

Decision 08-11-030 November 6, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company for Authority to Update Marginal Costs, Cost Allocation, and Electric Rate Design (U902E).

Application 07-01-047
(Filed January 31, 2007)

**DECISION ADDRESSING THE RATE CAP ROLL-OFF PROPOSAL OF
SAN DIEGO GAS & ELECTRIC COMPANY**

1. Summary

Assembly Bill 1 of the 1st Extraordinary Session of 2001-2002 (AB1X)¹ was enacted in response to California's energy crisis and placed the California Department of Water Resources (DWR) in the position of procuring energy for California's electric utilities. Among other things, AB1X imposed a rate cap on residential rates for usage less than 130% of baseline, which is to remain in place until certain conditions are met. This decision addresses the "roll off" proposal of San Diego Gas & Electric Company (SDG&E) to increase the electric rates, over the next eight years, for Tier 1 and Tier 2 usage.² By gradually increasing these residential rates, SDG&E's proposal would gradually phase out the rate cap

¹ Statutes of 2001, 1st Extraordinary Session, Chapter 4.

² Tier 1 applies to electric usage for the baseline amount of electricity, and Tier 2 is for electric usage above Tier 1 up to 130% of the baseline amount. The baseline amount for SDG&E's customers varies by summer and winter months, by climate zones, and whether the customer is an all-electric user.

imposed by AB1X, codified in Water Code § 80110 by January 1, 2016.³ This code section capped the electric rates for Tier 1 and Tier 2 (residential usage) at the February 1, 2001 rate levels.

In deciding whether the phase-out proposal should be adopted, we focus our attention on the rate cap language in Water Code § 80110 and the related provisions in Division 27 of the Water Code that were added by AB1X. We conclude that, at a minimum, Water Code § 80110 prohibits any increase in the electric rates for SDG&E's Tier 1 and Tier 2 residential usage while DWR power contracts are still in existence, and SDG&E's end use customers are still paying the power charges associated with those contracts to DWR. Since SDG&E's phase-out proposal would increase the rates of these customers, and because DWR has not yet fully recovered its power charges, SDG&E's proposal is not adopted.

We decline, however, to rule at this time on whether Water Code § 80110 requires that the rate cap be kept in effect *after* the time DWR ceases procuring power on behalf of SDG&E's customers but *before* the time when the bonds authorized by AB 1X have been paid off. (*See e.g.*, Reply Brief of SCE Regarding AB1X p. 2.) The Commission's rulings on Water code § 80110 to date have not addressed the precise question presented here. Our ruling on this issue will significantly affect the way electricity is used in California which in turn will have significant impacts on our economy and our environment. Accordingly, the Commission finds that the legal question of how long the rate cap must remain in effect, pursuant to Water Code § 80110, must be considered within the broader

³ We refer to SDG&E's roll off proposal as the "phase-out" proposal in this decision.

context of the economic and policy effects that our ruling on this question will have. Because this will require further development of the record and because we need not answer this precise question in order to dispose of the instant application, we decline to make a ruling at this time.

2. Background

SDG&E proposes in this proceeding to phase-out the rate cap on Tier 1 and Tier 2 usage. This phase-out proposal is designed to gradually eliminate the rate cap imposed by Water Code § 80110 by increasing the electric rates for SDG&E's Tier 1 and Tier 2 usage beginning on January 1, 2008, and ending on January 1, 2016. SDG&E proposes this annual increase to move electric rates for Tier 1 and Tier 2 usage closer to the actual costs of providing this service.

In the April 11, 2007 Scoping Memo and Ruling, we framed the phase-out proposal and the issues raised by the proposal into the following issue: "Can the Commission take any action on the AB1X rate freeze?"⁴

In the settlement that we approved for this proceeding in Decision (D.) 08-02-034, the parties agreed to separate the AB1X rate cap issues from the other cost allocation and rate design issues addressed in that decision. The parties also agreed to waive evidentiary hearings on the AB1X issues, and agreed to a schedule for the filing of opening and reply briefs on the AB1X issues.

