raising new factors that likely influenced the increase of insurance costs and presents undocumented argument that it had its broker negotiate for months the best terms it could, while insisting it is a price-taker incapable of influencing costs.

C. Sempra failed to avail itself of feasible alternative risk management

1. Sulpizio's Findings

Mr. Sulpizio found that SDG&E failed to thoroughly explore alternatives to the traditional insurance market. (Exhibit 10, Page 5). Mr. Sulpizio argues that insurance markets are subject to extremely cyclical and predictable behavior of which Sempra should have been fully aware and that Sempra could have and should have anticipated that a catastrophic event would reduce capacity and drive up costs. (Exhibit 10, Page 11). He also notes that Sempra failed to diversify its risk contrary to one of preeminent rules of insurance purchasing. (Exhibit 10, Page 12). While admitting that public utilities are often inordinately reliant on traditional insurance markets do to regulators rarely questions those expenditures while giving greater scrutiny to alternative risk financing, it does not excuse Sempra's reliance on a traditional insurance market which is too small and too thinly capitalized to offer any long term stability in costs. (Exhibit 10, Pages 13-14).

Mr. Sulpizio proposes a number of alternative strategies that Sempra could have explored, that his previous clients have considered and adopted as part of a complete and balanced insurance strategy including captive insurance, loss stabilization plans, and capital market solutions such as catastrophe bonds. (Exhibit 10, Page 14). Sempra bewilders Mr. Sulpizio with its conclusion that alternative risk transfer mechanisms are not economically viable absent performing any formal analysis of alternative financing strategies or obtaining any documentation instead merely relying on the assertion of its brokers over telephone conversations. (Exhibit 10, Page 15).

Mr. Sulpizio then provides a rough analysis of the potential use of some of the alternative risk transfer mechanisms. He notes that despite the expense involved in issuing catastrophe bond, they at least merit consideration given the amount Sempra is paying in primary insurance, and current industry trends noting that the catastrophe bond market is growing, reducing costs in stark comparison to the traditional insurance market. (Exhibit 10, Pages 15-16). He argues that while captive insurance and group captive insurers involves difficult regulatory and tax issues, that the true advantages and disadvantages cannot be determined without a study and Sempra didn't even discuss group captive among the other IOUs despite its acknowledgement that all IOUs are facing reduced insurance availability and increased costs and that more and more Fortune 1000 companies are incorporating captive insurance as part of its insurance portfolio. (Exhibit 10, Pages 16-17). Mr. Sulpizio also established that reinsurers would have at least considered a loss stabilization program which should have at least led Sempra to review some documentation regarding the alternative. (Exhibit 10, Page 19-20).

2. SDG&E's Refutation

SDG&E claims that it explored all of the alternatives mentioned by Mr. Sulpizio and has found that the timing and costs still make them infeasible and not cost competitive. (Exhibit 4, Page 7). SDG&E disagrees with the assertion that one of the preeminent rules for insurance purchasers is to diversify, but rather it is to the find the insurance mechanism that provides the best coverage at the best price. (Exhibit 4, Page 7). SDG&E does not explain whether that best price should be looked for on a yearly basis or if the insurance purchaser should find the best value considering predictable future costs. SDG&E also claims that AEGIS and EIM are the best alternatives for energy providers despite and because of the lack of competition in the utility risk insurance market. (Exhibit 4, Page 8). Lastly, SDG&E claim that Mr. Sulpizio's argument is too narrowly focused on using alternatives to try and replace AEGIS and EIM limits without address the excess layers or the need for catastrophic limits. (Exhibit 4, Page 8-9).

SDG&E also claims written formal analysis was not necessary to make a decision as to whether a particular alternative was feasible. (Exhibit 4, Page 9). Mr. DeBont asserts that none of the alternatives were viable and a further study would only be done if an option was first determined to be viable and that it was sufficient to rely on its broker and professionals at Swiss Re due to their experience and it does not require a written analysis or documentation to make such a determination. (Exhibit 4, Page 10)

3. Discussion

UCAN's expert presents various alternatives to the traditional insurance market that Sempra could have and should have considered in determining the best option or options to adopt to protect itself. (Exhibit 10, Pages 11-20). SDG&E in response claims to have a had a few undocumented phone conversations with its broker and some agents as Swiss Re, but determined that none of the many alternative forms of insurance were viable given their alleged costs (Exhibit 4, Pages 7-10) even with the significant increases to the traditional insurance market which SDG&E believe is so substantial as to have a major impact on its overall costs. (Exhibit 1, Page 13).

