

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



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Application of Pacific Gas and Electric Company
(U39E) for Review of the Disadvantaged
Communities – Green Tariff, Community Solar
Green Tariff and Green Tariff Shared Renewables
Programs.

A. 22-05-022
(Filed May 31, 2022)

And Related Matters

A.22-05-023

A.22-05-024

**OPENING BRIEF OF SAN DIEGO COMMUNITY POWER
AND CLEAN ENERGY ALLIANCE**

May 17, 2023

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I. INTRODUCTION

Pursuant to Rule 13.12 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission” or “CPUC”) and the Administrative Law Judge’s (“ALJ”) email ruling dated April 21, 2023 (“ALJ Email Ruling”),¹ San Diego Community Power (“SDCP”) and Clean Energy Alliance (“CEA”) file this opening brief regarding the limited issue of past cost recovery for San Diego Gas & Electric’s (“SDG&E”) Green Tariff Shared Renewables (“GTSR”) program, raised in the *Application of San Diego Gas & Electric Company (U 902 E) to Review Green Access Programs Pursuant to Decisions 18-06-027 and 21-12-036* (“Application”).² This brief does not address any other issues related to the GTSR program or

¹ *Administrative Law Judge’s Ruling Updating Procedural Schedule and Requiring Use of Briefing Outline*, A. 22-05-023 consolidated, April 21, 2023.

² San Diego Gas & Electric (“SDG&E”) Application (“A.”) 22-05-023 (“SDG&E Application”), May 31, 2022.

new proposals associated with the Disadvantaged Communities Green Tariff (“DAC-GT”) or the Community Solar Green Tariff (“CSGT”). Accordingly, the briefing outline that was developed for the purpose of program evaluation and provided in the ALJ Email Ruling is not applicable and has not been followed here.

As explained further below, SDG&E is seeking a little over \$5 million in cost recovery for past undercollections associated with its GTSR program, also known as EcoChoice, which is currently suspended. The reasons behind the undercollection and why program costs were not collected from participating customers, as the authorizing legislation, Senate Bill (“SB”) 43, requires, remains a mystery that has yet to be solved because the undercollection has not been formally reviewed by the Commission. Nevertheless, SDCP and CEA agree with SDG&E that past cost recovery for its GTSR program should be subject to full review in the annual Energy Resource Recovery Account (“ERRA”) compliance proceeding.³ Alternatively, SDCP and CEA recommend that the Commission address recovery of past undercollections in a standalone proceeding. SDCP and CEA respectfully request that the Commission add specific language to this effect in its final decision in this proceeding.

II. BACKGROUND

A. SDCP and CEA Have an Interest in Recovery of Green Tariff Shared Renewables Costs

SDCP and CEA are each governed by a board of directors comprised of elected officials who represent the individual cities and counties the CCA serves or an elected City Council.⁴ SDCP and CEA provide generation services to their customers, and customers receive

³ Ex. SDGE-01: Prepared Direct Testimony (Bierman), May 31, 2022, at 81, L: 6 – 14.

⁴ California Public Utility Code § 366.2.

transmission, distribution, billing, and other services from SDG&E at the same rates as SDG&E's bundled customers. SDCP and CEA customers also pay CCA-specific generation rates, which vary and are partially influenced by local mandates to procure and maintain clean electricity portfolios, and that in many cases exceed state requirements for renewable generation.

When SDG&E's GTSR program was operating, it was only available to bundled customers.⁵ Unbundled CCA customers were ineligible and considered non-participating customers under the program. Non-participating customers are not responsible for costs incurred on behalf of participating GTSR customers. Because ERRRA is used to approve rates from broader classes of customers, the Application's proposed collection of GTSR costs through ERRRA could force non-participating CCA customers to subsidize GTSR program costs associated with participating customers. This cross-subsidization directly contravenes Senate Bill 43's intent to avoid non-participating customers subsidizing participating customers and puts CCAs at competitive disadvantage.⁶ The Commission has previously emphasized its desire and its legal commitment to avoid any such cross-subsidization.⁷ Thus, ensuring the Application's proposed cost recovery method is of substantial interest to the Joint CCAs.