SDG&E provided testimony on its phase-out proposal in Exhibits 1 and 2. Some of the parties to the proceeding submitted testimony in opposition to SDG&E's phase-out proposal as reflected in Exhibits 15, 29, 30, and 36. Other

⁴ Southern California Edison Company (SCE) correctly notes that Water Code § 80110 is technically a rate cap, as opposed to a rate freeze, because nothing in AB1X prevents rates from being decreased.

parties submitted testimony in support of SDG&E's phase-out proposal, or to have the rate cap end as soon as possible, as reflected in Exhibits 1, 2, 17, 20, 26, 28, and 36.

Opening briefs on the AB1X issues were filed by SDG&E, the Division of Ratepayer Advocates (DRA), SCE, and The Utility Reform Network (TURN). Reply briefs were filed by SDG&E, DRA, Pacific Gas and Electric Company (PG&E), SCE, and TURN.⁵

In the February 5, 2008 Ruling of the Assigned Commissioner and Administrative Law Judge (ALJ), the parties were invited to file additional briefs on the issue of whether AB1X allows the Commission to order SDG&E to switch its Schedule DR residential customers to the residential time-of-use schedule (Schedule DR-TOU) that was in effect when AB1X took effect, once advanced metering infrastructure (AMI) meters are installed for residential customers. SDG&E, DRA, and TURN filed opening briefs, and a reply brief was filed by DRA.

3. Discussion

3.1. Introduction

SDG&E proposes in its application to phase-out the AB1X rate cap requirement and the related rate subsidies over the period that the DWR contracts expire. SDG&E proposes that the phase-out of the rate cap begin on the implementation date of its General Rate Case, which SDG&E had originally

⁵ Although the phase-out proposal, if adopted, would only apply to SDG&E's customers, PG&E and SCE are interested in the issue because the rate cap applies to their residential customers as well.

contemplated as January 1, 2008, and that the phase-out be completed on January 1, 2016, when the last DWR contract assigned to the utilities expires.

The purpose behind SDG&E's phase-out proposal is to "help mitigate the bill impact of eliminating the rate cap and subsidies." (Ex. 2, p. RWH-17.) SDG&E proposes to accomplish this over a an eight-year period by reducing the level of the subsidy by Tier 1 and Tier 2 rates by the Tier 3, Tier 4, and Tier 5 rates.⁶ The electric rates for residential usage in Tier 1 and Tier 2 have been capped by Water Code § 80110 since February 1, 2001, while most of the increases in SDG&E's revenue requirement have been allocated to and recovered from non-residential customers through a surcharge in the electric commodity rate. According to SDG&E, the rate cap's main effect "is to shelter the majority of residential electric customers from such costs as the effects of inflation and costs for new infrastructure, renewables, and public purposes programs - none of which were the focus of AB1X." (Ex. 1, p. JKH-5.) SDG&E contends that the rate cap's purpose was "initially intended to protect residential customers against the cost consequences of the contracts entered into by [DWR] during the energy crisis." (Ex. 1, p. JKH-4.) Instead, the result has been that higher usage electric customers have ended up subsidizing the rates of the residential customers in Tier 1 and Tier 2.

⁶ As part of the settlement that we approved in D.08-02-034, SDG&E agreed to consolidate the Tier 4 and Tier 5 residential rates into a single Tier 4 rate.

If the Commission adopts the phase-out proposal, SDG&E contends this will “move residential rates toward a structure that reflects cost causation principles and supports energy efficiency and demand response objectives.” (Ex. 1, p. JKH-4.) SDG&E cautions that if the phase-out proposal is not adopted, the Commission will be faced in the future with having to implement a significant reallocation of the embedded subsidies for Tier 1 and Tier 2 usage, which could lead to significant rate shock and the rates of some customers being increased by 70%. SDG&E contends that the adoption of its phase-out proposal would gradually alleviate the rate shock problem over eight years.

DRA, TURN and the Utility Consumers’ Action Network (UCAN) oppose SDG&E’s proposal on the grounds that any increase is prohibited by Water Code § 80110.