SDG&E expects the Commission and ratepayers to accept its analysis based on a few undocumented phone conversations. (Exhibit 4, Page 10). SDG&E does not and cannot provide any written analysis or documentation of the feasibility of alternatives because it did not obtain any such information before reaching its conclusion. SDG&E has not even put forth testimony from its broker or the professionals at Swiss Re. It relies solely upon the hearsay testimony of some unidentified person(s) (Mr. DeBont never claims to have been the individual to have had these telephone conversations) who allegedly spoke with the broker. For the Commission to rely upon some unidentified Swiss Re employees to conclude that all alternatives were more costly to investigate would be entirely inappropriate.

Further, if the Commission were to accept SDG&E's argument on its face it strengthens the case that the costs were within SDG&E's control and were a normal cost of doing business. SDG&E tries to show it is engaging in analysis and evaluating insurance alternatives and making a decision as to how to insure itself from liability. For SDG&E to admit to such review is to again show that these costs are a normal cost of doing business that are to be anticipated and considered regardless of any increases and SDG&E continues to show that its management played a role in decision making. SDG&E choose not to arm itself with written analysis concerning the feasibility of alternatives which could have strengthened its negotiation position. SDG&E however failed to consider these alternatives beyond a few individuals telling them that the alternatives are expensive.

We also note that a reason that Sempra's brokers did not urge the alternatives is that they would not have been eligible for commissions from producing CAT bonds. However, SDG&E takes a remarkable position that the brokers would have been paid the same, regardless of whether SDG&E had used financial instruments outside the scope of what Marsh offers. (Exhibit 12, questions 18 & 20). This assertion by SDG&E is quite indicative of the extent to which SDG&E's risk management arrangements warrant regulatory scrutiny.

D. Failure to act in a timely matter to mitigate insurance cost increases

1. Sulpizio's Findings

Mr. Sulpizio claims that SDG&E should have anticipated the spike in losses stemming from a catastrophic event, such as the 2007 wildfires, would have the effect of reducing capacity and driving up the Company's cost of risk. (Exhibit 10, Page 11). SDG&E should have diversified its risk to prepare itself to address the expected insurance response. (Id.)

2. SDG&E's Refutation

SDG&E claims that it did foresee the possibility of shrinking capacity and increased pricing for 2008 and 2009, but prior to that time it would have been illogical to spend time, resources, and money to develop an alternative (Exhibit 4, Page 9), that its 2008 renewal was such a small increase in costs that it did not feel the need to consider alternatives (Id.), and even though it anticipated an even more difficult renewal process in 2009 that the results were unprecedented and it did not need to develop alternatives because even the significantly higher rates were still the best alternatives. (Exhibit 4, Pages 9-10).

3. Discussion

SDG&E claims to have had the knowledge that rates were going to increase following the 2007 wildfires. (Exhibit 4, Page 9). SDG&E, however, fails to explain why it did not account for these anticipated increases in the 2008 rate hearings. If SDG&E knew at least some level of increase was coming it should have incorporated it into its cost projects rather than reactively waiting for an increase and then requesting Z-factor treatment.

This is yet another instance where SDG&E could have helped control for or anticipate the increasing costs yet failed to take appropriate action to mitigate the expected impact. SDG&E argues that it would have been illogical prior to the wildfires to develop an alternative risk plan for insurance. (Exhibit 4, Page 9). SDG&E does not actually provided an estimate as to what those costs would have been as to have reached that conclusion. SDG&E's argument appears to be that because it had insurance and could still obtain insurance in the same manner that it must be obtaining the best policy available at the best rate. It is incomprehensible that SDG&E can claim that it considered alternatives (Exhibit 4, Page 10) despite finding it illogical to consider them (Exhibit 4, Page 9). The reality is that SDG&E did not act, did not consider alternatives and did not develop a plan to diversify its risk despite knowing that it was about to experience an increase in costs coupled with a reduction in the amount of available insurance.

