

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA



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Order Instituting Rulemaking Regarding  
Microgrids Pursuant to Senate Bill 1339 and  
Resiliency Strategies.

R.19-09-009  
(Filed September 12, 2019)

APPLICATION OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E)  
FOR REHEARING OF DECISION 21-07-011

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(U 902-E) FOR REHEARING OF DECISION 21-07-011**

Pursuant to Commission Rule 16.1, and Pub. Util. Code § 1731, San Diego Gas & Electric Company (“SDG&E”) submits this Application for Rehearing of Decision (“D.”) 21-07-011 (the “Decision”).<sup>1</sup> Also, pursuant to Rule 16.3, SDG&E requests oral argument on this Application for Rehearing. As shown below, the Decision’s suspension of the capacity reservation component of utility standby charges violates the explicit Senate Bill (“SB”) 1339 prohibition of cost shifting, violates due process, and is not supported by the record.<sup>2</sup>

**I. LEGAL STANDARD AND SUMMARY OF ARGUMENT**

An application for rehearing of a Commission decision “shall set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and must make specific references to the record or law.”<sup>3</sup> “The purpose of an

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<sup>1</sup> *Decision Adopting a Suspension of the Capacity Reservation Component of the Standby Charge for Eligible Microgrid Distributed Technologies*, issued July 16, 2021. This Application for Rehearing is timely filed pursuant to Commission Rule 16.1 and Public Utilities Code § 1731. All statutory citations herein are to the California Public Utilities Code. (“Pub. Util. Code”).

<sup>2</sup> As described below, SDG&E attaches the Declaration of Jenell T. McKay (“McKay Declaration”), to attest to facts that would have been shown had the Commission provided an opportunity to present evidence on the cost shift impact of the capacity reservation charge suspension.

<sup>3</sup> Commission Rule 16.1(c); *see also* Pub. Util. Code § 1732 (“The application for a rehearing shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful.”).

application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously.”<sup>4</sup>

The Decision establishes a program to support certain distributed microgrid technologies by suspending the capacity reservation component of the utility standby charge.<sup>5</sup> SDG&E appreciates that the Decision attempts to support microgrids served by certain alternative fuels. However, while the Decision correctly identifies the cost shifting impact of a full standby charge waiver, its suspension of the capacity reservation component of the standby charge would cause the same cost shift the Decision states it seeks to avoid: the suspension violates the explicit statutory bar on cost shifting in SB 1339. That is, it causes non-participating customers to bear the costs – but not the benefits – of supporting the microgrid customer. This is true for all of the utilities, but it is especially true for SDG&E, because its standby charge consists entirely of a capacity reservation charge.

More specifically, the Decision errs because it fails to identify, much less quantify, any specific benefit(s) received by customers generally from a standby charge suspension; it also fails to show that the value of the suspension is reasonably equal to the benefit(s) eligible facilities would provide to the other customers that would pay for the standby services if the suspension is granted. There is no support in the record of this proceeding for finding that suspending standby charges will *not* result in a cost-shift to customers, and indeed the Decision’s own finding support the opposite conclusion. In addition, the suspension was proposed for the

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<sup>4</sup> Commission Rule 16.1(c).

<sup>5</sup> We refer to the Decision’s program herein as the “suspension” or the “suspension program.”

first time in a proposed decision,<sup>6</sup> and thus it was not subject to evidence or full comment by parties.<sup>7</sup> Accordingly, the Decision commits legal error by allowing for cost shifts, in contravention of SB 1339,<sup>8</sup> and by setting the program for decision without proper prior notice and an opportunity to be heard. Because this error is the basis for the Decision, SDG&E recommends curing the error by withdrawing the Decision for further proceedings to address the error as described herein.

## **II. PROCEDURAL BACKGROUND - THE TRACK 3 SCOPING MEMO SET THE CORRECT STANDARD FOR THE DECISION**

The Commission initiated Rulemaking (“R.”) 19-09-009 on September 19, 2019 to craft a policy framework surrounding the commercialization of microgrids, focusing on implementation of SB 1339.<sup>9</sup> In directing the Commission to take actions to facilitate the commercialization of microgrids, Pub. Util. Code § 8371 requires that the Commission: “[w]ithout shifting costs between ratepayers, develop methods to reduce barriers for microgrid deployment”<sup>10</sup> and “[w]ithout shifting costs between ratepayers, develop separate large electrical corporation rates

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<sup>6</sup> Proposed decision of Administrative Law Judge Colin Rizzo, *Decision Adopting a Suspension of the Capacity Reservation Component of the Standby Charge for Eligible Microgrid Distributed Technologies* (June 9, 2021).

<sup>7</sup> To demonstrate the sort of evidence that would have been introduced had there been an opportunity, SDG&E attaches hereto the declaration of Jenell T. McKay, SDG&E’s Advanced Clean Technology Development Manager. This declaration includes an explanation and illustrative calculations showing how the suspension program creates a cost shift .

