BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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Application of Southern California Gas Company (U904G) for Authority, Among Other Things, to Update its Gas Revenue Requirement and Base Rates Effective on January 1, 2024.	Application 22-05-015 (Filed May 16, 2022)
Application of San Diego Gas & Electric Company (U902M) for Authority, Among Other Things, to Update its Electric and Gas Revenue Requirement and Base Rates Effective on January 1, 2024.	Application 22-05-016 (Filed May 16, 2022)

RESPONSE OF THE UTILITY REFORM NETWORK AND SOUTHERN CALIFORNIA GENERATION COALITION TO PETITION OF SOUTHERN CALIFORNIA GAS COMPANY AND SAN DIEGO GAS & ELECTRIC COMPANY FOR MODIFICATION OF DECISION 24-12-074

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I. INTRODUCTION

On December 17, 2025, Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) (collectively, the Utilities) filed a Petition for Modification (PFM) of their Test Year (TY) 2024 General Rate Case (GRC) decision, Decision (D.) 24-12-074. The Utilities seek modification of the post-test year (PTY) mechanism adopted in D.24-12-074 for years 2025-2027 because they want to collect more money from ratepayers for the activities covered by the GRC. In D.24-12-074, the Commission authorized TY 2024 revenue requirement increases of 9.3 percent for SoCalGas and 7.5 percent for SDG&E over 2023 authorized revenue requirements.[1] The Commission also elected to provide the Utilities with additional revenue requirement increases during the PTY through a PTY ratemaking mechanism (also commonly referred to as "attrition"). The authorized PTY mechanism provides an additional 3 percent annual increase in SDG&E's and SoCalGas's base margin revenue requirements (covering O&M and capital revenue requirements), plus additional capital budgets for SDG&E for certain wildfire mitigations, including undergrounding and covered conductor.[2] The Utilities also have an opportunity to recover additional costs for Gas Integrity Management Programs over the 2024-2027 GRC cycle through the authorized memorandum accounts.[3]

The Utilities suggest that the Commission made an "unintended error" in adopting a PTR

[1] D.24-12-074, pp. 2-3.
[2] D.24-12-074, pp. 895-896.
[3] D.24-12-074, p. 901.

mechanism that does not, as it turns out, fully cover their capital-related costs in the three post-test years.[4] The culprit, they surmise, is the "one-part" nature of the PTY mechanism adopted in D.24-12-074, pursuant to which revenue requirements associated with O&M expense and capital costs are escalated in the same manner, despite that O&M and capital-related costs affect revenue requirement differently.[5] They accordingly ask the Commission to abandon the thoroughly litigated PTY mechanism adopted in D.24-12-074 and instead adopt a more generous mechanism that would apply retroactively to post-test year 2025 and endure through 2027.[6]

Pursuant to Rule 16.4 of the Commission's Rules of Practice and Procedure, The Utility Reform Network (TURN) and Southern California Generation Coalition (SCGC) jointly submit this response in opposition to the Utilities' PFM.[7] TURN and SCGC do not dispute the Utilities' assertion that O&M expenses and capital expenditures affect revenue requirements differently. The PTY mechanism proposed by TURN and SCGC in this proceeding separately addressed O&M expense and capital costs.[8] But the reality of how a regulated utility incurs capital-related costs does preclude the Commission from concluding that a one-part attrition mechanism is reasonable in the context of a specific GRC. Indeed, the Commission has made clear that "it has the discretion to grant or deny an attrition request, and that the utilities are not automatically entitled to an attrition mechanism between rate cases."[9] For this reason and many others enumerated below, the Commission should find that the Utilities have failed to establish extraordinary circumstances that justify dismantling a GRC decision that reflects a careful

[4] PFM, pp. 2-3.
[5] *See, e.g.,* PFM, pp. 2, 4.
[6] PFM, p. 5; D.24-12-074, pp. 891-909 (Section 47); 934-935 (Comments on PD).
[7] TURN and SCGC jointly addressed PTY ratemaking in this proceeding. *See, e.g.,* Exhibit TURN-SCGC-07 (sponsored by expert witness Catherine E. Yap).
[8] *See* Ex. TURN-SCGC-07.
[9] *See, e.g.,* D.25-09-030, p. 843; D.20-01-002, pp. 40-41.

balancing of utility and ratepayer interests. Accordingly, the Commission should deny the relief requested in the PFM.