⁵ SDG&E Schedule GT at Sheet 1 ("Optionally available to Eligible Customers, as defined in Special Condition (SC) 1.a, all bundled San Diego Gas & Electric Company (referred to herein as Utility) customers are eligible to participate in the Green Tariff (GT) program.") available at: https://tariff.sdge.com/tm2/pdf/tariffs/ELEC_ELEC-SCHEDS_GT.pdf

⁶ Pub. Util. Code § 2833(d) (2021).

⁷ See, e.g., D. 13-08-023 at 17 ("The Commission remains committed to ensuring that Community Choice Aggregators and other non-utility LSEs may compete on a fair and equal basis with regulated utilities. Toward this end, we will continue to consider both the mechanics and overall fairness of cost allocation and departing load charge methodologies proposed in the future, with the specific goal of avoiding cross-subsidization.")

B. SDG&E’s Green Tariff Shared Renewables Program

SB 43 (Wolk 2014) required electrical corporations with 100,000 or more customers in California to file an application with the Commission requesting approval of a GTSR program.⁸ The program was designed to “expand access to all eligible renewable energy resources to all ratepayers who are currently unable to access the benefits of onsite generation.”⁹ The Commission issued the *Decision Approving Green Tariff Shared Renewables Program for San Diego Gas & Electric Company, Pacific Gas and Electric Company, and Southern California Edison Company Pursuant to Senate Bill 43*, Decision (“D.”) 15-01-051, on January 29, 2015. That decision granted, with modifications, SDG&E’s proposal to launch a GTSR program, which it did.

C. San Diego Community Power and Clean Energy Alliance Began Enrolling Customers in 2021

SDCP first began enrolling municipal customers in March 2021, with commercial and industrial customer enrollment beginning in June 2021.¹⁰ The vast majority of customers – residential customers – for the cities of Chula Vista, Encinitas, La Mesa, Imperial Beach, and San Diego were enrolled between February and June 2022.¹¹ Similarly, CEA began providing

⁸ Pub. Util. Code § 2831.5(b)(2), § 2832(a).

⁹ Pub. Util. Code § 2831(b).

¹⁰ See San Diego Community Power’s Community Choice Aggregation Implementation Plan and Statement of Intent, December 9, 2019, at 17.

¹¹ See Letter to Energy Division Regarding Revisions to San Diego Community Power’s Implementation Plan, July 21, 2021, available at https://sdcommunitypower.org/wp-content/uploads/2021/11/2021.07.21_Letter-to-CPUC-Regarding-Revisions-to-Implementation-Plan.pdf.

service to the approximately 60,000 eligible accounts within its boundaries, including the cities of Carlsbad, Del Mar, and Solana Beach, in May 2021.¹²

D. SDG&E Requests Suspension of Its Green Tariff Shared Renewables Program

SDG&E filed Advice Letter (“AL”) 3920-E on December 17, 2021, requesting rapid suspension of its GTSR program. SDG&E pointed out that many of its customers had departed for CCAs and newly formed SDCP was scheduled to take over the City of San Diego in March 2022, accounting for 40 percent of SDG&E’s load.¹³ SDG&E stated that the GTSR’s fixed costs were now spread over fewer customers, making it more expensive for the remaining customers.¹⁴

SDCP filed a timely response to AL 3920-E on January 6, 2022. SDCP expressed concern that SDG&E may improperly attempt to recover outstanding costs from non-participating customers served by CCAs if its GTSR program were suspended.¹⁵ SDCP questioned how SDG&E would recover any of its remaining under-collection balance after suspension, when SDG&E already had approximately \$2 million in undercollected amounts that had accrued from GTSR customers.¹⁶

The Commission denied SDG&E’s request for suspension on April 19, 2022, because SDG&E failed to meet the obligations necessary to suspend its GTSR program as directed in Ordering Paragraph (“OP”) 15 of D. 15-01-051.¹⁷ D. 15-01-051 states that an IOU may issue a

¹² See Clean Energy Alliance, Addendum No. 1 to the Community Choice Aggregation Implementation Plan and Statement of Intent to Address Expansion to the Cities of Escondido and San Marcos, December 30, 2021, at 1.

