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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of SAN DIEGO GAS & ELECTRIC
COMPANY (U 902 E) For Authority To Update
Marginal Costs, Cost Allocation, And Electric Rate
Design.

Application 11-10-002
(Filed October 3, 2011)

**RESPONSE OF THE SIERRA CLUB IN SUPPORT OF
THE MOTION OF UTILITY CONSUMERS' ACTION NETWORK (UCAN) FOR A
PRELIMINARY RULING DETERMINING SAN DIEGO GAS & ELECTRIC'S RATE
DESIGN APPLICATION VIOLATES THE PUBLIC UTILITIES CODE AND
COMPELLING SDG&E TO RESUBMIT ITS GRC PHASE 2 APPLICATION**

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Dated: November 14, 2011

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Pursuant to Rule 11.1(e) of the Rules of Practice and Procedure of the California Public Utilities Commission, the Sierra Club hereby responds in support of the Motion of Utility Consumers' Action Network (UCAN) for a Preliminary Ruling Determining San Diego Gas & Electric's Rate Design Application Violates the Public Utilities Code and Compelling SDG&E to Resubmit its GRC Phase 2 Application filed in the above captioned proceeding on October 25, 2011 (Motion).¹ Through its Motion UCAN asserts that the three elements of SDG&E's application, a Network Use Charge, a Basic Service Fee and a Prepay Service Option violate numerous provisions of the Public Utilities Code. UCAN seeks a preliminary ruling from the Commission rejecting the application and requiring SDG&E to resubmit an application that is consistent with the Public Utilities Code. The Sierra Club supports UCAN's Motion as it pertains to the Network Usage Charge. The Sierra Club expresses no opinion regarding UCAN's Motion as it pertains to the Basic Service Fee and Prepay Service Option.

¹ Sierra Club filed a Motion Requesting Party Status in the instant proceeding on November 2, 2011.

I. INTRODUCTION

The State of California has long been a leader in programs that foster the development of renewable energy resources. Net energy metering (NEM) is one such program. NEM allows customers that install small-scale renewable energy facilities such as photovoltaic systems to receive a financial credit for power generated by their system and fed back to the utility. The State has determined that the NEM program “is one way to encourage substantial private investment in renewable energy resources, stimulate in-state economic growth, reduce demand for electricity during peak consumption periods, help stabilize California’s energy supply infrastructure, enhance the continued diversification of California’s energy resource mix, reduce interconnection and administrative costs for electric suppliers, and encourage conservation and efficiency.” Pub. Util. Code § 2827(a). To ensure that the financial viability of NEM is not undermined, Public Utilities Code Section 2827(g) expressly prohibits “any ... charge that would increase an eligible customer-generator’s costs beyond those of other customers who are not eligible customer-generators.”

In direct contravention of Section 2827(g), SDG&E proposes a “Network Usage Charge” that disproportionately increases costs to NEM customers as compared with non NEM customers. Glossing over the conflict with Section 2827(g), SDG&E attempts to justify the Network Usage Charge on the grounds that it is needed to address a “cross-subsidy” to NEM customers. SDG&E’s effort to defend the Network Usage Charge fails for at least two reasons. First, where, as here, there is no ambiguity in a statute, “then we presume the lawmakers meant what they said, and the plain meaning of the language governs.” *See, e.g., Allen v. Sully-Miller Contracting Co.*, 28 Cal.4th 222, 227 (2002). Because the Network Usage Charge violates the plain meaning of Section 2827(g) by increasing costs to NEM customers beyond those of other

customers, SDG&E's policy rationales do not remedy the illegality of its proposal.

Second, SDG&E made these same failed policy arguments to the Legislature less than three months ago in opposing SB 489, a bill that expanded technologies eligible for NEM. The Legislature rejected SDG&E's arguments and passed SB 489 without changes to the NEM program's cost safeguards. Having failed in the Legislature, SDG&E cannot now side-step the requirements of the NEM program through a rate case before the Public Utilities Commission. SDG&E's effort to subvert the clear will of the Legislature should not be countenanced.

Because the Network Usage Charge is invalid as a matter of law, judicial and administrative economy is best served through a preliminary ruling on the legality of SDG&E's proposal. No evidentiary hearings are necessary. SDG&E's own application makes clear that the Network Usage Charge would selectively increase costs to NEM customers and leave other customers largely unaffected. The Commission need only declare that the Network Usage Charge violates Public Utilities Code Section 2827(g) and order SDG&E to withdraw its application.