The other two electric utilities affected by the rate cap, PG&E and SCE, advocate that Water Code § 80110 be interpreted in a manner that would allow the rate cap to be terminated as soon as possible, *i.e.*, once the DWR power contracts expire or DWR is replaced by another entity as the contracting party through a novation or assignment of the power contracts. Groups representing large electric users also support an end to the rate cap.

During the course of this proceeding, we received a number of letters from residential customers of SDG&E who oppose the phase-out proposal. Many of the letters state that SDG&E’s proposal to increase electric rates will hurt those who are on fixed incomes and those who are already conserving as much energy as they can.

At the four public participation hearings held in the San Diego area in September 2007, many of the speakers who represented the chambers of commerce or other business interests spoke in favor of SDG&E’s phase-out

proposal. They support the phase-out proposal because it will end the rate subsidies to residential usage in Tier 1 and Tier 2 funded by large electric users, and will cause the Tier 1 and Tier 2 customers to pay their fair share of the costs.

In the sections below, we focus our attention on Water Code § 80110 and the related provisions in Division 27 of the Water Code, which were added by AB1X.

3.2. Whether SDG&E's Phase-Out Proposal Results In A Rate Increase

Water Code § 80110 codifies the rate cap provision at issue in this proceeding. Water Code § 80110 states in pertinent part:

“In no case shall the commission increase the electricity charges in effect on the date that the act that adds this section becomes effective for residential customers for existing baseline quantities or usage by those customers of up to 130 percent of existing baseline quantities, until such time as the department has recovered the costs of power it has procured for the electrical corporation's retail end use customers as provided in this division.”

The starting point of our analysis is to determine whether SDG&E's phase-out proposal would increase the electricity charges for residential customers who use less than 130% of baseline.

SDG&E estimates that approximately 70% of its residential usage is protected under the rate cap provision of Water Code § 80110. This represents about 26% of SDG&E's total electric load. The revenue shortfall resulting from the rate cap is currently being recovered from customers who are not protected by the rate cap through a surcharge on the electric commodity rates. SDG&E proposes to phase-out the rate subsidies that are being paid for by the upper tier usage by 11.1% each year beginning January 1, 2008 and ending by January 1, 2016.

As described by SDG&E, and as shown in Attachment RWH-3 of Exhibit 2, SDG&E's phase-out proposal would increase the rates for residential customers in Tier 1 and Tier 2 in each year beginning in 2008 through 2016, while reducing the rates for usage in the higher tiers. We find that phasing-out the rate subsidies by 11.1% each year would have the effect of increasing electric rates in each year for residential usage in Tier 1 and Tier 2. Due to the effect of SDG&E's proposal, the next part of our analysis is to determine whether the phase-out proposal is permitted under AB1X and Water Code § 80110.

3.3. Whether SDG&E's Policy Reasons Justify the Adoption of the Phase-out Proposal

SDG&E contends that its phase-out proposal should be adopted because it is consistent with the goals of the Energy Action Plan (EAP), which was adopted by the Commission and the Energy Commission.⁷ According to SDG&E, one of the goals of the EAP is to create more transparency in electricity rates by basing rates on cost causation principles. By having cost-based rates, this will aid the EAP's goal of having dynamic pricing in place. SDG&E contends that the rate cap is a barrier to the establishment of cost-based rates, and prevents effective dynamic pricing from occurring.

Without the proper price signals, SDG&E asserts that low usage customers are less likely to invest in energy efficiency measures, and higher usage customers are likely to over invest in energy efficiency measures. SDG&E contends that continuing the rate cap is not in the public interest because it undermines the key state policies of: (1) minimizing cross subsidies that mask

⁷ The EAP II was adopted by both agencies in October 2005.

price signals; (2) encouraging energy conservation and demand response; (3) achieving environmental goals; and (4) promoting equitable rates.