¹³ SDG&E AL 3920-E at 3.

¹⁴ *Id.* at 6.

¹⁵ SDCP’s Response to SDG&E’s AL 3920-E at 2.

¹⁶ SDCP’s Response to SDG&E’s AL 3920-E at 2.

¹⁷ Staff Disposition of SDG&E’s AL 3920-E at 1.

Tier 2 AL to suspend the GTSR program “[i]f there is ratepayer exposure to excessive costs due to market manipulation or market malfunction associated with the GTSR Program.”¹⁸ However, OP 15 states SDG&E “shall file a Tier 2 Advice Letter setting forth why such suspension is necessary to protect ratepayers and the utility’s proposal for resolving the issue.” In AL 3920-E, SDG&E did not include any proposed solutions for resolving the issues that made suspension necessary.¹⁹ Staff recommended that SDG&E “provide a detailed mitigation strategy and suspension plan, complete with concrete timelines, in its forthcoming Application for Review.”²⁰

The Commission also stated that a temporary suspension must have an end-date, and a full termination is forbidden by Public Utilities Code § 2833(d). At the time of Disposition, Section 2833(d) stated that the utility must implement the GTSR program “until the utility meets its proportionate share of a statewide limitation of 600 megawatts.”²¹

E. SDG&E’s Current Application

SDG&E filed the current Application on May 31, 2022, requesting authorization to suspend its GTSR programs “to protect program participants from impacts to GTSR rates that are on a trajectory to be more than 20 times higher than the rates were two years ago.”²² SDG&E also requests that the Commission:

[d]irect SDG&E to seek cost recovery of its GTSR balancing account under collection to date for those costs that have been reviewed through the ERRRA Compliance Proceedings and going forward as costs are reviewed in the future Annual ERRRA Compliance Proceedings. As SDG&E is required to offer the programs to all customers, authorize SDG&E to seek recovery of SDG&E

¹⁸ D. 15-01-051 at 164, Finding of Fact 46.

¹⁹ Staff Disposition of SDG&E’s AL 3920-E at 5.

²⁰ Staff Disposition of SDG&E’s AL 3920-E at 6-7.

²¹ Public Utilities Code § 2833(d).

²² SDG&E Application at 4.

reviewed under collection, and future GTSR program costs, once reviewed, in future Annual ERRA Compliance Proceedings.²³

SDCP and CEA filed a joint protest to the Application on July 6, 2022, identifying several issues related to the reasonableness of SDG&E's requests to recover past costs in its GTSR balancing account.²⁴ The protest to the Application also recommended that cost recovery be addressed in the near term in the current proceeding.²⁵ Finally, SDCP and CEA raised and made no objection to SDG&E's request for authorization to suspend the GTSR program, subject to an expedited schedule under Rule 2.9.²⁶

Consolidation of the Investor-Owned Utilities' ("IOUs") individual cases reviewing GTSR and related programs followed. The Public Advocates Office ("Cal Advocates") filed motions to consolidate Pacific Gas and Electric Company ("PG&E") Application 22-05-022,²⁷ SDG&E's current Application, A. 22-05-023, and Southern California Edison Company ("SCE") Application 22-05-024.²⁸ The motions were granted.²⁹

²³ *Id.* at 4-5.

²⁴ *Protest of Clean Energy Alliance and San Diego Community Power to the Application of San Diego Gas & Electric Company to Review Green Access Programs* ("SDCP and CEA Protest"), A. 22-05-023, July 6, 2022.

²⁵ SDCP and CEA Protest at 11.

²⁶ SDCP and CEA Protest at 2-3.

²⁷ *Application of Pacific Gas and Electric Company (U39E) for Review of the Disadvantaged Communities – Green Tariff, Community Solar Green Tariff and Green Tariff Shared Renewables Programs*, A.22-05-022, May 31, 2022.

²⁸ *Application of Southern California Edison Company (U338E) For Review of the Disadvantaged Communities Green Tariff (DAC-GT), Community Solar Green Tariff (CSGT), and Green Tariff Shared Renewables (GTSR) Programs*, A.22-05-024, May 31, 2022.

