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Ratesetting

TO PARTIES OF RECORD IN APPLICATION 20-10-015:

This is the proposed decision of Administrative Law Judge Jason Jungreis. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's June 2, 2022 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties to the proceeding may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure. Electronic copies of comments should also be sent to the Intervenor Compensation Program at icompcordinator@cpuc.ca.gov.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ ANNE E. SIMONAnne E. Simon
Chief Administrative Law JudgeAES:nd3
Attachment

Decision PROPOSED DECISION OF ALJ JUNGREIS (Mailed 4/28/2022)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of The Protect Our
Communities Foundation for Award
of Intervenor Compensation for
Substantial Contribution to
Resolution E-5071.

Application 20-10-015

DECISION DENYING INTERVENOR COMPENSATION

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DECISION DENYING INTERVENOR COMPENSATION

Summary

This decision denies intervenor compensation to The Protect Our Communities Foundation (PCF). PCF had filed an application requesting an award of intervenor compensation for its asserted substantial contribution to Resolution E-5071 (the Resolution). We find that PCF did not substantially contribute to the Resolution.

Application 20-10-015 is closed.

1. Procedural Background

On October 27, 2020, The Protect Our Communities Foundation (PCF)¹ filed an application, pursuant to Public Utilities Code Section 801, *et seq.*,² requesting an award of intervenor compensation (Application) for substantial contribution to California Public Utilities Commission (Commission) Resolution E-5071 (the Resolution). San Diego Gas & Electric Company (SDG&E) filed a Protest to PCF's Application, asserting that PCF had not substantially contributed to the Resolution. PCF filed a Reply to the SDG&E Protest.

The Resolution concerned an SDG&E Advice Letter (AL) as required by Decision (D.) 19-09-051, which resolved SDG&E's General Rate Case (GRC). That Decision's Ordering Paragraph (OP) 6 directed SDG&E to file a Tier 3 AL³ in order to obtain approval for reduction of its Post Test Year revenue

¹ At the time of Resolution, The Protect Our Communities Foundation was referred to as POC, and subsequently began referring to itself as PCF; while we refer to it here as PCF, some earlier documents in the record may refer to it as POC.

² Unless otherwise stated, all statutory references are to the Public Utilities (Pub. Util.) Code.

³ Tier 3 ALs are approved by the Commission via resolution at a Commission Voting Meeting.

requirements by \$7.2 million, \$11.0 million, and \$10.4 million in 2020, 2021, and 2022, respectively, to reflect the equity rate base exclusion for SDG&E's Wildfire Mitigation Plan (WMP) capital expenditures required by Assembly Bill (AB) 1054. The Commission's Energy Division (ED) Staff first directed SDG&E to submit two modifications to its AL 3488-E – AL 3488-E-A and AL 3488-E-B – before ED Staff processed and finalized the Resolution.

PCF filed a Protest regarding AL 3488-E-A, to which SDG&E filed a Reply. Later, PCF filed a Protest regarding AL 3488-E-B, to which SDG&E also filed a Reply. PCF and SDG&E each prepared comments regarding an ED Staff draft of the Resolution.

In its Application, PCF asserts that it meets statutory qualification for intervenor compensation, and that it meets the statutory requirements for having substantially contributed to the Resolution. SDG&E asserts that PCF did not meet the statutory requirements for having substantially contributed to the Resolution. Each party raised statutory arguments, referred to prior Commission decisions, and referred to some of the actual submitted documents that underlie the Resolution, as well as to the Resolution itself.

On January 5, 2022, a prehearing conference (PHC) was held to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary. As a result of discussion at the PHC, a ruling was issued enabling each party to file a statement either asserting that the record, as it existed at that time in the proceeding,⁴ was

⁴ With its Application, PCF had transmitted a set of documents, referred to on page 22 of its Application and identified on that page as follows: Attachment 1 (Certificate of Service); Attachment 2 (PCF's Protest to AL 3488-E-A); Attachment 3 (Draft Resolution); Attachment 4 (PCF's comments on the Draft Resolution); Attachment 5 (subsequent held [Proposed] Resolutions); Attachment 6 (PCF's Protest to AL 3488-E-B); Attachment 7 (the [Proposed]

complete for all relevant purposes, or, in the alternative, proffer additional documents and communications that are believed to be relevant to the resolution of the proceeding, and to reply to the other party's filing. On January 14, 2022, SDG&E filed a Response to the Ruling that submitted seven additional documents that it contended are necessary to the record.⁵ PCF did not file anything in response to the Ruling.

On February 4, 2022, the assigned Commissioner issued a Scoping Ruling that set forth the issues and schedule of the proceeding. The Scoping Ruling also determined that because the existing filings and communications related to the Resolution comprise the substantive record at issue for review in this proceeding, and because no party at the PHC argued that an evidentiary hearing would be necessary, therefore an evidentiary hearing was not needed. The Scoping Ruling enabled the parties to file opening and reply briefs.

On February 25, 2022, SDG&E timely filed its Opening Brief. PCF did not file a substantive opening brief. PCF instead filed a self-described Opening Brief consisting of the following statement: "PCF hereby refers to and incorporates herein its application, filings, and its arguments made at the prehearing conference as the opening brief authorized by the Assigned Commissioner's Scoping Memo and Ruling."