SDG&E also argues that the Commission has the legal authority to determine how and when to end the rate cap so long as it does not result in absurd consequences or frustrate the purposes of the statute. SDG&E contends that the Commission has this authority because the legislative history of AB1X does not provide any insight as to how and when the rate cap can be terminated, and Water Code § 80110 is ambiguous on this point. Since ratemaking is a task of this Commission, SDG&E contends that the Legislature could not have intended to micro-manage utility electric rates by imposing a rate cap for such a lengthy period of time.

DRA, TURN, and UCAN all contend that SDG&E's phase-out proposal is prohibited by Water Code § 80110. DRA and TURN contend that SDG&E's phase-out proposal should not be adopted based on the policy grounds cited by SDG&E.

SDG&E and others make a persuasive case that, as a matter of policy, it may be imprudent for the Commission to perpetuate the rate cap, and the cross-subsidies among customer groups that it entails, for another decade or longer, well beyond the time when DWR will have ceased purchasing power on behalf of SDG&E's retail customers. Among other ill effects, such a policy could result in rate shock if the Commission were faced with redistributing the cost burden among customer classes after decades of artificially suppressing costs for Tier 1 and Tier 2. Beyond this potential harm to future residential customers paying Tier 1 and 2 rates, it may also be inconsistent with the State's energy policies as reflected in the EAP and the Commission's recent decisions on dynamic pricing and advanced metering.

In comments on the alternate proposed decision and in opening briefs, DRA argues that the AB1X rate cap “serves the public interest without subverting other state policies such as demand response, energy efficiency, and conservation.” DRA further argues that the rate cap coupled with an increasing block rate design in fact encourages residential customers to conserve. We note that DRA made similar arguments in response to D.08-07-045, in which the Commission adopted timetable for implementing dynamic pricing and the associated rate design. There we stated:

Baseline rates and an inverted block rate structure may not be consistent with the objective of promoting economically efficient decision-making. Advanced metering and dynamic pricing offer alternate approaches to rate design that could be more effective at lowering overall customer costs, promoting conservation, and reducing Greenhouse Gas emissions. (p.43.)

The Commission agrees with SDG&E that a rate cap is inconsistent with the EAP, as well as efforts to extend dynamic pricing and advanced metering services to all customer classes. Whether it also undermines conservation efforts or is economically inefficient need not be resolved here. The current record is insufficient, however, to determine the best way to phase out or eliminate the rate cap to achieve our policy goals. Furthermore, regardless of the policy merits, the Commission’s authority to eliminate the rate cap at this time is constrained by Water Code § 80110.

3.4. The Effect of Water Code § 80110 on the Phase-Out Proposal

Water Code § 80110 states in pertinent part that “In no case shall the Commission increase the electricity charge in effect” on February 1, 2001 “for residential customers for existing baseline quantities or usage by those customers of up to 130% of existing baseline quantities, until such time” as DWR “has

recovered the costs of power it has procured.” In interpreting the meaning of this phrase, we stated in D.02-04-026 at page 13 that: “We find this statement to be unequivocal: the Legislature, for the life of the legislation, does not want residential customers to pay more money than they were paying on February 1, 2001 for the baseline quantity of electricity they were receiving on that date.” Similarly, in Finding of Fact 11 in D.04-02-057, we found that this code section “prohibits the Commission from increasing electricity charges for residential usage up to 130% of baseline quantities for utilities that take power from DWR or are otherwise bound by its provisions.”⁸

As discussed earlier, since SDG&E’s phase-out proposal would increase the rates of residential customers for Tier 1 and Tier 2 usage, the mandatory language in Water Code § 80110 of “In no case shall the commission increase the electricity charge in effect” prohibits the adoption of SDG&E’s phase-out proposal unless the “until such time” condition in Water Code § 80110 is triggered.⁹

Under Water Code § 80110, the phrase “until such time as the department has recovered the costs of power,” creates the condition of when the rate cap can be lifted. This condition is triggered when DWR has “recovered the costs of power.” No one disputes that the DWR power contracts are still in existence and that the power under those contracts is being supplied to the retail end use customers of the three electric utilities. Since DWR is still supplying these

⁸ We also stated in D.02-04-026 at page 16 that Water Code § 80110 “prohibits increases in charges for existing baseline quantities or usage up to 130 % of existing baseline quantities.”