²⁹ Administrative Law Judge's Ruling Granting Public Advocates Office's Motions to Consolidate Proceedings, A. 22-05-022 consolidated, August 10, 2022.

The ALJ then granted SDG&E temporary suspension of its EcoChoice program on August 25, 2022, but denied several other requests and made clear SDG&E maintained an obligation to fully address the issues required in its Application.³⁰

F. Assembly Bill 2838 Gave the Commission Authority to Terminate Green Tariff Shared Renewables Programs

The Governor approved Assembly Bill (“AB”) 2838 (O’Donnell 2022) on September 18, 2022, amending the requirement that a utility offer a GTSR program to its customers and authorizing the Commission to terminate a utility’s GTSR program by advice letter. Section 2833(d) now states that a utility must implement the GTSR program “until the utility meets its proportionate share of a statewide limitation of 600 megawatts . . . or the participating utility’s green tariff shared renewables program is terminated or suspended.”³¹ The statute now also provides that “[o]n and after April 1, 2023, the commission may authorize through an advice letter a participating utility to terminate its green tariff shared renewables program.”³² Unfortunately, AB 2838 provides no other guidance to the Commission or the parties regarding program termination.

G. SDCP’s Testimony Explains that CCA Departures Do Not Account for Past Undercollections and that Costs Have Never Been Reviewed

SDCP filed and served prepared direct testimony on the issue of SDG&E’s GTSR undercollections in this case on January 20, 2023.³³ The testimony examines potential

³⁰ Administrative Law Judge’s Ruling Granting Request for Green Tariff Suspension, A. 22-05-022 consolidated, August 25, 2022, at 7-10.

³¹ Pub. Util. Code § 2833(d).

³² Pub. Util. Code § 2833 (a)(2).

³³ Ex. SDCP 01: Prepared Direct Testimony of Carlo Bencomo-Jasso on Behalf of San Diego Community Power in San Diego Gas and Electric Company’s 2022 Green Access Programs Proceeding, A. 22-05-022 consolidated, January 20, 2023.

root causes of SDG&E’s GTSR undercollection, including customer departure for CCA programs, but finds that the majority of GTSR costs that SDG&E now seeks to recover were incurred prior to the departure of customers for CCA service in 2021.³⁴ The testimony also documents SDG&E’s unwillingness to provide data about GTSR program costs in response to discovery.³⁵

III. ARGUMENT

A. Senate Bill 43 Requires that GTSR Program Costs Be Recovered from Participating Customers, Not CCA Customers

SB 43 requires that no GTSR costs are shifted from participating customers to non-participating customers. The Commission is required to ensure:

... that charges and credits associated with a participating utility's green tariff shared renewables program are set in a manner that ensures nonparticipant ratepayer indifference for the remaining bundled service, direct access, and community choice aggregation customers and ensures that no costs are shifted from participating customers to nonparticipating ratepayers.³⁶

Notably, the statute explicitly prohibits shifting costs from GTSR customers to CCA customers.

After SB 43 was passed, the Commission issued D. 15-01-051, establishing rate components and various other rules, and generally authorizing the IOUs to operate GTSR programs.³⁷ Preservation of non-participating customer indifference was given substantial attention in that decision.³⁸ For example, the Commission required that GTSR customers be

³⁴ Ex. SDCP 01 at 6, L: 3-5.

³⁵ Ex. SDCP 01 at 8, L: 1-2.

³⁶ Pub. Util. Code § 2833(q).

³⁷ *Decision Approving Green Tariff Shared Renewables Program for San Diego Gas & Electric Company, Pacific Gas and Electric Company, and Southern California Edison Company Pursuant to Senate Bill 43*, Decision (“D.”) 15-01-051, A. 12-01-008 consolidated, January 29, 2015.

³⁸ D. 15-01-051 at 100-104.

charged a proxy amount for the Power Charge Indifference Adjustment (“PCIA”) to prevent participating customers from shifting the cost of legacy generation to non-participating customers who are required to pay the PCIA.³⁹ Program termination was not authorized at the time D. 15-01-051 was issued, so the question of how customer indifference should be applied in that situation was not addressed.