On March 18, 2022, both PCF and SDG&E filed their respective Reply Briefs. At that time, this proceeding was submitted. Hereby, we find that the

Resolution); Attachment 8 ([Proposed] Resolution Rev.1); Attachment 9 (PCF's principal's resume); Attachment 10 (PCF's Time Sheet and Categorization).

⁵ The January 14, 2022, SDG&E Response to Ruling included the following: AL 3488-E; AL 3488-E-A; SDG&E's Reply to PCF's Protest to AL 3488-E-A; AL 3488-E-B; SDG&E's Reply to PCF's Protest to AL 3488-E-B; and the final Resolution. These documents are each necessary to the understanding of the PCF Application.

record is deemed complete, based upon the Application, the documents transmitted by PCF with its Application (*see* footnote 4), and the documents submitted by SDG&E on January 14, 2022, in response to Ruling (*see* footnote 5).

2. Issues Before the Commission

As defined in the February 4, 2022, Scoping Memo, the issues in this proceeding are as follows:

1. Does the Application satisfy all of the requirements of the Pub. Util. Code and all applicable Commission Rules, General Orders (GOs), and Decisions?
2. Did PCF make a substantial contribution to the Resolution as adopted by the Commission?
3. Are PCF's claimed costs reasonable and comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services?

3. Discussion

3.1. The Standard for Intervenor Compensation Is Well-Established to Require Proof of Hardship, Substantial Contribution, and Reasonable Claimed Costs

Pub. Util. Code Section 1801, *et. seq.*, sets forth the legal standard to be applied in considering PCF's Application. These statutes establish the criteria for consideration. The Commission then applies those criteria.

In pertinent part, the statutory scheme is found in these excerpts:

Section 1801:

(b) The provisions of this article shall be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process.

...

(d) Intervenors be compensated for making a substantial contribution to proceedings of the commission, as determined by the commission in its orders and decisions, regardless of whether a settlement agreement is reached.

...

(f) This article shall be administered in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately represented or participation that is not necessary for a fair determination of the proceeding.

Section 1802:

(a) "Compensation" means payment for all or part, as determined by the commission, of reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a proceeding, and includes the fees and costs of obtaining an award under this article and of obtaining judicial review, if any.

(b) (1) "Customer" means any of the following:

(A) A participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission.

(B) A representative who has been authorized by a customer.

(C) A representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electrical corporation.

(c) "Expert witness fees" means recorded or billed costs incurred by a customer for an expert witness.

...

(h) "Significant financial hardship" means either that the customer cannot afford, without undue hardship, to pay the

costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

...

(j) "Substantial contribution" means that, in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

Section 1802.5:

Participation by a customer that materially supplements, complements, or contributes to the presentation of another party, including the commission Staff, may be fully eligible for compensation if the participation makes a substantial contribution to a commission order or decision, consistent with Section 1801.3.

Section 1803:

The commission shall award reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a hearing or proceeding to any customer who complies with Section 1804 and satisfies both of the following requirements:

(a) The customer's presentation makes a substantial contribution to the adoption, in whole or in part, of the commission's order or decision.

(b) Participation or intervention without an award of fees or costs imposes a significant financial hardship.

Section 1804:

...the commission shall issue a decision that determines whether or not the customer or eligible local government entity has made a substantial contribution to the final order or decision in the hearing or proceeding. If the commission finds that the customer or eligible local government entity requesting compensation has made a substantial contribution, the commission shall describe this substantial contribution and shall determine the amount of compensation to be paid...

Section 1807:

(a) An award made under this article shall be paid by the public utility that is the subject of the hearing, investigation, or proceeding, as determined by the commission, within 30 days. Notwithstanding any other law, an award paid by a public utility pursuant to this article shall be allowed by the commission as an expense for the purpose of establishing rates of the public utility by way of a dollar-for-dollar adjustment to rates imposed by the commission immediately on the determination of the amount of the award, so that the amount of the award shall be fully recovered within one year from the date of the award.

Section 1808:

The commission shall deny any award to any customer or eligible local government entity that attempts to delay or obstruct the orderly and timely fulfillment of the commission's responsibilities.

In past decisions, the Commission has described the recovery of intervenor compensation in several ways. "Our obligations to ratepayers, who ultimately provide the funds for compensation of intervenors, require us to be certain that funds only go to intervenors who can adequately demonstrate, through the filings required by the statute and our rules, that they both deserve and need

compensation.”⁶ “[C]urrent rules, implementing Pub. Util. Code § 1801 et seq., are much more restrictive [than the prior intervenor compensation mechanism] in the sense that they are tied to the enhancement of the Commission’s decision-making process in a very specific manner, as opposed to broader public policy considerations.”⁷

Under Pub. Util. Code Section 1804, the burden of proving that the “substantial contribution” requirement has been met is placed on the intervenor.⁸ In order to determine whether an intervenor has made a substantial contribution, the Commission considers the record, including the testimony and pleadings offered by the intervenor.⁹ The Commission then “compares it to the findings, conclusion and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer’s presentation substantially assisted the Commission.”¹⁰

Active participation by an intervenor in a proceeding is not, by itself, sufficient to support a finding of substantial contribution.¹¹ The California Court of Appeal stated that “by the plain terms of the statute there must be some demonstrable link between a position an intervenor took and a specific ‘order or decision’ adopted by the CPUC.”¹² The standard for review requires that “in the judgment of the commission, the customer’s presentation has substantially

⁶ D.86-05-007 at 20.