⁹ We consider the phrase “In no case shall the commission increase the electricity charge” to be a mandatory directive because of the “In no case shall” language.

customers with electricity from the DWR contracts, and because SDG&E customers still have to pay power charges to DWR, it appears that all of the parties in this docket agree that a condition precedent for lifting the rate cap has not been met as of this time, because DWR is still in the process of purchasing power on behalf of SDG&E's customers and recovering the associated costs.¹⁰ Accordingly, it is not disputed that we cannot adopt any *immediate* phase-out of the rate cap. Water Code § 80110 prohibits an increase in the electric rates for residential usage in Tier 1 and Tier 2 until DWR has recovered the costs of power. As of today, this precondition has not been met, because DWR is still procuring power on behalf of SDG&E's retail customers, and DWR accordingly is still in the process of recovering the costs of these power purchases from SDG&E's retail customers.

The legal briefs submitted by the parties to this case have made the Commission aware that there is an open question as to whether Water Code § 80110 requires that the rate cap be kept in effect *after* the time DWR ceases procuring power on behalf of SDG&E's customers but *before* the time when the bonds authorized by AB1X have been paid off. (*See e.g.*, Reply Brief of SCE Regarding AB1X, p. 2.) The Commission's rulings on Water code § 80110 to date have not addressed the precise question presented here. Our ruling on this issue

¹⁰ Water Code § 80104 provides that the electricity supplied to retail end use customers by DWR is a purchase by those customers, and payment for that electricity is a direct obligation of the customers to DWR. Water Code §§ 80110 and 80134 provide that DWR is entitled to recover that obligation in its revenue requirement. SDG&E's customers are currently required to pay power charges to DWR pursuant to D.08-04-051, the decision allocating DWR's latest revenue requirement to SDG&E, PG&E and SCE. As we recently stated in D.08-02-033 at p. 21, "DWR continues to 'sell' power to retail customers"

will significantly affect the way electricity is used in California which in turn will have significant impacts on our economy and our environment. Accordingly, the Commission finds that the question of how long the rate cap must remain in effect, pursuant to Water Code § 80110, must be considered within the broader context of the economic and policy-effects that our ruling on this question will have. Because this will require further development of the record and because we need not answer this precise question in order to dispose of the instant application, we decline to make a ruling at this time.

We decline to resolve this question at this time because we believe the issue will benefit from the development of additional record evidence and further refinement of the legal arguments on both sides of the question. Furthermore answering this question is not necessary for the disposition of the immediate application.

The electric rates adopted in D.08-02-034 for SDG&E's customers may need to be adjusted if they were calculated on the assumption that SDG&E's phase-out proposal would be adopted. (*See* D.08-02-034, § 3.3.3., p. 20.) Accordingly, and if necessary, SDG&E shall within 20 days file an advice letter to revise its tariffs to conform the rates to reflect our decision not to adopt SDG&E's phase-out proposal.

3.5. The February 5, 2008 Ruling

In the February 5, 2008 ruling, we solicited comments on whether AB1X allows us to order SDG&E to switch its Schedule DR residential customers to the residential time-of-use schedule (Schedule DR-TOU) that was in effect on February 1, 2001, once AMI meters are installed for residential customers.

Schedule DR is the rate schedule for most of SDG&E's residential electric service customers. The rates for Schedule DR include the costs of transmission

and distribution, public purpose programs, nuclear decommissioning, and ongoing competition transition charges. Residential electric customers also pay the commodity charge for electricity under Schedule Electric Energy Commodity Cost (EECC).

Schedule DR-TOU is applicable as an option to domestic residential electric service. The rates for Schedule DR-TOU also cover the costs of transmission and distribution, public purpose programs, nuclear decommissioning, and ongoing competition transition charges. However, the rates for this schedule are based on on-peak and off-peak usage periods, and have a baseline adjustment for summer and winter. In addition, Schedule DR-TOU has a monthly metering charge. Residential customers who take service under Schedule DR-TOU also pay the commodity charge for electricity under Schedule EECC.