IV. HOW SDG&E FANNED THE FLAMES OF INSURANCE PRICE INCREASES

SDG&E did itself and its customers few favors by funding and cooperating in the public release of a flawed, one-sided report suggesting that San Diego County was ill-prepared to deal with wildfires. The report, cited by Mr. Schavrien in Exhibit 1, charged that the County dramatically underfunds fire prevention, as compared to other nearby counties. And he concludes, erroneously, that "As a result past fire-related claims against SDG&E have been higher than they would otherwise have been, and the risk of future claims is greater." (Exhibit 1, p. 13).

This assertion is problematic in a number of ways. First, it is unfounded. He made this damning assertion but it is founded upon a report about which he never read and testimony that he apparently didn't write or review for accuracy. (R.T. at pages 5-7).

Second, SDG&E's assertions are likely false. As set forth in Exhibit 7, the report falsely assumed that San Diego County has a county run fire department as the other two counties have. It is an "apples and oranges comparison" and not valid. Moreover, the study does not include state and federal money spent on fire protection in San Diego County, which is significant because of the presence of large national and state forests in the County. (Exhibit 7, Page 2).

Third, the presence of a flawed report will likely be seized upon by underwriters to continue to impose high premiums (based upon high risk) upon Sempra and, thus, its customers. It is logical to conclude that insurers monitor the news and even follow public hearings, such as the Commission's Z-factor process. False and unfounded statements that exaggerate fire-related claims risk are counterproductive to SDG&E's customers' interests.

Fourth, SDG&E participated with National University in publicly releasing the study. As the evidentiary record shows, SDG&E was given access to the report findings a full month prior to its public release. Mr. Schavrien suggested that the report was accessed through a public database but that is highly unlikely. It was in SDG&E's possession a full month before it was released publicly (Exhibit 7 - dated September 22, 2009 whereas SDG&E's testimony is dated August 31st). SDG&E's spokesperson is cited in the press release, so it clearly participated in the public release.

While the Commission has little clue as to what underwriters were told by Sempra and its agents (due to literally NOTHING being submitted in writing and no documents memorializing conversations), what the Commission does know is that SDG&E caused to have distributed an authoritative-sounding report blaring a clarion call of future high claims due to the County's alleged unpreparedness for wildfires. Contrary to attempting to mitigate insurance premiums, SDG&E's action fanned the flames of present and future insurance premium hikes. Rather than mitigate, SDG&E effectively exacerbates its wildfire liability situtation.

V. CONCLUSION

UCAN's showing has focused upon demonstrating how the costs for which SDG&E seeks recovery do not meet certain essential Z-factor criteria and thus, as a matter of law, should not be permitted. UCAN also presents expert-supported testimony which explains that even if the request met Z-factor criteria, SDG&E failed to reasonably mitigate the impacts of the 2007 wildfires upon insurance premiums.

In order to eschew redundant argumentation, by agreement of the intervenors, UCAN has deferred to DRA and intervenor Ruth Hendricks the arguments that show that:

1. Other Z-factor criteria are not met;

2. SDG&E was culpable in the fires that led directly to the premium increases;

3. That SDG&E's memorandum account methodology and the use of advice letter filings is inappropriate; and

4. The existence of other operational costs which offset the insurance premium increases.

5. The legitimacy of Sempra's allocation of the overall general liability premiums to wildfire-related liability.

These points, combined with the presentation offered by UCAN in this proceeding, compel the Commission to reject SDG&E's requested relief. Moreover, they offer the Commission an unparalleled opportunity to rearticulate the Commission's expectations of SDG&E's risk management operations and direct the utility to seriously reevaluate its risk management strategies.

Respectfully submitted, Dated: May 10, 2010

/s/

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PROOF OF SERVICE

I, Laura Impastato, declare: I am employed in the City and County of San Diego, California. I am over the age of 18 years and am not a party to this action. On May 10, 2010, I served the Opening Brief of UCAN on the parties in this proceeding by supervising the electronic service of the document on all parties on the attached service list pursuant to the ALJ's instructions.

/s/

Laura Impastato

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