⁷ D.87-10-078 at 14.

⁸ D.98-11-009 at 18.

⁹ D.98-04-059 at 68.

¹⁰ *Ibid.*

¹¹ D.98-11-009 at 22.

¹² *New Cingular Wireless, PCS, LLC v. Public Utilities Com.* (2018) 21 Cal. App. 5th 1197 at 1203.

assisted the commission in the making of its order or decision because the order or decision has **adopted** in whole or in part one or more factual contentions, legal contentions, or **specific** policy or procedural recommendations presented by the customer” (emphasis as in the original).¹³

The Commission’s application of the statutes denies intervenor compensation merely for “participation that is not necessary for a fair determination of the proceeding... [this] means the Commission should not award compensation where the customer has argued issues that are, e.g., irrelevant, outside the scope of the proceeding, or beyond the Commission’s jurisdiction to resolve.”¹⁴ “[T]he Legislature did not intend the intervenor compensation program to be a full employment act for private consultants.”¹⁵ “While we wish to encourage participation of diverse consumer representatives, we are also mindful that intervenor compensation is funded through utility rates. Requests for intervenor compensation must demonstrate that the intervenor’s participation was meaningful and in some way unique or complementary.”¹⁶

The Commission has made clear that its reason for conducting this review is to “ensure that compensated intervention **provides value to the ratepayers who fund it**” (emphasis as in the original).¹⁷

¹³ D.18-12-009 at 7.

¹⁴ D.98-04-059 at 54.

¹⁵ *Id.* at 41.

¹⁶ D.08-06-018 at 9-10.

¹⁷ D.18-12-009 at 8.

3.2. The History of the Resolution and PCF's Participation

On December 30, 2019, SDG&E filed AL 3488-E in compliance with D.19-09-015 OP 6 regarding SDG&E's Test Year 2019 GRC. OP 6 required SDG&E to file an advice letter to demonstrate its plan to comply with AB 1054.¹⁸ This was necessary because AB 1054 had been enacted after the close of evidence and briefing in SDG&E's GRC but before the final GRC decision was issued, and the decision had to enable effectuation of AB 1054.

OP 6 reads in pertinent part as follows:

Beginning in Post-Test Year (PTY) 2020, San Diego Gas & Electric Company (SDG&E) shall adjust its PTY revenue requirements to reflect the equity rate base exclusion required by Assembly Bill 1054. SDG&E shall file a Tier 3 Advice Letter concurrent with its year-end adjustment filing for 2019, providing a detailed explanation and showing of the revenue requirement impact of the Public Utilities Code section 8386.3(e) equity rate base exclusion when it makes its annual PTY revenue requirement implementation filings.¹⁹

On December 30, 2019, as required by D.19-09-015 OP 6, SDG&E filed its initial advice letter, designated as AL 3488-E. It identified the revenue requirement impact as mandated by OP 6, and identified the total to be excluded from equity rate base and refunded to customers during SDG&E's PTY period (2020-2022), and provided a breakdown of the \$215 million in WMP capital projects that would shortly be or were already reflected in SDG&E's rate base,

¹⁸ AB 1054 contains a provision that prohibits SDG&E and the other large Investor-Owned Electrical Utilities from including their allocated share of fire risk mitigation capital expenditures in equity rate base (SDG&E's share is \$215 million). *See* Pub. Util. Code § 3280 and § 8386.3(e). *See also*, the Resolution's discussion of AB 1054 at 3-4 (discussing the impact and requirements of AB 1054).

¹⁹ D.19-09-051, OP 6 at 776-777.

and the timing for refunding those amounts to customers.²⁰ No protests were filed regarding SDG&E's AL 3488-E.

On March 4, 2020, after the protest period for AL 3488-E had passed, at the request of ED Staff, SDG&E filed a Supplement to AL 3488-E, identified as AL 3488-E-A.²¹ That Supplement included two paragraphs of additional information regarding the timing and implementation of the equity exclusion refund to its customers (under the section entitled "Discussion – Timing of Refund"). AL 3488-E-A also stated that "This advice letter supplements in part and will not change the integrity of the original AL 3488-E," and added that "pursuant to GO [General Order] 96-B, General Rule 7.5.1, any new protest shall be limited to the substance of the supplemental or additional information contained herein."²²

On March 23, 2020, in response to AL 3488-E-A, PCF filed its Protest.²³ The Protest expressly cited to GO 96-B, General Rule 7.4.2, which references "The relief requested in the advice letter." The Protest essentially raises questions regarding the interplay between AL 3488-E and AL 3488-E-A, stating that it was "[not clear] as to whether SDGE [sic] 3488-E-A is in fact adding to Advice Letter 3488-E or eliminating aspects of Advice Letter 3488-E," and alleged that

²⁰ January 14, 2022, SDG&E Response to Ruling at Attachment A.1, SDG&E AL 3488-E.