The reason for soliciting comments on proposing a switch in schedules was to determine whether the different rates that apply to Schedule DR-TOU customers, and the different rate that Schedule DR-TOU customers pay for the electric energy commodity cost under Schedule EECC, would alleviate some of the burden on the higher usage electric customers.

SDG&E continues to believe that its roll-off proposal is the best approach to address the detrimental impacts of AB1X. If the Commission were to consider switching SDG&E's residential customers to Schedule DR-TOU, SDG&E contends that nothing in AB1X, or any other statute or decision, prevents the Commission from switching customers to a tariff that was in effect when AB1X was implemented or from switching customers to a new tariff.

However, SDG&E does not believe it would be productive to switch customers to Schedule DR-TOU because the rates for usage up to 130% of the

baseline allowance would still be capped under AB1X. In addition, because the time-of-use rate differentials were very small when AB1X became effective, the price incentive for customers to shift their summer on-peak usage would be insignificant for most residential customers. SDG&E recommends that Schedule DR-TOU not be used for most residential customers because it is a complex rate structure that consists of usage tiers within each time-of-use period, as well as baseline adjustments that differ by season.

DRA contends that AB1X would allow the Commission to switch the schedule of a residential customer so long as the rate that customers pays for Tier 1 and Tier 2 usage does not increase for the same amount of energy consumed. DRA contends that if the Commission desires to switch residential customers to the currently effective Schedule DR-TOU, as opposed to the Schedule DR-TOU that was in effect on February 1, 2001, that such a switch would violate AB1X. According to SDG&E's bill impact, which is Attachment A of SDG&E's comments in response to the February 5, 2008 ruling, the bill analysis shows that a switch from Schedule DR to current Schedule DR-TOU would increase the bills for 35% of SDG&E's low usage residential customers by 19% or more. This increase is attributable in large part to the monthly meter charge, which is a rate element of Schedule DR-TOU. The increase is also attributable to the higher summer on-peak rates for Tier 1 and Tier 2. Since a switch of residential customers to Schedule DR-TOU would increase the rates of residential customers for Tier 1 and Tier 2 usage, DRA contends such a switch would violate AB1X.

TURN notes that the rates for Schedule DR-TOU that were in effect on February 1, 2001 were considerably lower, on average, than the current rates in Schedule DR-TOU. If the Commission intends to switch residential customers to

the rates that were in effect for Schedule DR-TOU on February 1, 2001, TURN states that this would result in a large revenue shortfall for SDG&E. If the Ruling meant to switch current Schedule DR customers to today's Schedule DR-TOU rates, that would violate AB1X because it would result in an increase to some residential customers in Tier 1 and Tier 2 due to the monthly meter charge and the higher charge for summer on-peak usage.

We solicited comments on this switching proposal to determine if such a switch would help alleviate the burden on those electric customers who have to pay more as a result of the rate cap imposed by AB1X. Based on the responses, it does not appear that it would be worthwhile to pursue such a proposal. Switching SDG&E's residential customers to Schedule DR-TOU, as it existed on February 1, 2001, is not an attractive option because, as TURN points out, the rates in effect at that time were considerably lower on average than the current rates for Schedule DR-TOU. Such a switch would result in a large revenue shortfall for SDG&E which would only make the problem worse rather than alleviating the burden on higher usage electric customers.

Based on the prohibition against a rate increase in Water Code § 80110, as discussed earlier, switching residential customers to the current Schedule DR-TOU would result in an increase to the summer rate for residential Tier 1 and Tier 2 usage and may also result in other increases on other customer bills. Accordingly, such a switch would run afoul of Water Code § 80110 and will not be adopted for SDG&E.

With respect to the residential customers who use less than 130% of baseline in the service territories of PG&E and SCE, we are open to the idea of whether switching these residential customers to a time-of-use rate would help alleviate the rate impacts caused by the rate cap. So long as such a switch does

not violate the rate cap imposed by AB1X, PG&E and SCE may want to explore this idea further by raising it in a proceeding applicable to those utilities.