<sup>8</sup> Stats. 2018, Ch. 566. The Decision (at 25) acknowledges that any waiver of standby charges would result in illegal cost-shifting: “A blanket waiver or reduction of standby charges would excessively burden the average California electric customer, in direct violation of Section 8371(d).”

<sup>9</sup> *Order Instituting Rulemaking Regarding Microgrids Pursuant to Senate Bill 1339* (September 19, 2019) at 1. SB 1339 added Chapter 4.5 (commencing with Section 8370) to Division 4.1 of the Public Utilities Code.

<sup>10</sup> Pub. Util. Code. § 8371(b).

and tariffs, as necessary, to support microgrids, while ensuring that system, public, and worker safety are given the highest priority.”<sup>11</sup>

Throughout this proceeding, parties have proposed to eliminate or reduce standby charges as a means of facilitating development of microgrids. Following Track 2, where “many parties fervently advocated for microgrid exemption from cost-responsibility surcharges,” the Commission scoped Track 3 to consider whether to waive standby charges for microgrid customers, specifically within the context of SB 1339’s cost-shifting prohibition.<sup>12</sup> Consistent with the cost-shifting prohibition, the Track 3 Scoping Memo made clear that any standby charge waiver to be considered must be accompanied by incremental benefit that is equal to the waived charges; it defines the scoped issue as: “[w]hether the Commission should require PG&E, SCE, and SDG&E to waive standby charges for a customer operating a microgrid, regardless of fuel source, *so long as*: (1) waiving a standby charge will enable the microgrid customer to provide an incremental benefit to other customers; that is (2) *commensurate* with the magnitude of the otherwise applicable standby charges.”<sup>13</sup>

To develop a record, the Track 3 Scoping Memo directed parties to answer a detailed series of questions concerning standby service attached to the Track 3 Scoping Memo. Per this direction, parties filed and served opening and reply comments to the attachment’s questions on March 3, and March 10, 2021, respectively.<sup>14</sup>

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<sup>11</sup> Pub. Util. Code. § 8371(d).

<sup>12</sup> *Assigned Commissioner’s Amended Scoping Memo and Ruling for Track 3* (February 9, 2021) (“Track 3 Scoping Memo”) at 6. The Track 3 Scoping Memo also established a Track 4 for the proceeding. *Id.* at 8.

<sup>13</sup> *Id.* at 7 (original emphasis).

<sup>14</sup> Such comments are cited herein as follows: “[party name] comments” or “reply comments” as applicable.

### III. THE DECISION'S SUSPENSION PROGRAM

After opening and reply comments to the Track 3 Scoping Memo, a proposed decision issued which does not differ substantially from the Decision.<sup>15</sup> On July 16, 2021, the Commission issued the Decision, which suspends the capacity reservation component of the standby service surcharge for eligible microgrids that meet certain performance and capacity requirements.<sup>16</sup> Microgrids participating in the suspension still receive standby service, and will be assessed a Demand Assurance Amount, for any month when the customer exceeds its reservation capacity, at two times the tariffed capacity reservation charge that would have applied in the absence of the waiver.<sup>17</sup> The investor-owned utilities will track the costs associated with the suspension in a two-way balancing account, and revenue shortfalls are pre-approved for ratepayer recovery in distribution rates using standard distribution cost allocation factors.<sup>18</sup> Despite recognizing that the “value of resiliency” will not be addressed until Track 4 of this proceeding, the Decision states that eligible microgrids “can demonstrate high availability and high reliability”<sup>19</sup> and concludes that the suspension will allow the Commission and stakeholders to ascertain the costs to provide standby service to microgrids.<sup>20</sup> In 2026, the Commission will evaluate the effectiveness of the suspension and the adequacy of the Demand

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<sup>15</sup> See n. 6, *supra*. SDG&E joined with Pacific Gas & Electric Company and Southern California Edison Company, in submitting opening and reply comments on the proposed decision (June 29 and July 6, 2021) consistent with the substantive positions SDG&E takes in this rehearing application.

<sup>16</sup> Decision, Ordering Paragraph (“OP”) 2 at 44-48.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*, OP 1 at 43-44.

<sup>19</sup> *Id.* at 27.

<sup>20</sup> *Id.* at 36.



Assurance Amount.<sup>21</sup> The Decision gives no indication that the program - or its capacity reservation charge suspension - will end after the evaluation

#### **IV. ARGUMENT – THE DECISION CREATES AN UNLAWFUL COST SHIFT AND VIOLATES DUE PROCESS**

##### **A. The Decision correctly finds that waiver or reduction of standby charges would illegally shift costs**

Pub. Util. Code § 8371 prohibits the Commission from shifting costs between ratepayers when taking actions to facilitate the commercialization of microgrids: Pub. Util. Code § 8371(b) requires that the Commission develop methods to reduce barriers for microgrid deployment “*without shifting costs between ratepayers*” (emphasis added). And Pub. Util. Code § 8371(d) requires that the Commission develop necessary rates and tariffs to support microgrids, also “*without shifting costs between ratepayers*” (emphasis added). The Decision recognizes these statutory prohibitions on cost shifting, citing Pub. Util. Code §§ 8371(b) and 8371(d) as the applicable “legal contours that shape this proceeding.”<sup>22</sup> It also acknowledges that Pub. Util. Code § 8371(d) requires that customers who do not benefit from microgrids do not pay for microgrids, such that that non-participating microgrid customers remain indifferent.<sup>23</sup>

In light of these statutory requirements, the Decision correctly rejects blanket waivers of standby charges, and even “*significant reductions of different components of the standby charge*,”<sup>24</sup> because:

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<sup>21</sup> *Id.*, OP 1 at 43.

<sup>22</sup> *Id.* at 24-25.

<sup>23</sup> *See id.* at 25 (“To comply with Section 8371(d), we must protect customers from inequitable cross-subsidies by separating customers’ fair-share responsibility for a utility’s cost of service from those who do not benefit from a resiliency technology, like a microgrid. Thus, our goal under Section 8371(d) is to ensure that non-participating microgrid customers remain indifferent”).

<sup>24</sup> *Id.* (emphasis added).

A blanket waiver or reduction of standby charges would excessively burden the average California electric customer, in direct violation of Section 8371(d). A blanket waiver of standby charges for microgrids could also lead to unjustifiable cost-shifts for all distribution ratepayers.<sup>25</sup>

The Decision further explicitly finds that blanket waivers *and reductions* are unsupported by fact and the resulting cost shifts would inevitably violate statute:

[T]he record upon which we consider the topic of waiving or reducing standby charges for microgrids shows that: (1) there are *no facts to support a blanket waiver or reduction* of standby charges; and (2) any blanket waiver or reduction of standby charges *will inevitably shift costs to non-participating customers in direct violation to Section 8371*. Therefore, we reject a blanket waiver of standby charges.<sup>26</sup>

The Decision is correct in so finding because the policy rationales of standby service, as found by the Decision,<sup>27</sup> are such that customers pay standby charges to cover the costs the utility incurs to “stand by” and be ready to serve when capacity is needed. Thus, where an IOU must provide standby service and standby charges are waived or reduced, the utility still incurs costs of standby service which are then passed on to other ratepayers, resulting in cost shifts.

**B. Even though limited in scope, the suspension program shifts costs in violation of SB 1339**

Despite recognizing that blanket waivers, and even reductions of standby charge components would violate Pub. Util. Code § 8371,<sup>28</sup> the Decision orders a suspension of standby charges. It attempts to reach this result and still avoid the consequent illegal cost shifts it identifies by attempting to distinguish the adopted suspension program from the waiver or reduction it rejects. Rather than a “blanket waiver or reduction of standby charges,” the Decision

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 25 (emphasis added).

<sup>27</sup> *See id.*, Findings of Fact (“FoF”) 2-7 at 37-38.

<sup>28</sup> *Id.* at 25.

orders a “suspension of the capacity reservation component of the standby charge.”<sup>29</sup> The Decision limits the suspension to eligible projects and for information gathering purposes, and preserves an opportunity for potential compensation for the foregone capacity reservation revenue through the Demand Assurance Amount.<sup>30</sup>

However, there is no practical distinction between a reduction of the standby charge and a suspension of a single component of the standby charge. The capacity reservation charge, as defined by the Decision,<sup>31</sup> is the core of any standby charge.<sup>32</sup> Thus, the only relevant differences between the rejected standby waiver and the adopted suspension program are that: (1) the suspension is available only to some microgrids served by certain fuel sources and meeting certain availability and reliability criteria, and (2) the suspension program provides the potential for the utility to recoup revenue through the Demand Assurance Amount. SDG&E appreciates that these program features limit the quantitative impact of the suspension. But the record shows that there are no facts to support a standby charge waiver or reduction, and that any such waiver or reduction will inevitably result in illegal cost shifts. The same is necessarily true for the Decision’s suspension which is, in fact, a reduction (and for SDG&E, it is the complete elimination of the standby charge).

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<sup>29</sup> *See id.*, *passim*.

<sup>30</sup> *See id.*, OP 1 at 43-44.

<sup>31</sup> *Id.* at 26 (footnote omitted) “We use the term ‘capacity reservation charge’ to refer to a monthly charge, in dollars per kilowatt, to reserve capacity for standby customers, regardless of how such a charge is named within each utility’s tariff.”

<sup>32</sup> Note that SDG&E’s standby charge consists entirely of a capacity reservation charge, and thus the Decision has the effect of suspending SDG&E’s entire standby charge, or what the Decision refers to as a “blanket waiver.” See McKay Declaration, ¶ 4.

**1. The statutory prohibition is absolute and does not except limited or temporary cost shifts**

None of these suspension program features cure the legal error created by the suspension of the capacity reservation charge. That is because Pub. Util. Code § 8371’s bar against cost shifts is absolute. There are no exceptions for limited programs. A limited cost shift—whether limited because suspension applies only to some subset of customers, or because there is the potential for some offsetting revenue through the Demand Assurance Amount—is still a cost shift prohibited by statute.

Nor does the statute permit temporary cost shifting on a trial or evaluative basis. In fact, the Decision’s purported rationale to proceed with a pilot suspension for the purpose of “ascertain[ing] the costs utilities incur to provide standby service to these [qualifying] microgrid projects”<sup>33</sup> only illustrates the Decision’s acknowledgement that the suspension will in fact result in costs incurred by the utilities for standby service, but not paid for by participating customers (and thus shifted to others). Even with limited qualification criteria and program parameters, the Decision’s adopted suspension shifts costs and thereby violates Pub. Util. Code § 8371.

**2. The Decision does not and cannot show that the suspension does not shift costs**

The Decision correctly explains that standby charges reflect the actual cost of providing standby service to the customer.<sup>34</sup> If standby charges are suspended but the utility must still provide standby service, the unpaid charges reflect costs that are then shifted to other ratepayers.<sup>35</sup> To avoid such cost shifting, any suspension must be accompanied by benefits to

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<sup>33</sup> *Id.*, FoF 9 at 38.

<sup>34</sup> *See id.*, FoF 2 at 37.

<sup>35</sup> *See* McKay Declaration, ¶¶ 7-11.

those other ratepayers, and those benefits must be “commensurate” with the incremental costs they bear due to the suspension.<sup>36</sup> That is, to satisfy the statute, if the Commission provides an exemption from standby charges without reducing the need for standby service, it must first identify and quantify specific benefits that accrue to non-participants, and then ensure any benefits to non-participants are sufficient to offset the cost shifts resulting from the suspension. These benefits must be incremental to benefits already assumed in and compensated by existing distributed energy resource (“DER”) incentive programs.

After correctly recognizing the inevitable cost shifts of a standby charge waiver or reduction, the Decision appears to correctly recognize that a cost shift would occur even where some subset of customers are exempted from standby charges.<sup>37</sup> The Decision’s only attempt to suggest that any cost shift impact from the suspension might be offset by equal benefit is a single conclusory assertion in Finding of Fact 16, which states that the Demand Assurance Amount “ensures that the utility receives an equal exchange from the microgrid customer’s reliance on the utility system if the microgrid’s generation fails or the microgrid cannot serve its load.”<sup>38</sup> That finding is not supported by the record or the Decision itself. The costs incurred for “the microgrid customer’s reliance on the utility system if the microgrid’s generation fails or the microgrid cannot serve its load” (*id.*) are reflected by standby charges, which are incurred regardless of whether the utility ultimately provides electricity. Because the Demand Assurance

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<sup>36</sup> Track 3 Scoping Memo at 7.

<sup>37</sup> See Decision at 31 (*citing* Reply Comments of Public Advocates Office, at 2-3), suggesting financial responsibility of other ratepayers even where only some customers take service under suspension of the capacity reservation charge, stating that “[w]e also agree with Cal Advocates that ratepayers should not be financially responsible for providing electrical service to customers taking service under the rate schedule suspending the reservation capacity standby charge.”

<sup>38</sup> *Id.*, FoF 16 at 40.

Amount only compensates the utility if the microgrid actually receives standby electricity from the utility's system, by its nature, the Demand Assurance Amount cannot substitute for or provide an "equal exchange" for a capacity reservation charge. For the same reasons, contrary to the Decision, the Demand Assurance Amount cannot serve as "an assurance that the utility is compensated for the use [of the grid]"<sup>39</sup> or to "to ensure adequate financial support of the ratepayer utility system."<sup>40</sup>

The only scenario where there could be an equal exchange of revenue from the Demand Assurance Amount to offset the suspension's cost shift is if the Demand Assurance Amount is assessed in six different months in a year.<sup>41</sup> Ironically, under the suspension program, a Demand Assurance Amount is only assessed when the microgrid customer uses capacity in excess of reservation capacity, meaning that ratepayers benefit from poor performing systems: the more the microgrid fails, the more likely that the Demand Assurance Amount will be triggered enough times to cover the cost of the utility providing standby service. The Decision's attempt to balance the cost of standby charge suspensions against potential Demand Assurance Amount revenues lacks any facts, analysis or logic to support the conclusion that these amounts will balance and ensure against cost shifting. There is no evidence in the record of this proceeding that supports the Commission's conclusory assumption that the revenues from an unknown number of Demand Assurance Amount events will "equal" the cost of standing by for the suspension program customers. And, as shown in the attached Declaration of Jenell McKay, it is

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<sup>39</sup> *Id.* at 30-31.

<sup>40</sup> *Id.* Separately, the Decision does not address, and the record does not support, why a Demand Assurance Amount at two times, as opposed to some other multiplier of the tariffed capacity reservation charge, should apply.

<sup>41</sup> See McKay Declaration ¶¶ 7-8.

very unlikely that, for a given eligible microgrid, that Demand Assurance Amount charges will be paid at all, much less for half the year.<sup>42</sup>

Nor will tracking the revenue received from the Demand Assurance Amount compensate non-participating customers for the cost of standby service, as the Decision orders that revenue shortfalls be recovered through distribution rates.<sup>43</sup> While SDG&E appreciates that the Decision’s Demand Assurance Amount aims to limit cost shifts and to incentivize maximum microgrid generation availability, the Decision fails to justify how its Demand Assurance Amount provides sufficient off-setting compensation. Nor could it rationally do so.<sup>44</sup>

In sum, other than through the Demand Assurance Amount, the Decision makes no attempt to identify or quantify any “equal” benefit to customers not participating in the suspension. Nor could it, because there is nothing in the record to support any such specific or quantifiable benefit. The eligibility criteria limit but do not prevent a cost shift. The Decision makes no finding that its suspension program avoids cost shifts, and nothing in the record supports a conclusion that the suspension program will not shift costs in violation of Pub. Util. Code § 8371.

**3. There was no proper opportunity to be heard on the suspension program, and analysis based on the record shows how the suspension will shift costs**

The Decision issued after the suspension program was proposed for the first time in the proposed decision.<sup>45</sup> Parties are limited in the scope of comments on a proposed decision by

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<sup>42</sup> *Id.*, ¶¶ 7-8.

<sup>43</sup> Decision, OP 1 at 43-44.

<sup>44</sup> *See*, McKay Declaration ¶¶ 7-11.

<sup>45</sup> *See* n. 6, *supra*.

Commission Rule 14.3 (b), and that comment process does not accommodate the introduction of evidentiary facts. SDG&E submits herewith the Declaration of Jenell McKay to verify certain facts submitted with this rehearing application, and to show what sort of evidence would have been introduced if the suspension program had been properly presented prior to the proposed decision. SDG&E submits that the failure to provide a proper opportunity to present evidence on the Decision’s suspension program is legal error.

**C. The suspension program is not necessary for evaluation purposes**

The Decision implies that a standby charge suspension is necessary and justifiable to evaluate the impact of the suspension over a 5-year period: “A suspension of the capacity reservation component of the standby charge for eligible microgrids . . . is appropriate so the Commission and stakeholders can publicly ascertain the costs utilities incur to provide standby service to these microgrid projects.”<sup>46</sup> While SDG&E appreciates the goal to further understand costs associated with suspending standby charges, that justification does not adequately support the need for a standby charge suspension.

First, complete information regarding the cost of providing standby service is already available. Already on the record are detailed reports of revenues from historical capacity reservation charges to show the expense that would be incurred should standby charges be suspended.<sup>47</sup> In addition, information about the basis for standby charges—what services are

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<sup>46</sup> Decision, FoF 9 at 38; *see also, id.* at 2 (“This suspension will allow the Commission and stakeholders to ascertain the costs that the utilities incur to provide standby service to microgrids”).

<sup>47</sup> To develop a record, the Track 3 Scoping Memo directed parties to answer a detailed series of questions attached to the scoping memo concerning standby charges. Per this direction, parties filed and served opening and reply comments to the attachment’s questions on March 3, and March 10, 2021, respectively.



covered and what costs they are designed to collect—is routinely addressed in each utility’s General Rate Case (“GRC”) Phase Two.

Second, the Decision does not specify what, if any, information it seeks to collect that is additional to the data or analysis already in the record in this proceeding and that is already part of every utility’s GRC Phase Two. Nor does it specify how implementation of the suspension is necessary or will aid in gathering any of the unidentified additional information. To the extent the Decision intends for the experimental program to ascertain any benefits that might result from the suspension and whether those benefits are equal to the foregone capacity reservation charge revenues, the Decision contains no information or direction as to how any benefit would be assessed. It also does not address how a cost shift would be remediated if an after-the-fact analysis reveals (as is certain) a cost shift occurred because the costs and any benefits are not “equal.”

Finally, even if there is additional relevant information that could be gained by implementing the Decision, it is both inappropriate and unnecessary to modify the standby charge tariffs now to evaluate the costs (or any benefits) of a suspension. Implementing even a temporary and limited program to analyze the cost shifts violates the absolute statutory prohibition on cost shifts as explained above. It is also not necessary because there are other methods to obtain additional information which are legal and more justifiable than implementing a brand-new program with tariff modifications to long-standing standby charges. For example, the Commission could instead direct the utilities to track the cost of a hypothetical suspension from the standby charges to include that information in the record of the proceeding, and then consider whether the costs justify a suspension. The Commission could also separately evaluate the value provided by the facilities that are proposed to receive an exemption from standby

charges. With that information in the record, the Commission would be in a better position to evaluate whether an exemption is lawful and appropriate. Additionally, engaging in such evaluation or quantification would not harm, but only further facilitate, the development of microgrids; providing microgrids the opportunity to demonstrate and quantify any benefits they provide will enable the collection and analysis of information and data that establishes through concrete evidence the value that certain microgrids may provide.

**D. The Commission should consider alternative approaches**

As explained above, the Commission should withdraw or rehear the Decision. Legal error cannot be remedied by mere modification because there is no record to support the Decision's result. Nonetheless, SDG&E appreciates the Commission's intent to explore compensating microgrids for the demonstrable incremental benefits they provide, and submits that the Commission could continue to explore other mechanisms to compensate microgrids, through lawful and more appropriate alternatives.

First, after the Commission withdraws the Decision, it could determine an alternate path to more accurately ascertain costs and benefits of microgrid implementation. Instead of attempting to offset an unquantified value of resiliency against an unquantified standby charge exemption, the Commission should allow the Resiliency and Microgrids Working Group to continue to quantify these values and costs, and incorporate those efforts into the evidentiary record. To the extent there is a quantified value of resiliency provided by specific microgrids to specific customers, SDG&E supports compensating those microgrids for the quantified value they provide and allocating those costs appropriately to all benefitting customers. But to the extent the benefits of specific microgrids do not accrue to all non-participating customers across

a utility's territory, a standby charge waiver that shifts costs to all non-participating customers would not be a lawful mechanism for compensation.

Following a quantification of costs and benefits, if certain microgrids deserve additional compensation for value they demonstrably provide to certain other customers, that compensation should take the form of a distinct payment, separate from adjustments to the standby rate schedule. Compensation for customers operating a microgrid should not be tied to, or conflated with, measures that are meant to maintain cost-equity and that reflect the cost of actual standby service received by the customer. Because they are meant to maintain cost-equity, standby charges should not be a lever by which the Commission compensates microgrids for values they provide to the public. Compensating microgrids for benefits they provide through a distinct incentive payment would be more equitable than a standby charge exemption.<sup>48</sup>

Second, the Commission could explore alternatives that actually reduce the utilities' need to provide standby service for microgrid customers. Currently, one such solution exists in the form of "physical assurance" agreements offered by Southern California Edison Company and Pacific Gas and Electric Company.<sup>49</sup> Under this construct, customers agree that, should their generation experience an outage, they will instantaneously reduce load such that their overall load does not exceed the expected net peak load. Customers are also required to pay for the cost of additional equipment that will make it infeasible for customer load to increase beyond the expected level.

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<sup>48</sup> See, *Opening Comments of Pacific Gas and Electric Co. ... [SDG&E] and Southern California Edison Co. ... on Proposed Decision ....* (June 29, 2021) at 6.

<sup>49</sup> Physical assurance systems can also be used in SDG&E's service area to avoid the need for, and charges associated with, standby charges.

And third, to the extent the Commission still seeks to modify standby charges, there are more appropriate procedural venues, other than this proceeding (R.19-09-009), to revise policy and regulation associated with standby charges. As the Track 3 Scoping Memo states (at 6), “cost responsibility surcharges are the result of a well-litigated process in which the Commission has examined the costs associated with departing load, standby service, and new or incremental load service to determine the appropriate allocation of those costs to a customer to preserve cost-equity.” Service rate schedules, including standby rate schedules, are determined through the GRC Phase Two proceedings. Any consideration of changes to standby charges should occur in the utilities’ GRC Phase Two proceedings or Rate Design Windows where a broader set of stakeholders can participate. It is improper to eliminate, in this proceeding, charges developed through the GRC Phase Two after consideration of broader policy objectives in that proceeding.

SDG&E does not dispute that certain microgrids may in fact demonstrate high availability and high reliability, and recognizes that microgrids can play a role in supporting grid safety, reliability, and resiliency as California pursues greater decarbonization and faces challenges from a changing climate. SDG&E also remains committed to working with stakeholders through the Resiliency and Microgrid Working Group to examine metrics, methodologies, and policy applications for resiliency valuation. SDG&E continues to support the development of microgrids, as it has done throughout this proceeding. But any compensation or incentives for microgrids must not burden non-participating customers and must be consistent with applicable law.

## **V. REQUEST FOR ORAL ARGUMENT**

An applicant for rehearing may request oral argument, pursuant to Commission Rule 16.3(a), when an oral argument “will materially assist the Commission” because the challenged

order or decision, among other reasons: “(1) adopts new Commission precedent . . . without adequate explanation” or “(3) presents legal issues of exceptional controversy, complexity, or public importance.” These criteria are not exclusive, as the Commission has complete discretion whether to set oral argument.

Oral argument will materially assist the Commission in resolving the application, because it will permit the Commission to receive direct answers to questions regarding legal considerations that were not but must be addressed in the Decision. Additionally, the application raises major issues of significance for the Commission because as explained herein, the Decision diverges from statutory language, and as such adopts new precedent, without adequate explanation or factual basis to support such divergence. The Decision is also likely to have significant precedential impact given that cost shift implications must be addressed in Track 4 of this proceeding. Per the Track 3 Scoping Memo (at 8), the Commission anticipates resolving the following topics in Track 4: “(1) multi-property tariffs and alternatives; (2) value of resiliency; (3) interconnection issues; and (4) single property tariff revisit.” The Decision (at 4) provides that “[a]ll comments submitted by parties were considered but, issues within the scope of the proceeding that are not addressed here, or only partially addressed, may be addressed in Track 4 or another subsequent track of this proceeding.” Therefore cost-shifting principles adopted in this Decision will guide and inform the issues considered in Track 4.

The Decision also presents issues of exceptional public importance, because it imposes cost shifts that broadly affect utility customers. And, as discussed herein, it presents issues of exceptional controversy, given the necessity to strike an appropriate balance among competing considerations that impact microgrid customers and the larger customer population.

**VI. CONCLUSION**

For the foregoing reasons, SDG&E requests that: (1) the Commission grant this Application for Rehearing to correct the unlawful and erroneous aspects of the Decision, and (2) hold oral argument on this Application for Rehearing.

Respectfully submitted,

*/s/ E. Gregory Barnes* \_\_\_\_\_

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August 16, 2021

**DECLARATION OF JENELL T. M<sup>C</sup>KAY**

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding  
Microgrids Pursuant to Senate Bill 1339 and  
Resiliency Strategies.

Rulemaking 19-09-009  
(Filed September 12, 2019)

**DECLARATION OF JENELL T. McKAY**

I, JENELL T. McKAY, declare that:

1. I am currently employed by San Diego Gas & Electric Company (“SDG&E”) as Advanced Clean Technology Development Manager. I have been involved in SDG&E’s planning and development of microgrid technologies since April 2020, and have worked on SDG&E’s response to the above-captioned rulemaking. I am authorized to make this declaration on SDG&E’s behalf. I have personal knowledge of the matters stated herein and could and would testify competently thereto, under oath, if required.

2. I have reviewed the recent decision of the California Public Utilities Commission (“Commission”), *Decision Adopting a Suspension of the Capacity Reservation Component of the Standby Charge for Eligible Microgrid Distributed Technologies*, Decision (“D.”) 21-07-011, issued July 16, 2021 (the “Decision”). As described below, based on my review of the Decision, and on my experience and expertise in microgrid technologies and the issues in this proceeding, I submit that the Decision, if implemented, will create a cost shift in violation of Senate Bill 1339.

3. The Decision directs Pacific Gas and Electric Company, Southern California Edison Company, and SDG&E to revise their respective rate schedule(s) to suspend the capacity reservation component of their standby charge for eligible microgrids that meet the California Air Resources Board air pollution standards for generation. According to the Decision, this suspension will allow the Commission and stakeholders to ascertain the costs that the utilities



incur to provide standby service to microgrids. The Decision (at 26 (footnote omitted)) adopts “a suspension of the capacity reservation component of the utilities’ standby charges. We use the term ‘capacity reservation charge’ to refer to a monthly charge, in dollars per kilowatt, to reserve capacity for standby customers, regardless of how such a charge is named within each utility’s tariff.” Notwithstanding the suspension of the capacity reservation charge, the Decision requires the utility to stand by and to serve the eligible microgrid in the event such microgrid experiences an outage. In exchange for this reliance, the microgrid customer shall pay, directly to the utility, a Demand Assurance Amount for the service the utility system provides during any microgrid generation failure or when the microgrid cannot otherwise serve its load. The Demand Assurance Amount is assessed at two times the tariffed capacity reservation charge that would have applied in the absence of the waiver required by the Decision, only during the month(s) that the contracted demand was exceeded. *See* Decision at 30.

4. Standby charges are designed to recover the costs of utility service, including the transmission and distribution infrastructure associated with the delivery of electricity. The standby tariff was designed as a result of a Commission proceeding and decision that adopted standby rate design rules and policies affecting the deployment of customer onsite generation facilities whose load, in partial or completely, the facilities are designed to serve. In D.01-07-027, the Commission determined that system costs to serve standby customers are fixed in nature, regardless of the level or frequency of standby service needed. Because SDG&E’s standby charge consists entirely of a capacity reservation charge, the Decision has the effect of suspending SDG&E’s entire standby charge.<sup>1</sup> As I describe in the next paragraphs, due to the nature of standby service and the Decision’s suspension of the capacity reservation charge, including the cost recovery authorization,

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<sup>1</sup> SDG&E, *Standby Service*, Schedule S, Sheet 1, available at [http://regarchive.sdge.com/tm2/pdf/ELEC\\_ELEC-SCHEDS\\_S.pdf](http://regarchive.sdge.com/tm2/pdf/ELEC_ELEC-SCHEDS_S.pdf)

the Decision's Demand Assurance Amount "exchange" does not equal the suspended capacity reservation charge, resulting in a cost shift.

5. SDG&E's standby charge is assessed on a monthly basis using the contracted demand amount, which is calculated as the lesser of the nameplate capacity of the customer's generating facility or the customer's peak demand.

6. As stated in SDG&E's Comments to the Assigned Commissioner's Amended Scoping Memo and Ruling for Track 3 (February 9, 2021), SDG&E's receipt of standby revenues for calendar years 2018-2020 was a combined total of \$61.0 million for 68 customer accounts, made up of commercial and industrial customers at various voltage service levels. If the Decision stands, SDG&E expects the advent of eligible microgrids taking advantage of the Decision's suspension program to create additional standby accounts, and it is possible that existing standby accounts might qualify as well.

7. Since the Decision's Demand Assurance Amount is assessed at twice the capacity reservation charge, and is only assessed when the customer's demand exceeds their contracted demand, this use of standby service resulting in the Demand Assurance Amount being charged would need to occur once for every two month period during any waiver to ensure a result of no cost shift. This would result in the same revenues collected if the current standby charge is assessed on the monthly basis without the waiver.

8. For the generation supporting a microgrid under the Decision's suspension program, the Decision's performance eligibility criteria require an 85 percent capacity factor and a 95 percent availability factor.<sup>2</sup> Research from the National Renewable Energy Laboratory ("NREL") indicates

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<sup>2</sup> Decision, Ordering Paragraph ("OP") 2 at 44.

that base load fuel cell units operate on average with a capacity factor of 89.2 percent.<sup>3</sup> That same research states that the availability factor of base load fuel cell units exceeds 98 percent. While it is positive that these technologies have extraordinary availability, it also means that microgrids supported by such technologies will rarely be assessed a Demand Assurance Amount during the suspension program, much less once every two months. The lack of compensation from the Decision's Demand Assurance Amount necessarily will result in a cost shift, as described in the next paragraph.

9. For example, if a customer on standby service has a generating facility with a nameplate capacity of 100 kW and their average monthly demand is 75 kW, the customer's contracted demand would be 75 kW. The customer would only be assessed a Demand Assurance Amount in the event that the generating facility has a failure or de-rate of capacity below the 75 kW. With the Decision's performance eligibility criteria requiring an 85 percent capacity factor and a 95 percent availability factor, as noted above, this scenario is unlikely to occur once every two months. Alternatively, if a customer's demand exceeded their contracted demand amount for more than once in every two months, the result would be paying more than the current assessment of the standby charge. For example, if a customer on standby service has a generating facility with a nameplate capacity of 50 kW and their average monthly peak demand is 75 kW, the customer's contracted demand would be 50 kW. For every month the customer's peak demand exceeded the 50 kW, the customer would be assessed the Decision's Demand Assurance Amount. This scenario may result in the customer paying more than their fair share – which is also a cost shift.

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<sup>3</sup> NREL, *Stationary Fuel Cell Evaluation: 2016 Annual Merit Review*, Genevieve Saur, Jennifer Kurtz, Chris Ainscough, Sam Sprik, and Matt Post, Presented at the 2016 DOE Annual Merit Review Meeting (June 7, 2016) at 17, available at [https://www.hydrogen.energy.gov/pdfs/review16/tv016\\_saur\\_2016\\_p.pdf](https://www.hydrogen.energy.gov/pdfs/review16/tv016_saur_2016_p.pdf).

10. Under California’s public utility regulation principles, the local utility is granted the right of exclusive retail electricity delivery in a given area in return for undertaking the obligation to plan for and to serve the existing and foreseeable electric demand in that area. The utility is entitled to compensation for its reasonable expenses and investment to provide such service, plus a reasonable return on the investment. Under this public utility regulation model, the Commission establishes a revenue requirement for the utility operations, which revenue requirement is recovered through Commission-approved rates. Such regulation yields the result that any costs not compensated in rates by one subset of customers will be paid by other customers.

11. In addition, pursuant to Public Utilities Code Section 739.6, rates are to be designed “using cost allocation principles that fairly and reasonably assign to different customer classes the costs of providing service to those customer classes.” The rate design principle of revenue neutrality means that a specific amount of revenue is to be collected among a given group of customers. However, if a smaller subset of those customers is exempted from paying a portion of the group’s share of costs, the revenue neutrality principle requires the exempted amount to be collected from the non-exempted customers of the group. This principle reinforces that requiring the utility to provide standby service without full compensation results in a cost shift from customers participating in the suspension program to nonparticipating customers in violation of Public Utilities Code Section 8371. Specifically, the suspension of the standby charge and assessment of the Demand Assurance Amount are to be assessed to eligible customer generating facilities and recorded in a two-way balancing account, “Microgrid Reservation Capacity Component-Standby Charge Suspension Account.” Decision, OP 1 at 43. However, the Decision also authorizes the disposition of the balance of said two-way balancing account to occur annually

through the utility's electric true-up advice letter filings using ratepayer recovery in distribution rates using standard distribution cost allocation factors. Using the cost-recovery authorized by the Commission, the balance of the suspended standby charge and assessment of the Demand Assurance Amount will be borne by both microgrid participating and non-participating customers and by all customer classes. This rate recovery methodology violates the prohibition on cost shifting in two fashions: 1) the indifference principle by allowing costs to shift between participating and non-participating customers, and 2) the cost-allocation principle by allowing costs to shift between customer classes.

Further Declarant sayeth not.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, except as to those matters stated to be on information and belief, and as to those matters, I believe them to be true and correct.

Executed this 16<sup>th</sup> day of August 2021, at San Diego, California.

  
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Jenell T. McKay