²¹ *Id.* at Attachment A.2, SDG&E Supplement AL 3488-E-A. It reads in part as follows: "This filing provides additional supplemental information requested by the Energy Division regarding requested adjustments to SDG&E's electric revenue requirement effective January 1, 2020 to implement the equity rate base exclusion required by AB 1054 and approved in [] D.19-09-051 on September 26, 2019" (AL 3488-E-A at 1-2).

²² *Id.* at 1-2.

²³ PCF Application Attachment 2.

“SDG&E’s cryptic supplement raises questions which the Advice Letter fails to address.”²⁴

On March 30, 2020, SDG&E filed a Reply to PCF’s Protest, essentially asserting that AL 3488-E was not protested, that AL 3488-E-A expressly stated that it only supplemented and did not change AL 3488-E, and that nothing was omitted from AL 3488-E. In net effect, SDG&E explained that AL 3488-E and AL 3488-E-A must be read together. Also, where PCF’s Protest had included references to other CPUC decisions that PCF asserted affected SDG&E’s AL 3488-E, SDG&E responded that AL 3488-E was not protested and therefore those PCF remarks were out of scope for a Protest concerning AL 3488-E-A.²⁵

On May 1, 2020, ED Staff circulated a draft of the Resolution, which proposed PTY revenue requirement downward adjustments of \$8.3 million in 2020, \$10.9 million in 2021, an \$10.3 million in 2020.²⁶ The draft Resolution addressed both AL 3488-E and Supplemental AL 3488-E-A. The draft Resolution also stated that “SDG&E filed supplemental AL 3488-E-A at the request of Energy Division for more clarification regarding the timing of the implementation of the proposed refunds.”²⁷

²⁴ There is nothing in the record to indicate that PCF sought information from either SDG&E or from ED Staff regarding ED Staff’s request for additional information that was the basis for AL 3488-E-A, and its Protest indicated that PCF was unaware of the nature of the ED Staff request for additional information: had PCF timely sought such information, the basis for its Protest as to the alleged cryptic aspect of the AL 3488-E-A supplement might have been dispelled at the very beginning and precluded the need for its Protest.

²⁵ January 14, 2022, SDG&E Response to Ruling at Attachment A.3, SDG&E Reply to PCF Protest of AL 3488-E-A.

²⁶ *Id.* at Attachment A.4: the draft Resolution was circulated to the SDG&E AL 3488-E Service List and to the A.17-10-007 (the SDG&E GRC D.19-09-051) Service List.

²⁷ *Id.* at 7.

The draft Resolution also noted the PCF Protest, and wrote on the subject in full as follows:

Protest of the Protect Our Communities Foundation
and SDG&E's Reply

POC's Protest states that supplemental AL 3488-E-A "neither explains what additional information was requested nor how the information provided in the Advice Letter meets those requirements. Nor is it clear as to whether SDGE [sic] 3488-E-A is in fact adding to Advice Letter 3488-E or eliminating aspects of Advice Letter 3488-E."

Regarding the additional information, supplemental AL 3488-E-A contains a section titled "Discussion - Timing Of Refund" that explains that implementation of the PTY 2020 refund "will be part of SDG&E's next available revenue requirement rate change and will be amortized through the end of the year." This information was not previously included in AL 3488-E and therefore provides the additional information.

Regarding the Protest's concern whether supplemental AL 3488-E-A is eliminating aspects of the original AL 3488-E, supplemental AL 3488-E-A clearly states that it "supplements in part and will not change the integrity of the original AL 3488-E." As a result, the Commission finds that supplemental AL 3488-E-A does not eliminate any information contained in AL 3488-E.

POC's Protest adds that "Advice Letter 3488-E-A fails to include any reference to the recent decision D.20-01-002 which is currently under discussion in I.19-10-010/011, requires SDG&E to file a petition to modify D.19-09-051 in A.17-10-007, and which involves SDG&E's requested revenue requirements in 2022 and 2023." However, as noted in SDG&E's Reply, AL 3488-E was not protested and the Commission's General Order (GO) 96-B, General Rule 7.5.1, states that "any new protest shall be limited to the substance of the supplemental or additional information contained herein."

Supplemental AL 3488-E-A contains additional information related to the timing of the PTY 2020 customer refund, does not eliminate information from AL 3488-E (which was not protested) and does not reference D.20-01-002. Therefore, pursuant to GO 96-B, POC's Protest should be limited to the additional information presented in supplemental AL 3488-E-A.

The Protest further states that "Although the decision in the cost of capital proceeding was issued on December 20, 2019, SDG&E provides no update or explanation regarding the effect of D.19-12-056 on this Advice Letter or how this Advice Letter incorporates the holdings of D.19-12-056." Again, pursuant to GO 96-B General Rule 7.5.1, supplemental AL 3488-E-A does not discuss SDG&E's cost of capital proceeding, therefore POC's Protest should be limited to the additional information presented. Nevertheless, SDG&E's Reply explains that as a result of D.19-12-056 and AL 3499-E/2836-G "all the components of SDG&E's Cost of Capital will remain unchanged from D.17-07-005." As a result, there will be no impact from SDG&E's recent Cost of Capital proceeding on AL 3488-E or supplemental AL 3488-E-A.

To summarize, the Commission finds that the Protest's concerns regarding the possible elimination of information from AL 3488-E is unwarranted, discussion of D.20-01-002 is out of scope, and there is no impact from SDG&E's cost of capital proceeding on the PTY refund amounts calculated in AL 3488-E.