As there are no other issues to resolve in this proceeding, this proceeding should be closed.

4. Comments on Alternate Proposed Decision

The alternate proposed decision of Commissioner Michael R. Peevey in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on October 22, 2008, and reply comments were filed on October 27, 2008, by PG&E, DRA, SCE, and SDG&E.

5. Assignment of Proceeding

John A. Bohn is the assigned Commissioner, and John S. Wong is the assigned ALJ in this proceeding.

Findings of Fact

1. SDG&E's phase-out proposal is designed to eliminate the rate cap imposed by Water Code § 80110 by increasing SDG&E's Tier 1 and Tier 2 residential electric rates beginning on January 1, 2008, and ending on January 1, 2016.

2. In the settlement that we approved in D.08-02-034, the parties agreed to separate the AB1X rate cap issues from the other issues in this proceeding, agreed to waive evidentiary hearings on the AB1X issues, and agreed to a schedule for the filing of briefs on the AB1X issues.

3. Water Code § 80110 codifies the rate cap provision at issue in this proceeding.

4. SDG&E's proposal to phase-out the rate subsidies by 11.1% each year would have the effect of increasing the Tier 1 and Tier 2 electric rates for residential customers each year beginning in 2008 through 2016.

5. The rate cap is inconsistent with the EAP, and a barrier to cost-based rates and dynamic pricing.

6. The phrase "until such time as the department has recovered the costs of power" in Water Code § 80110 creates the condition of when the rate cap can be lifted.

7. No one disputes that the DWR power contracts are still in existence and that the power under those contracts is being supplied to the retail end use customers of the three electric utilities.

8. A switch of SDG&E's residential customers to Schedule DR-TOU, as it existed on February 1, 2001, would result in a large revenue shortfall for SDG&E.

Conclusions of Law

1. Since SDG&E's phase-out proposal would increase residential rates for Tier 1 and Tier 2 usage, the mandatory language in Water Code § 80110 prohibits the adoption of SDG&E's phase-out proposal unless the "until such time" condition is triggered.

2. Since DWR currently is still in the process procuring power on behalf of SDG&E's customers and recovering the costs of this power, a statutory precondition for eliminating the rate cap in Water Code § 80110 has not yet been met, and accordingly SDG&E's phase-out proposal cannot be adopted at this time.

3. The Commission's rulings on Water code § 80110 to date have not addressed the precise question of whether Water Code § 80110 requires that the rate cap be kept in effect *after* the time DWR ceases procuring power on behalf of

SDG&E's customers but *before* the time when the bonds authorized by AB1X have been paid off.

4. The Commission finds that the question of how long the rate cap must remain in effect, pursuant to Water Code § 80110, must be considered within the broader context of the economic and policy effects that our ruling on this question will have. Because this will require further development of the record and because we need not answer this precise question in order to dispose of the instant application, we decline to make a ruling at this time.

5. If necessary, SDG&E shall file an advice letter within 20 days of today's date to revise its tariffs to conform the rates to reflect our decision not to adopt SDG&E's phase-out proposal.

6. Switching SDG&E's residential customers to the current Schedule DR-TOU would result in an increase to the summer rate for Tier 1 and Tier 2 usage, and therefore should not be adopted because it would run afoul of Water Code § 80110.

7. Since there are no other issues to resolve in this proceeding, this proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The proposal of San Diego Gas & Electric Company (SDG&E) to phase-out, *i.e.*, roll off, the rate cap mandated by Water Code § 80110 is not adopted.

2. If necessary, within 20 days of today's date, SDG&E shall file an advice letter to revise its tariffs to conform the rates to reflect our decision not to adopt SDG&E's phase-out proposal:

The advice letter shall also state whether any collections were made pursuant to rates that would not comply with this decision and should include a plan to repay any such collections.

3. Application 07-01-047 is closed.

This order is effective today.

Dated November 6, 2008, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners