FILED
08/31/21
04:59 PM

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)

JOINT PARTIES RESPONSE TO SAN DIEGO GAS AND ELECTRIC APPLICATION FOR REHEARING OF DECISION 21-07-011 AND OPPOSITION TO ATTEMPT TO SUPPLEMENT THE RECORD

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August 31, 2021

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Pursuant to Rules 16.1(d) and 11.1(e) of the Rules of Practice and Procedure ("**Rules"**) of the California Public Utility Commission (the "**Commission"**), the Microgrid Resources Coalition, National Fuel Cell Research Center, and the Green Power Institute (the "**Joint Parties"**) respectfully files this response ("**Response"**) to the application of San Diego Gas and Electric Company ("**SDG&E"**) for rehearing of Decision 21-07-011 (the "**Track 3 Decision**") and its effort, in that context, to supplement the record in Track 3 of the proceeding filed with the Commission on August 16, 2021 ("**SDG&E's Application"**). SDG&E's Application purports to find errors of law in the Track 3 Decision, but it is SDG&E's Application that displays misunderstanding of the law. The use of the phrase "without shifting costs" in SB 1339[1] must be read in the context of the overall purpose and requirements of the legislation and the powers of the Commission and is not a restriction to prevent the implementation of the plain requirements of the statute. Moreover, SDG&E's Application attempts to supplement the record in the Track 3 proceeding by the inclusion of the Declaration of Jennell T. McKay (the "**Declaration**") as an appendix without any reference to the requirements of Rule 13.8. This submission does not meet the requirements of Rule 13.8 and should be rejected as being prejudicial to the other parties to the Track 3 proceeding.

[1] SB 1339 (Stern, 2018) https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1339

1. SB 1339 Does Not Prohibit the Track 3 Decision

SDG&E's assertion of error is wrong as a matter of law. The overriding purpose of SB 1339 is clear from its preamble:

> The Public Utilities Commission, Independent System Operator, and State Energy Resources Conservation and Development Commission must take action to help transition the microgrid from its current status as a promising emerging technology solution to a successful, cost-effective, safe, and reliable commercial product that helps California meet its future energy goals and provides end-use electricity customers new ways to manage their individual energy needs.[2]

Moreover, the direct statutory provisions ask the Commission to "develop methods to reduce barriers for microgrid deployment"[3] and to "develop separate large electrical corporation rates and tariffs, as necessary, to support microgrids."[4] While both of these directives are prefaced by the phrase "without shifting costs," the statute clearly contemplates that Commission action is needed and possible. The balance of the directive on tariffs makes clear, in the negative, that the Commission can direct monetary benefit to microgrids under the suggested tariffs so long as payments are not made to diesel generators.[5]

We acknowledge the plain language of the statute preventing cost shifting but what constitutes cost shifting is a matter of interpretation and empirical data. Our view is that SDG&E asserts an inappropriately narrow definition of cost shifting. SDG&E suggests that any costs borne by ratepayers who don't directly benefit from microgrids is prohibited. This argument seems to ignore the past three years of PSPS events that are wreaking havoc on the California grid and, in particular, on critical facilities. It is <u>not</u> cost shifting to adopt microgrid-related policies, which help to harden the grid and protect critical facilities, because it is incontrovertible that all ratepayers benefit from such policies -- and particularly those in at-risk areas from PSPS and other shutoff events this summer and in later years.

It is also the case that placing the risk of PSPS on ratepayers, as is the current practice, is a massive cost shift from shareholders to ratepayers because there is no compensation provided to ratepayers from loss of service during PSPS, which can be quite serious for many ratepayers.

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[2] SB 1339 §1(e).
[3] Pub. Util. Code §8371(b).
[4] Pub. Util. Code §8371(d).
[5] Id.

We are supporting microgrid solutions for resiliency in significant part because of the potential for microgrids to end this unfortunate cost shifting that is currently occurring and is expected to continue for many more years.

SDG&E's Application attempts to render the phrase "without shifting costs" surplusage and read the entire substance of SB 1339 out of the statute. Any new tariff that removes a barrier or compensates a microgrid will involve costs that must be paid, and if the prohibition on cost shifting were to read literally in this way,[6] the statute would be a nullity. The California Civil Code actually adopts a longstanding principle of statutory construction:

> In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; *and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all*. (*Emphasis supplied.*)[7]

SDG&E's reading of the statute clearly violates that principle. A better and far more obvious reading of the statute is that the drafters intended to distinguish SB 1339 from statutes such as the original NEM legislation,[8] which was clearly intended to give an above market payment for exports of solar energy.

The Commission has broad power directly under the California Constitution to fix rates and establish rules,[9] and all rates are required to be just and reasonable.[10] In making such determinations the Commission can consider overall benefit to ratepayers and benefits that accrue over time rather than simply on next months' bill. It makes such decisions all the time in connection with utility planning. It also makes decisions to allocate costs between rate classes,

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[6] "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." SDG&E Application at 9.

[7] Code of Civil Procedure §1858

[8] AB 327 (Pera, 2013)

[9] Constitution Article XII Sec. 6.

[10] Pub. Util. Code §451.

generally based on Equal Percent of Marginal Cost (EPMC).[11] As SDG&E appears to recognize, the benefits from microgrids enter into that overall calculation, and, we suggest, so should past misallocations of costs that now cause barriers.

Contrary to SDG&E's assertions, the majority of parties to the proceeding favored the elimination or reduction of standby charges for microgrids and provided substantial evidence of the benefits they provide, beginning with the customer's investment in the microgrid itself, which reduces the requirement for utility investment in expansion of its distribution system. The MRC's initial filing also provided substantial evidence that standby charges create barriers to microgrid deployment[12] and that they are disproportionately high.[13] SDG&E's Application provides direct evidence for that proposition. In Section 8 of the Declaration, they acknowledge that microgrids powered by fuel cells are very reliable and will not fail often enough to collect their full hoped-for revenue under the terms of the Track 3 Decision. They have it backwards. If microgrids fail infrequently (with which we strongly agree), the cost of being prepared to supply backup for microgrids as a group is correspondingly low.

2. SDG&E Should Not Be Permitted to Supplement the Record

Section 13.8(b) of the Rules states:

> Direct testimony in addition to the prepared testimony previously served, other than the correction of minor typographical or wording errors that do not alter the substance of the prepared testimony, *will not be accepted into evidence unless the sponsoring party shows good cause why the additional testimony could not have been served with the prepared testimony or should otherwise be admitted*. (Emphasis supplied.)

SDG&E has not acknowledged that its surreptitious inclusion of the Declaration is subject to Rule 13.8, and it has made no attempt to demonstrate that it has met this burden. A review of the five-and-one-half pages of the Declaration does not suggest any reason why it could not have been prepared as initial or reply comments in this proceeding. Admitting this material into evidence would prejudice the other parties, who had no prior opportunity to review or comment.

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[11] *See, e.g. discussion in* Decision 18-08-013 (August 17, 2018) in Docket A.16-06-013 (Decision on Pacific Gas and Electric Company's Proposed Rate Designs and Related Issues).

[12] Comments of Microgrid Resources Coalition on the Assigned Commissioner's Amended Scoping Memo and Ruling For Track 3 (March 3, 2021) at 10-12.

[13] Ibid. at 17-19.

3. Conclusion

For the reasons set forth above, the Joint Parties respectfully request that the Commission deny SDG&E's Application and reject the attempt to include the Declaration in the Record.

Respectfully submitted,

August 31, 2021

/s/

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