For the reasons stated above, POC's Protest of supplemental AL 3488-E-A is denied.²⁸

On July 10, 2020, again at ED Staff's request, SDG&E filed supplemental AL 3488-E-B to update its equity rate base exclusion calculations to reflect its actual WMP capital expenditures from August 1, 2019 through April 30, 2020:

²⁸ *Id.* at 8-9, underline emphasis as in the original, 7 footnotes omitted.

this update proposed reduction of SDG&E's PTY revenue requirements by \$7.2 million, \$11.0 million, and \$10.4 million in 2020, 2021, and 2022.²⁹ On July 30, 2020, PCF filed a Protest against AL 3488-E-B, essentially arguing that SDG&E's asserted WMP capital expenditures were not approved, and that SDG&E had failed to comply with Commission efforts to assess the effectiveness of its WMP risk reduction.³⁰ On August 6, 2020, SDG&E filed a Reply to PCF's Protest of AL 3488-E-B, essentially pointing out that AL 3488-E was directed by D.19-09-051 OP 6, that AL 3488-E-B only provided an update as to certain project expenditures that were authorized in D.19-09-051, and that the projects were expressly approved a part of SDG&E's WMPs.³¹

On August 27, 2020, the Commission approved the Resolution. The adopted Resolution approved SDG&E's AL 3488-E-B's proposed reduction of its PTY revenue requirements by \$7.2 million, \$11.0 million, and \$10.4 million in 2020, 2021, and 2022, respectively. The approved Resolution also contained the same critique of PCF's AL 3488-E-A Protest failures as found in the initial Draft Resolution, but now included an additional critique of PCF's Protest of AL 3488-E-B, finding that whereas PCF had asserted that "Any consideration SDG&E's revenue requirement or rate adjustments should only be considered

²⁹ *Id.* at Attachment A.5. The Resolution reads in part as follows: "At the request of Energy Division, SDG&E filed supplemental AL 3488-E-B, on July 10, 2020 updating its equity rate base exclusion calculations to reflect its actual wildfire mitigation capital expenditures from August 1, 2019 through April 30, 2020." The initial AL 3488-E contained actual WMP capital expenditures for the period August and September 2019, but had included only a forecast of capital expenditures for future periods: AL 3488-E-B provided a complete set of the actual expenditure figures.

³⁰ PCF Application Attachment 6. PCF's July 30, 2020, Protest is 13 single-space pages with 62 footnotes.

³¹ January 14, 2022, SDG& Response to Ruling at Attachment A.6, SDG&E Reply to PCF Protest of AL 3488-E-B.

through the formal GRC process,” such an assertion was “incorrect.”³² The Commission’s approved Resolution contained more than four single-space pages reviewing and determining that none of PCF’s Protests analyses and none of PCF’s Resolution comments were accurate.³³

For the sake of efficiency, while the Draft Resolution’s review of PCF’s AL 3488-E-A Protest is repeated in the final Resolution, it is not included again here: instead, below is only the Resolution’s address of PCF’s Protest and comments regarding AL 3488-E-B:

Protest of Protect Our Communities Foundation
to Supplemental AL 3488-E-B and SDG&E’s Reply

As mentioned above, SDG&E AL 3488-E was not protested by any party and the Commission’s GO 96-B, General Rule 7.5.1 regarding supplemental advice letter filings states that “Any new protest shall be limited to the substance of the supplemental or additional information.”

Nevertheless, POC’s Protest to supplemental AL 3488-E-B contains certain arguments that are not limited to the additional information presented by SDG&E in supplemental AL 3488-E-B.

For example, while supplemental AL 3488-E-B only updates SDG&E’s AB 1054 revenue requirement decrease to use recorded capital expenditures through April 30, 2020, POC’s Protest to supplemental AL 3488-E-B argues that ratepayers should not have to pay for “SDG&E’s unjustified and unreasonable” Wildfire Mitigation Plan (WMP) capital expenditures because SDG&E’s 2019 and 2020 WMPs have not been approved by the commission, nor have any SDG&E WMP capital expenditures been approved during GRCs. This Resolution only relates to WMP expenditures already approved by the Commission, as explained below. Consistent

³² Resolution at 9.

³³ Resolution at 7-13.

with GO 96-B, General Rule 7.5.1, the remainder of this section will focus on addressing the arguments in POC's Protest that deal with the substance or additional information presented in supplemental AL 3488-E-B.

Regarding POC's assertion that "Any consideration of SDG&E's revenue requirement or rate adjustments should only be considered through the formal GRC process, which is ongoing in a separate Commission proceeding," POC's assertion in this instance is incorrect. As noted in SDG&E's reply, SDG&E was specifically directed by its GRC decision D.19-09-051 to file a Tier 3 AL to adjust its PTY revenue requirements beginning with PTY 2020. In compliance with D.19-09-051, SDG&E filed AL 3488-E which was not protested by any party.

POC also argues that "revenue reductions and related matters should be considered in A.17-10-007 or another formal proceeding" and while citing to events in other proceedings and decisions that have occurred after D.19-09-051 was issued, states that "aforementioned developments render consideration of capital expenditures by advice letter inappropriate." However, supplemental AL 3488-E-B is not considering capital expenditures and does not discuss subsequent events or proceedings - AL 3488-E-B only updates the revenue requirement savings to be based on actual expenditures through April 30, 2020 related to programs that have already been considered and approved in the 2019 GRC. Furthermore, these arguments do not adhere to the subject matter limitations for supplemental Advice Letters required by Commission GO 96-B, General Rule 7.5.1 and are disregarded here.

POC also asserts that "AL 3488-E-B omits any reference to an application filed by SDG&E seeking approval of any WMP capital expenditures, to any decision by the Commission approving such an application, or to any GRC proceeding in which SDG&E's WMP was the subject of testimony and before the Commission." AL 3488-E-B actually contains multiple detailed references demonstrating the WMP capital expenditures subject to the equity rate base exclusion were

approved in the 2019 GRC, including citations to program names, budget codes, exhibit numbers and decision page numbers. As a result, we disagree with POC that these WMP capital expenditures have not yet been approved in a GRC.

Similarly, POC argues that the five WMP capital expenditure programs listed by SDG&E in AL 3488-E-B as being approved in the 2019 GRC were in existence before SDG&E's first WMP was submitted to the Commission, and thus "could not have been approved in the context of approving wildfire mitigation plan expenditures pursuant to SB 901 which was effective January 1, 2019" including a review for cost-effectiveness. That the Commission first approved the costs in question as just and reasonable and then approved the WMP capital expenditures program is immaterial and the requirements of AB 1054 are satisfied. At the request of Energy Division, SDG&E's AL 3488-E-B updated its equity rate base exclusion calculations to reflect actual WMP capital expenditures from August 1, 2019 through April 30, 2020. AL 3488-E-B provided further information showing these five capital expenditure programs were approved by the Commission in the 2019 GRC.

To summarize, supplemental AL 3488-E-B simply updates the required AB 1054 revenue requirement savings to include only actual recorded WMP-approved capital expenditures through April 2020 – expenditures that SDG&E has shown were already found reasonable in the 2019 GRC. POC's Protest fails to show that the capital expenditures cited by SDG&E were not approved in the 2019 GRC or that the amounts shown in AL 3488-E-B are not recorded expenditures. POC's protest also does not provide evidence that the revenue requirement savings calculations that are the subject of AL 3488-E-B are invalid.

For the reasons stated above, POC's Protest of supplemental AL 3488-E-B is denied.

The Commission approves the revenue requirement reductions for PTYs 2020, 2021 and 2022 proposed by SDG&E in supplemental AL 3488-E-B. The PTY 2020 reduction of

\$7.2 million shall be implemented during SDG&E's next available revenue requirement change.

If SDG&E's next available revenue requirement change is not until January 1, 2021, SDG&E will include the PTY 2020 reduction of \$7.2 million, simultaneously with the PTY 2021 revenue requirement reduction of \$11.0 million. The PTY 2022 reduction of \$10.4 million shall be included in SDG&E's annual revenue requirement implementation filing effective for January 1, 2022.

COMMENTS

...SDG&E and POC submitted comments on May 21, 2020. The comments are summarized below...

POC's comments take issue with the draft resolution's interpretation of AB 1054 and recommend the Commission reject SDG&E AL 3488-E and supplemental AL 3488-E-A based on the premises that "SDG&E has neither an approved wildfire mitigation plan nor any approved wildfire mitigation plan capital expenditures."

With regard to whether SDG&E's 2019 Wildfire Mitigation Plan (2019 WMP) has been approved, POC points to D.19-05-039 and states that "SDG&E's 2019 WMP persists as the only 2019 WMP that was neither approved nor conditionally approved by the Commission in May of 2019. D.19-05-039 discusses the approval of SDG&E's 2019 WMP and concludes "SDG&E's WMP contains each of the elements required by Public Utilities Code Section 8386(c)." The question of what constitutes approval was examined in WMP Rulemaking (R.) 18-10-007 with WMP Guidance D.19-05-036 concluding "the statute provides the answer: approval means that every WMP contains 19 elements that the SB 901 Legislature deemed essential to catastrophic wildfire mitigation." As a result, SDG&E's 2019 WMP was deemed approved when D.19-05-039 found that SDG&E's 2019 WMP met the statutory burden for approval. Similarly, SDG&E's 2020 WMP was approved (after POC filed its Comments) by Commission Resolution WSD-005.

With regard to Commission approval of SDG&E's 2019 WMP capital expenditures, POC asserts that no already-approved wildfire mitigation plan expenditures exist because "Neither SDG&E's TY 2019 GRC application nor the testimony presented by SDG&E in support thereof included SDG&E's 2019 WMP, because SDG&E had not yet created or filed its WMP at the time it submitted its GRC application or presented testimony." POC's assertion is incorrect. To clarify, POC contends that SDG&E's TY 2019 GRC could not have approved capital expenditures included in the 2019 WMP because SDG&E filed its 2019 WMP with the CPUC after it filed its application for its TY 2019 GRC. However, simply because a GRC application was filed prior to a WMP filing does not mean that capital expenditure programs requested in that GRC application cannot be included in a subsequently filed Wildfire Mitigation Plan. For example, as described above, SDG&E's approved 2019 WMP includes the Fire Risk Mitigation (FiRM) and Pole Risk Mitigation and Engineering (PRiME) programs which are discussed (and costs approved) in GRC D.19-09-051. This treatment is consistent with CPUC practice that cost recovery of approved WMPs is to be addressed in GRCs or other proceedings.