B. SDG&E Appears to Propose to Collect Green Tariff Shared Renewables Costs from Non-Participating Customers

SDG&E seeks to recover \$5.0 million in undercollection costs recorded in its various GTSR related balancing accounts⁴⁰ through March 2022. For costs incurred through 2020 that have already been reviewed and found reasonable in previous ERRA compliance proceedings, SDG&E proposes recovery in the next annual ERRA compliance application. SDG&E seeks to establish the annual ERRA compliance case as the correct venue for reasonableness review and cost recovery of any current and future undercollected GTSR costs which includes costs incurred from 2021 to 2022.⁴¹

SDG&E’s proposed recovery of undercollection costs is vague at best and in any event incomplete as to how nonparticipant ratepayer indifference will be maintained. SDG&E does not explicitly identify the group of ratepayers that costs will be recovered from, but at least suggests that it will seek recovery from all customers. The Application states that “[a]s SDG&E is required to offer the programs to all customers, authorize

³⁹ D. 15-01-051 at 103 (“The utilities are directed to use vintaged PCIA as a proxy for the indifference adjustment.”)

⁴⁰ Green Tariff Shared Renewables Balancing Account (“GTSRBA”); Green Tariff Shared Renewables Administrative Cost Memorandum Account (“GTSRACMA”); Green Tariff Marketing Education & Outreach Memorandum Account (“GTME&OMA”); and Enhanced Community Renewable Marketing, Education & Outreach Memorandum Account (“ECRME&OMA”).

⁴¹ Ex. SDGE-01 (Bierman) at 81, L: 6 – 14.

SDG&E to seek recovery of SDG&E reviewed under collection, and future GTSR program costs, once reviewed, in future Annual ERRR Compliance Proceedings.”⁴²

While the statement is misleading because SDG&E may only offer GTSR programs to bundled customers, not unbundled customers, SDCP and CEA interpret this statement to reflect a possible intent to seek cost recovery from all customers. That interpretation is further supported by the request to seek cost recovery through ERRR compliance proceedings which are used to approve rates for broad classes of customers. Regardless, SDG&E’s proposed cost recovery method lacks vital details needed to meet the Legislature’s mandate that no costs are shifted from participating customers to nonparticipating ratepayers.

In response to SDG&E AL 3920-E, SDCP raised concerns around improper cost recovery from non-participating customers, including unbundled customers served by CCAs due to the fact that SDG&E’s provided no explanation on how it would recover any of its remaining under-collection balance.⁴³ In the Commission’s Disposition Letter to SDG&E AL 3920-E, Energy Division recognized the legitimacy of SDCP’s concerns stating that SDG&E “does not advance any proposals for the recovery of its outstanding undercollection balance” but simply “identifies the balance and provides vague plans” to explore cost recovery.⁴⁴ The Application provides no additional information addressing the concerns SDCP raised in its response and remains unclear on how indifference will be maintained.

⁴² SDG&E Application at 4-5.

⁴³ SDCP’s Response to SDG&E’s AL 3920-E at 2.

⁴⁴ Staff Disposition of SDG&E’s AL 3920-E at 6.

The Commission’s denial of SDG&E AL 3920-E rested on the grounds that a proposed solution to issue was not provided, as required by D.15-01-051 Ordering Paragraph (“OP”) 15.⁴⁵ Further, the Commission noted that SDG&E failed to include an evaluation of stranded costs, identification of funds spent so far, and the number or characteristics of the customers affected.⁴⁶ SDG&E was directed to provide a detailed mitigation strategy and suspension plan, complete with concrete timelines, in the instant Application.⁴⁷ Like SDG&E AL 3920-E, SDG&E’s Application does not offer a proposed solution other than the suspension of the program⁴⁸ and does not provide a suspension plan with concrete timelines, stating the program will resume when there are sufficient bundled customers to support a rate reasonable to attract program participants.⁴⁹ A review of past GTSR costs is required in order to determine how past costs should be recovered and furthermore how suspension or another end to the program should be executed.

C. SDG&E’s GTSR Undercollections Should Be Subject to a Full Review in the ERRA Compliance Proceeding or a Standalone Proceeding

A full review of SDG&E’s past GTSR undercollections should be addressed in the ERRA compliance proceeding or in a standalone proceeding dedicated to this subject. GTSR rates are prospectively set in the ERRA forecast proceeding, but making a determination about recovery of past costs will involve a retrospective look at program

⁴⁵ Staff Disposition of SDG&E’s AL 3920-E at 5.

⁴⁶ *Id.*

⁴⁷ Staff Disposition of SDG&E’s AL 3920-E at 6-7.

⁴⁸ Ex. SDGE-01 (Bierman).

⁴⁹ Ex. SDGE-01 (Bierman) at 8, L: 8 – 10.

history and performance, similar to other retrospective examinations that typically occur in the ERRA compliance proceeding. “A compliance review considers whether a utility has complied with all applicable rules, regulations, opinions, and laws, while a reasonableness review evaluates not only a utility’s compliance, but also whether the data or actions resulting from, for example, the calculation of a forecasted expense, are reasonable, based on the methods and inputs used.”⁵⁰

The review should include the application of Public Utilities Code § 2833(q), which requires nonparticipant ratepayer indifference and prohibits cost shifting from participating to nonparticipating customers. Ultimately, a critical question for the Commission to answer is what group of ratepayers should be responsible for SDG&E’s past GTSR program costs. Given the law and the factual circumstances, the Commission should also consider disallowance of cost recovery as an option.

The Application goes on to cite the “recent explosion of customers leaving for CCA commodity service” as the reason for the sudden increase on GTSR rates and what drives the requested relief.⁵¹ However, SDG&E had ample notice of the implementation of CCA programs in its service territory due to the required public filing of SDCP and CEA’s respective implementation plan and statement of intent in 2019.⁵² Despite being on notice of the forecasted departure of customers from bundled service at that time, no regulatory action was taken by SDG&E to ensure the program’s continued success until

⁵⁰ D. 02-10-062 at Conclusion of Law 11.

⁵¹ SDG&E Application at 11.

⁵² San Diego Community Power CCA Implementation Plan and Statement of Intent, December 2019; Clean Energy Alliance CCA Implementation Plan and Statement of Intent, December 2019.

two years later, when SDG&E submitted AL 3920-E, on December 17, 2021, seeking to suspend the GTSR program.

Furthermore, the majority of GTSR program costs that SDG&E now seeks to recover were incurred prior to the departure of customers for CCA service in San Diego in 2021. SDCP and CEA filed implementation plans at the end of 2019 and began enrolling customers in 2021, months after SDG&E had already incurred over \$3.5 million in program costs.⁵³ “It is still unclear what circumstances led to program costs to far exceed program revenues in 2019 and 2020.”⁵⁴ The cause of the undercollection remains to be determined.

Whether SDG&E’s GTSR program was managed prudently is also an important question for the Commission to answer. The Application offers little detail, for example, explaining why costs, already reviewed and deemed reasonable in 2018, were not collected sooner. SDG&E simply cites the structure of the ERRRA filing process creating a two-year delay in cost recovery for undercollections between 2016 and 2019,⁵⁵ and “rate impact considerations”⁵⁶ as reasons for delaying recovery of 2020 costs.

The Commission should review the reasonableness of current and future GTSR costs and approve cost recovery in the ERRRA compliance proceeding or a standalone proceeding. The review should include the application of Public Utilities Code § 2833(q), examine the root causes of the undercollection, and investigate whether SDG&E prudently managed the program.

⁵³ Ex. SDCP 01 (Bencomo-Jasso) at 6, L: 3-5.

⁵⁴ Ex. SDCP 01 (Bencomo-Jasso) at 6, L: 5-6.

⁵⁵ Ex. SDGE-01 (Bierman) at 86, L: 6-9.

⁵⁶ Ex. SDGE-01 (Bierman) at 85-86, Table 2-ED: Summary of GTSRBA Activity.

IV. CONCLUSION

For the foregoing reasons, the Joint CCAs request that the Commission (1) direct SDG&E to seek approval for past cost recovery of its GTSR costs in the annual ERRRA compliance proceeding, and (2) provide guidance that a full reasonableness review of past undercollections must be conducted, including an examination of the root causes of the undercollection and an inquiry into prudent management.

Respectfully submitted,

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