In further support of UCAN's Motion as it pertains to the Network Usage Charge, the Sierra Club provides the following:

II. THE NETWORK USAGE CHARGE VIOLATES BOTH THE PLAIN MEANING AND INTENT OF PUBLIC UTILITIES CODE SECTION 2827

The Commission should reject SDG&E's Network Usage Charge because it violates the plain meaning of Public Utilities Code Section 2827(g). Section 2827(g) provides in relevant part:

Any new or additional demand charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or any other charge that would increase an eligible customer-generator's costs beyond those of other customers who are not eligible customer-generators in the rate class to which the eligible

customer-generator would otherwise be assigned if the customer did not own, lease, rent, or otherwise operate an eligible solar or wind electrical generating facility *is contrary to the intent of this section, and shall not form a part of net energy metering contracts or tariffs.*

Pub. Util. Code § 2827(g) (emphasis added). Accordingly, to comport with Section 2827(g), any charge imposed on NEM customers must apply equally to non NEM customers. SDG&E’s own application demonstrates that the Network Usage Charge fails this requirement. Attached to the Testimony of Charles Yunker (Chapter 2 to the SDG&E Application) are sample residential customer bills illustrating the effects of the Network Usage Charge. According to SDG&E, a sample bill comparison for a customer with very modest usage that consumes only the full Tier 1 allotment of electricity (317 kWh per month) varies as follows:²

No NEM, no Network Usage Charge:	\$ 43.60
No NEM, Network Usage Charge:	\$ 43.45
NEM, no Network Usage Charge:	\$ 5.95
NEM, Network Usage Charge:	\$ 13.92

Thus, under the Network Usage Charge, costs to a non NEM customer would decrease slightly while costs to a NEM customer would increase by over 230%. The Network Usage Charge runs afoul of Section 2827 because it vastly increases costs to NEM customers far beyond that of non NEM customers.

The SDG&E Application is also contrary to the legislative intent behind the NEM program. SDG&E claims that the Network Usage Charge is needed to “reduce[] a growing cross-subsidy to NEM customers” because NEM customers do not pay distribution and other charges. (SDG&E Application at 3.) However, the Legislature has already determined that the benefits of encouraging NEM outweigh this concern. In passing SB 489, the Legislature acknowledged that “[t]he fundamental effect of NEM is that the participating customer avoids

² SDG&E application, Yunker testimony, Appendix B, pp. 4-7.

the costs of transmission, distribution and public goods charges” and that “those costs are shifted to the remaining ratepayers.” Senate Bill 489, Senate Floor Analysis, May 31, 2011, available at http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0451-0500/sb_489_cfa_20110531_185838_sen_floor.html. Nonetheless, the Legislature concluded that “[t]he program is known to be a subsidy but one thought worth its value by the Legislature as part of its effort to stimulate the solar industry and bring down the costs of solar.” *Id.*

Indeed, in opposing SB 489, SDG&E argued less than three months ago that NEM was in “need of overhaul given the cost shifting in the existing program.” Senate Bill 489, Bill Analysis, Assembly Committee on Appropriations, August 16, 2011, available at http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_04510500/sb_489_cfa_20110816_164638_asm_comm.html. As the Legislature passed SB 489 absent the overhaul sought by SDG&E, the State of California does not share SDG&E’s view that changes to the NEM program are needed at this juncture. SDG&E’s attempt to reopen this settled policy determination before the Public Utilities Commission is improper and should be rejected.

III. THE NETWORK USAGE CHARGE IS PREMISED ON ASSUMPTIONS THAT IGNORE THE CAP ON NET METERING PARTICIPATION

Because the Network Usage Charge is inconsistent with Section 2827(g) as a matter of law, SDG&E’s analysis of the extent to which non NEM participants are purportedly impacted by the NEM program is irrelevant to a preliminary ruling on its legality. Nonetheless, it must be noted that the SDG&E Application is premised on a level of NEM participation that far exceeds the 5% peak demand limit allowed under existing law.³ Pub. Util. Code § 2827(c)(1); SDG&E

³ The Sierra Club strongly disagrees with SDG&E’s assessment of costs to non NEM customers as a result of the NEM program. Moreover, the Network Usage Charge appears designed to hurt NEM customers regardless of whether they are large users of electricity or frugal in their consumption. However, these factual and policy disputes need not be addressed by the Commission to resolve the requested preliminary ruling and reject SDG&E’s Application.

Application, Chapter 1, TRB-11 (evaluating purported cost shift with up to 15% NEM participation). Accordingly, not only is the Network Usage Charge illegal, it is also predicated on future scenarios that cannot be realized under the current NEM program. Should the Legislature propose to raise the cap on NEM participation, SDG&E is entitled to raise its concerns as part of that legislative process if and when it occurs. At present, SDG&E's concerns are both prematurely raised and brought in the wrong forum.

III. CONCLUSION

For the reasons set forth above, the Sierra Club respectfully requests the Commission grant UCAN's Motion to the extent it requires SDG&E to withdraw its request for a Network Usage Charge.

Respectfully submitted this 14th day of November, 2011 at San Francisco, California.

Dated: November 14, 2011

Respectfully submitted,

/s/

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