With regard to the draft resolution's interpretation of AB 1054, POC states "The Draft Resolution interprets AB 1054 as requiring rate reductions after wildfire mitigation plan capital expenditures have already been approved, but the Draft Resolution purports to authorize reductions before any wildfire mitigation plan capital expenditures have in fact been approved." As discussed above, SDG&E wildfire mitigation capital expenditures were approved in GRC D.19-09-051. However, it is also true that AB 1054 statutory language only requires the excluded capital expenditures to be "included in the electrical corporations' approved wildfire mitigation plans" and does not specifically require GRC approval before implementing the rate reductions. As a result, the draft

resolution language has been modified to more precisely reflect the language of AB 1054.³⁴

In sum, the Commission dismissed PCF's Protest of AL 3488-E-A and AL 3488-E-B in their entirety. The Resolution expressly noted that the Commission's earlier admonition of PCF for its Protest of AL 3488-E-A as a violation of GO 96-B and General Rule 7.5.1 went unheeded. The Resolution also pointed out that SDG&E, in filing its advice letter, was doing exactly what the Commission had directed SDG&E to do in D.19-09-051.

On October 27, 2020, regardless of the Resolution's outcome and its address and denial in full of PCF's Protests and comments, PCF filed its present Application seeking intervenor compensation. Between the actual Resolution itself, the PCF Application and its Attachment filing, and SDG&E's January 14, 2022, filing in response to an Administrative Law Judge (ALJ) Ruling, the record is complete. Briefing opportunities were afforded to both parties.

3.3. Analysis of the Resolution, PCF's Participation, and PCF's Failure to Provide Substantial Contribution to the Resolution

As described in detail above, there are standards to determine whether an intervenor has provided a substantial contribution to a proceeding. As also described in detail above, there is clear evidence regarding PCF's participation in the Resolution process. Based upon PCF's participation and the standards for substantial contribution, PCF failed to provide a substantial contribution to the Resolution.

Stated briefly, PCF Protested AL 3488-E-A, which only provided additional requested information as to the timing of refunds, and which

³⁴ Resolution at 7-13, 25 footnotes omitted.

expressly noted that it did not alter AL 3488-E. PCF's Protest of AL 3488-E-A did not substantively address the timing of refunds, and instead merely questioned how the additional information was requested, how the information met the request, and whether the supplemental information added to or eliminated aspects of the underlying AL 3488-E. In the Commission's draft Resolution, the Protest was fully reviewed in detail, and the Protest was fully denied as it was found to be incorrect in its assertion of the facts, unwarranted, and out of scope.

Also stated briefly, PCF later protested AL 3488-E-B, which only provided additional requested information as to then-known refund sums, and which also expressly noted that it did not alter AL 3488-E. PCF's Protest of AL 3488-E-B did not substantively address the amount of refunds, and instead argued that the amounts were not justified or reasonable, must be considered in a formal proceeding, did not reference an approving proceeding, and that the costs were later-incurred and therefore could not have been approved. In the Commission's final Resolution, the Protest was fully reviewed in detail, and the Protest was fully denied as it was found to be incorrect in its assertion of the facts and failed to demonstrate an understanding of Commission process and procedure.

As previously noted, mere participation does not constitute a substantial contribution. The Commission considers the record, and reviews the participation to see if there is a link between it and the decision. The Commission should deny intervenor compensation where the intervenor's arguments are factually incorrect, irrelevant, outside the scope, or demonstrate a lack of procedural or factual understanding, which only hinder the smooth operation of the proceeding and wastes resources of other participants and of the Commission.

Here, PCF's Protests have been rejected by the Commission. The reasons stated in the proposed Resolution, which was adopted by the full Commission, expressly identified the Protests to have numerous deficiencies.

The Resolution pointed out that SDG&E, in filing its advice letter, was doing exactly what the Commission, in D.19-09-051 had directed it to do. It also pointed out that PCF did not protest AL 3488-E, and therefore was bounded by the very limited additional information found in AL 3488-E-A (regarding refund timing), and later by the very limited additional information found in AL 3488-E-B (regarding refund amounts). The Resolution went on to observe that the Protests did not directly address the limited additional information found in AL 3488-E-A or in AL 3488-E-B.

The Resolution took several single-space pages to identify the issues and failings of the Protests. It stated that the Protests were unwarranted and out of scope. Importantly, the Resolution did not find the Protests to have any impact on the Resolution.³⁵

PCF's claim of substantial contribution to the Resolution through its Protest of 3488-E-A, as PCF asserts in its Application, is "that SDG&E be required to provide enough information about the reasons for and its assumptions underlying AL 3488-E-A so that its purpose and effect meet minimum

³⁵ See Resolution at 7-13. The final Resolution referred to one comment received from PCF regarding the draft Resolution, clarifying a particular Commission application of the language of AB 1054, concerning the exclusion of wildfire capital expenditures that are in approved mitigation plans. The Resolution lightly revised its language to better explain the order in which the process is considered: as the Resolution notes, "the draft Resolution language has been modified to more precisely reflect the language of AB 1054." This clarification was not necessary to the approval of the SDG&E Advice Letter, and therefore this nonsubstantive drafting change does not indicate a meaningful impact resulting from PCF's comment. See Resolution at 11-13.

transparency requirements.”³⁶ This claim entirely fails to demonstrate that PCF’s Protest of AL 3488-E-A had any impact on either the Resolution, or ED Staff’s review of AL 3488-E-A, or is related to ED Staff’s request for SDG&E to update its calculations to reflect actual, rather than forecasted, expenditure information. PCF’s claim is fundamentally flawed, as its Protest attempts to reach back to AL 3488-E because it bears no relation to AL 3488-E-A (regarding the timing of refunds), and the protest period for AL 3488-E was closed by the time SDG&E filed AL 3488-E-A.

Similarly, PCF’s claim of substantial contribution to the Resolution through its comment on the May 21, 2020, draft Resolution, as PCF asserts in its Application, is “that there was no legal or factual basis for the conclusions in the Draft Resolution regarding ‘approved’ wildfire mitigation plan capital spending or expenditures by SDG&E.”³⁷ This claim fails to demonstrate that PCF’s Protest of AL 3488-E-A had any impact on either the Resolution, or ED Staff’s review of AL 3488-E-A, or is related to ED Staff’s request for SDG&E to update its calculations to reflect actual, rather than forecasted, expenditure information. PCF’s claim is fundamentally flawed, as its comment misapprehends the nature of D.19-09-051 and its approval of SDG&E’s WMP.

A review of our Resolution disproves PCF’s bases for arguing that it provided a substantial contribution to the Resolution. First, underlying all of PCF’s claims regarding its Protests is a failure of the Protests to address the specific contents of AL 3488-E-A and AL 3488-E-B: at best, the Protests can only be understood to seek to reach back to AL 3488-E, but GO 96-B and General

³⁶ Application at 8.

³⁷ *Id.* at 8-9.

Rule 7.5.1 preclude Protest of AL 3488-E after the deadline for such protest has passed. Second, underlying all of PCF's claims regarding its Draft Resolution comments is a failure of the comments to address their specific contents to SDG&E's WMP cost refunds: at best, the comments can only be understood to seek to reach back to D.19-09-051, but without acknowledgement of that decision's findings and that decision's directions to SDG&E as expressly found in OP 6.

Rather than making a substantial contribution to the Resolution, PCF's participation has resulted in substantial use of the Commission's time and resources. We note that the Draft Resolution painstakingly explained to PCF the exact failings of its Protest to AL 3488-E-A, and yet PCF filed a Protest to AL 3488-E-B that repeated and amplified its failures to follow the Commission's GO 96-B and General Rule 7.5.1, and the directions that the Commission had clearly provided in D.19-09-051 OP 6.

In this Application for intervenor compensation, PCF compounds its prior failures by requiring the Commission to devote time and resources to the Application, despite the Commission's detailed Resolution, which explicitly rejected PCF's Protest and comments regarding AL 3488-E-A and which explicitly rejected PCF's Protest and comments regarding AL 3488-E-B. In sum, PCF's claims of substantial contribution are not supported by the record and are undercut by the express findings that the Commission had already made in the Resolution itself.

Therefore, we find that PCF's Application for intervenor compensation is denied in its entirety.

4. Comments on Proposed Decision

The proposed decision of ALJ Jason Jungreis in this matter was mailed to the parties in accordance with Pub. Util. Section 311 and comments were allowed under Rule 14.3. Comments were filed on _____ by _____, and reply comments were filed on _____ by _____.

5. Assignment of Proceeding

Alice Reynolds is the assigned Commissioner and Jason Jungreis is the assigned ALJ in this proceeding.

Findings of Fact

1. SDG&E's AL 3488-E was filed in fulfillment of the Commission's direction in D.19-09-051, OP 6.
2. SDG&E's AL 3488-E-A was filed in fulfillment of ED Staff's direction to SDG&E to provide additional information regarding refund timing.
3. SDG&E's AL 3488-E-B was filed in fulfillment of ED Staff's direction to SDG&E to provide additional information regarding actual refund amounts.
4. The Resolution found PCF's Protest to AL 3488-E-A to be unwarranted, out of scope, legally inappropriate, and factually incorrect, and failing to address the limited additional information found in AL 3488-E-A, and the Resolution denied the Protest.
5. The Resolution found PCF's Protest to AL 3488-E-B to be legally inappropriate, factually incorrect, and failing to address the limited additional information found in AL 3488-E-A, and the Resolution denied the Protest.
6. The Resolution found PCF's comments to the Draft Resolution to be to be legally inappropriate and factually incorrect.
7. PCF's Protests and comments had no positive impact on the Commission's work in preparation of the Resolution or on the Resolution itself.

Conclusions of Law

1. In accordance with GO 96-B, General Rule 7.5.1, PCF did not timely protest AL 3488-E, and was precluded from protesting the contents of AL 3488-E after the passing of the deadline for doing so.
2. PCF did not make a substantial contribution to the outcome of the Resolution.
3. PCF's Application for intervenor compensation should be denied in its entirety.
4. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The Protect Our Communities Foundation Application for intervenor compensation in regard to Resolution E-5071 is denied.
2. Application 20-10-015 is closed.

This order is effective today.

Dated _____, at San Francisco, California.