II. LEGAL STANDARD

Section 1708 of the California Public Utilities Code provides the Commission the discretion to "rescind, alter, or amend any order or decision made by it" after providing proper notice to the parties and an opportunity to be heard.[10] The Commission "has long recognized that this broad authority should be exercised with great care" to "protect parties from endless re-litigation of the same issues."[11] As the Commission recently explained in D.24-09-034:

> By its very nature, the Commission's authority under Section 1708 is an extraordinary remedy. It must be exercised with care, justified by extraordinary circumstances, and remain consistent with the fundamental principles of res judicata because "Section 1708 represents a departure from the standard that settled expectations should be allowed to stand undisturbed."[12]

Accordingly, the Commission has declined to exercise its Section 1708 authority where, for instance, the petitioner failed to demonstrate a "'strong expectation' that the Commission would have reached a different result based on the new information" provided in the petition.[13] Here, the Utilities have failed to satisfy their burden to demonstrate such extraordinary circumstances as to warrant the requested modification to D.24-12-074.

III. DISCUSSION

The Utilities submitted their PFM "on the grounds that the Commission adopted a one-part post-test year mechanism for 2025-2027, which does not enable a utility to recover its

[10] Cal. Pub. Util. Code § 1708.
[11] D.17-12-006, p. 9.
[12] D.24-09-034, pp. 5-6 (citing D.15-05-004, p. 6, D.24-03-051, p. 6).
[13] D.17-12-006, p. 11 (citing D.03-10-057, p. 17).

authorized capital-related costs."[14] They append hundreds of pages of documents to their PFM to substantiate the existence of capital-related costs left "unfunded" by the PTY mechanism adopted in D.24-12-074 and seek to recover this "missing money" now.[15] The PFM asks the Commission to "acknowledge the fact that capital costs and O&M expenses affect the revenue requirement differently and should not be subject to the same post-test year escalation."[16] D.24-12-074, they claim, "is based on a misunderstanding of the treatment of O&M and capital costs in the post-test years and should be modified accordingly and in alignment with the Rate Case Plan."[17] The remedy they propose is that the Commission address PTY capital through a separate mechanism that uses a 7-year average of capital additions based on 2018-2021 recorded data and 2022-2024 forecasted data, escalated by 3% (the escalation rate used in the adopted PTY mechanism).[18]

The Commission should find that the Utilities have failed to establish extraordinary circumstances that justify dismantling a GRC decision that reflects a careful balancing of utility and ratepayer interests. The Commission's reasoning in D.24-12-074 makes clear that the Commission intentionally fashioned a PTY mechanism that it deemed reasonable in the context of the total GRC decision, considering both test year and post-test year components. Moreover, the Commission has ample discretion to conclude, as it did, that a one-part attrition mechanism is appropriate in the context of a specific GRC to serve the purpose of PTY adjustments. Neither the Rate Case Plan nor other utility GRC decisions constrain the Commission's discretion here.

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[14] PFM, p. 2. The Utilities do not contest the treatment of PTY O&M expense in D.24-12-074. *Id.*, p. 13.
[15] PFM, pp. 3-4 (citing declarations attached to the PFM constituting "new factual evidence of the actual impacts of the post-est year mechanism since the Decision was adopted").
[16] PFM, p. 13.
[17] PFM, pp. 13-14.
[18] PFM, pp. 5, 44-45.

Furthermore, the Commission has already rejected the alternative PTY mechanism requested by the Utilities, which is not supported by the record. Finally, retroactively modifying the PTY mechanism and adjusting the Utilities' previously collected revenue requirements raises concerns about retroactive ratemaking which the Commission should take into account. The Commission should accordingly deny the PFM.

A. The PFM Ignores the Commission's Broad Discretion to Fashion a PTY Mechanism or Provide No Mechanism At All.

As an initial matter, the Utilities' petition is premised on a fundamental misunderstanding of the purpose of a PTY mechanism or attrition. When the Commission sets a GRC test year revenue requirement, it considers the revenue requirement needed to cover a reasonable cost of service. Attrition, in contrast, is an entirely discretionary adjustment to test year revenue requirements during the GRC cycle to provide some reasonable relief to shareholders in the face of increasing costs.[19]

Unlike a test year cost of service analysis, a PTY mechanism serves "merely to mitigate economic volatility between test years to a *reasonable* degree so that a well-managed utility can provide safe and reliable service while maintaining financial integrity."[20] The Commission has made clear that a PTY mechanism need not cover all attrition year capital expenditures, either projected by the utility or actual.[21] Indeed, the "Commission historically has not closely covered projected revenue requirement through an attrition mechanism," yet utility rate base has grown.[22] As the Commission explained in the Utilities' TY 2012 GRC, "SDG&E and SoCalGas should only be given a reasonable opportunity to earn their authorized rate of return, and not a

[19] D.23-11-069, p. 706; D.04-05-055, p. 26.
[20] D.14-08-032, pp. 652-653 (emphasis added). *See also* D.20-01-002, p. 41.
[21] D.14-08-032, pp. 657-659.
[22] D.14-08-032, pp. 658-659.

mechanism that brings them closer to achieving that target."[23] Similarly, "the Commission is not required to adopt a post-test year adjustment methodology that brings [the utility] closer to achieving its target expense and rate of return goals."[24] Instead, PTY ratemaking should provide utilities "an incentive to manage and reduce their costs during the TY period" and "to stretch to achieve productivity between test years."[25] Finally, the Commission has always balanced the utility's interests with the need to minimize rate increases for customers in determining a fair approach to PTY ratemaking in each GRC.[26]

In sum, attrition is not a mechanism for forecasting the utility's PTY cost of service. It is a tool for granting some rate relief during a multi-year rate case cycle until the Commission can revisit the cost of service determination in the next GRC proceeding. The Utilities' showing intended to compare the authorized PTY revenue requirement increases to capital-related funding needs is misplaced.

B. Modifying the PTY Mechanism Without Reducing Test Year Revenue Requirements Would Disrupt the Balance Intended by the Commission in D.24-12-074.

The PFM focuses exclusively on the PTY mechanism adopted in D.24-12-074. The Commission, however, did not adopt a PTY mechanism in isolation. As is typical in GRC decisions, the Commission considered the extent and nature of authorized test year increases when determining a reasonable PTY mechanism for SDG&E and SoCalGas in D.24-12-074. The Commission noted, for instance, that the authorized TY 2024 revenue requirements reflect

[23] D.13-05-010, p. 1010. *See also* D.23-11-069, p. 711 (reciting the same principle as applied to PG&E).
[24] D.23-11-069, p. 711; D.13-05-010, p. 1010.
[25] D.13-05-010, p. 1008; D.14-08-032, p. 652. *See also* D.17-05-013, pp. 132-133 (explaining that attrition should not be used to insulate the utility "from the economic pressures which all businesses experience.").
[26] *See e.g.,* D.09-03-025, pp. 305-306; D.13-05-010, pp. 1009-1010; D.23-11-069, p. 707.

very high escalation rates from 2021 to 2024, which resulted from the "automatic" application of Global Insight indices rather than close scrutiny of this component of the Utilities' cost forecasts.[27] To avoid "a compounding effect, leading to a more significant overall increase in rates," the Commission concluded that the more moderate CPI inflation index should be used in the PTY to adjust revenue requirements. The Commission explained that this approach "allows the utility to continue to increase its revenue requirement at a just and reasonable rate without overburdening ratepayers" during the GRC period.[28]

Modifying the PTY mechanism without revisiting TY revenue requirements would disrupt the balance intended by the Commission in D.24-12-074. The Utilities surmise that the Commission "would likely make a different determination – and authorize a two-part attrition mechanism that appropriately distinguishes between capital investments and O&M – if it was issuing D.24-12-074 today."[29] Their claim requires sharing their "belief" that the Commission did not know what it was doing when it determined an appropriate PTY mechanism for this GRC,[30] an incredible assumption given the Commission's experience and the Utilities' advocacy in this proceeding.[31] Nonetheless, if the Utilities are correct, there is good cause to expect that the Commission would have *also* authorized a different level of TY capital expenditures or lower O&M expense to ensure that GRC rates over the rate case cycle "are just and reasonable and do

[27] D.24-12-074, pp. 899-900.
[28] D.24-12-074, pp. 900-901.
[29] PFM, p. 38; *see also* p. 6 (asserting that the PFM satisfies the Commission's standards for modifying decisions).
[30] The PFM repeatedly refers to the Commission's "misunderstanding" regarding the different impacts of capital costs and O&M expenses on revenue requirement and the resulting "unintended" consequences of the adopted PTY mechanism. *See, e.g.,* PFM, pp. 2, 3, 5, 7, 13-14, 42.
[31] *See* PFM, pp. 26 (recounting the Utilities' testimony on the impacts of a PTY mechanism based on escalating revenue requirement), 39 (referencing the Utilities' discussion of attrition during oral argument).

not impose any undue burden on ratepayers."[32] The Commission should reject the Utilities' unprecedented request to modify the PTM mechanism adopted in this GRC.

C. The Rate Case Plan Does Not Compel the Utilities' Requested Relief.

The Utilities argue that D.24-12-075 ignores the Rate Case Plan "that acknowledges the need for a two-part mechanism."[33] Their reliance on the Rate Case Plan is misplaced. The Rate Case Plan, last updated in D.20-01-002, does not establish an entitlement to any PTY mechanism, let alone a two-part PTY mechanism that separately escalates capital-related costs. The Commission in D.20-01-002 recounts a "typical" attrition mechanism but does not constrain the Commission's discretion to fashion an appropriate mechanism in each GRC.[34] Indeed, the Commission issued D.24-12-074 *after* updating the Rate Case Plan in D.20-01-002. Importantly, D.20-01-002 also makes clear that the Commission may grant or deny requests for a PTY mechanism, and no utility should expect a PTY mechanism to "fully compensate" its "costs of service in the attrition years" or fully fund "reasonable spending during the three attrition years and avoid[] funding shortfalls."[35]

D. The SCE Test Year 2025 GRC Decision Does Not Establish Error in D.24-12-074.

The Utilities also point to the recent TY 2025 GRC decision for Southern California Edison Company (SCE), D.25-09-030, in support of their PFM. In D.25-09-030, Commission approved a two-part attrition mechanism for SCE after initially including a one-part mechanism in the proposed decision.[36] The Utilities attribute this change to the Commission's "recognition"

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[32] *See* D.24-12-074, p. 4.
[33] PFM, p. 40.
[34] D.20-01-002, p. 8.
[35] D.20-01-002, pp. 40-41 (rejecting Southern California Edison Company's plea for this assurance).
[36] PFM, pp. 3-4 (citing D.25-09-030, p. 843).

that "[a] one-part post-test year mechanism that escalates capital-related revenue requirement at the same level as O&M is problematic because O&M expense and capital costs are accounted for in very different ways."[37] The Commission should reject the Utilities' interpretation of the SCE 2025 GRC decision for two reasons.

First, the Commission did not state that a one-part mechanism is "problematic" in D.25-09-030. Instead, the Commission stated, "Since O&M expenses and capital costs affect the revenue requirement differently, *it is reasonable* to adopt a two-part PTYR [post-test year ratemaking] mechanism that separately escalates O&M expenses and capital-related costs."[38] The Commission has found a variety of PTY mechanisms "reasonable" in recent history. Three of the last 11 litigated GRC decisions adopted a one-part PTY mechanism that escalates revenue requirements.[39] The Commission has also found a variety of approaches to escalating O&M expenses in the PTY reasonable. In D.24-12-074 and D.25-09-030, the Commission found it reasonable to use the Consumer Price Index (CPI) for O&M expense PTY escalation, despite the Commission's repeated recognition that "utility-specific indices more accurately reflect how utilities incur costs as compared to consumer retail price changes reflected through the CPI."[40] In other recent GRC decisions, the Commission found utility-specific indices reasonable for PTY escalation of O&M expenses.[41] This variation is no surprise, as the Commission has yet to

[37] PFM, p. 14; *see also* pp. 4, 38.
[38] D.25-09-030, p. 843. *See also* Proposed Decision on SCE 2025 GRC, Rev. 1(REDLINE), p. 836.
[39] D.09-03-025, pp. 305-306; D.13-05-010, pp. 1010-1011; D.24-12-074, p. 901. The other 7 decisions adopted two-part mechanisms that either escalated TY capital additions or incorporated a 7-year average of capital additions. (D.12-11-051, p. 608; D.14-08-032, pp. 652-653, 661; D.15-11-021, p. 390; D.19-05-020, p. 285; D.19-09-051, pp. 706-709; D.21-08-036, pp. 549-550; D.23-11-069, pp. 712-716, D.25-09-030, p. 843). There were 3 GRC settlements since 2009 with fixed PTY revenue requirement increases. D.11-05-018, pp. 2, 18-19; D.17-05-013, p. 2; D.20-12-005, p. 2.
[40] D.25-09-030, pp. 843-844.
[41] *See, e.g.* D.23-11-069, pp. 708-709; D.21-08-036, p. 547; D.19-09-051, p. 708.

embrace a "one size fits all" approach to attrition. Rather, the Commission's tendency has been to fashion a PTY mechanism that the Commission finds reasonable within the specific context of each GRC. At times the ratepayer advocates may perceive the resulting PTY adjustments as excessive for the utility, while other times the utility may perceive the PTY adjustments as insufficient.

Second, and related, the Commission's revisions to the SCE 2025 GRC proposed decision regarding attrition must be viewed in the context of other changes to the proposed decision. The Commission in D.25-09-030 both *reduced* the TY revenue requirement and *increased* the PTY adjustments.[42] Just as in D.24-12-074, the Commission expressly considered the "overall magnitude of the 2025 TY revenue requirement increase approved in [that] decision" in determining a reasonable PTY mechanism.[43]

E. The Requested Relief is Not Supported by the Record.

The Utilities ask the Commission to replace the PTY mechanism adopted in D.24-12-074 with a "two-part" PTY mechanism in which O&M expense and capital expenditures are separately treated. They propose that the PTY capital-related revenue requirement be calculated using a 7-year average of capital additions (2018-2021 recorded and 2022-2024 forecasted), escalated by 3%, which is the escalation factor used in the adopted PTY mechanism to escalate test year revenue requirements.[44] The Utilities argue that the proposed capital attrition mechanism "is supported by the record" because it is "consistent with the Settlement Agreement in Track 1 between Cal Advocates and the Companies [Utilities]."[45] However, the record

[42] D.25-09-030, p. 2; Proposed Decision on SCE 2025 GRC, Revision 1 (REDLINE), p. 2.
[43] D.25-09-030, p. 846; D.24-12-074, pp. 900-901.
[44] PFM, pp. 5, 44-45.
[45] PFM, p. 45.

reflects strong opposition to that Settlement Agreement, including its treatment of PTY ratemaking, and the Commission rejected in it D.24-12-074.[46]

The Utilities also point to intervenor PTY recommendations in support of their requested relief, including TURN and SCGC's proposal to base capital attrition on a seven-year average of recorded 2015-2021 capital additions.[47] The Federal Executive Agencies (FEA) recommended this same averaging methodology.[48] The Utilities gloss over the significant disputes surrounding the years to include in a historical trend of capital additions. TURN and SCGC demonstrated in testimony and briefing that the 7-year historical average should be based entirely on recorded data from 2015-2021, whereas the rejected Settlement Agreement and the PFM proposal would include four years of recorded data, 2018-2021, and three years of forecast capital additions, 2022-2024.[49] The Utilities offer a comparison between several "options" for alternative capital PTY mechanisms in their PFM. Conspicuously absent from their discussion is the 7-year 2015-2021 average advocated by TURN, SCGC, and FEA, which produces smaller PTY increases than the methodologies contemplated in the PFM.[50]

Finally, the Utilities erroneously cite to the "Joint Motion of SoCalGas, SDG&E, TURN,

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[46] D.24-12-075, pp. 925 (recounting opposition by 10 parties to the proposed Settlement Agreement), 927-928 (denying the proposed Settlement Agreement); TURN-SCGC Comments Opposing the Settlement Agreement Between SoCalGas, SDG&E, and the Public Advocates Office, 11/27/23, pp. 24-27 (demonstrating, in pertinent part, that the proposed Settlement Agreement's treatment of PTY ratemaking is unreasonable in light of the whole record); Environmental Defense Fund Comments on Settlement Agreement Motions, 11/27/23, pp. 19-20, The Protect Our Communities Foundation Comments on Settlement Agreement Motions, 11/27/23, pp. 10-11 (opposing the proposed Settlement Agreement's treatment of PTY ratemaking).

[47] PFM, p. 46.

[48] Ex. FEA-01, pp. 42-43.

[49] *See* Ex. TURN-SCGC-07, pp. 8-10; TURN and SCGC Joint Opening Brief, 94-102; TURN and SCGC Joint Reply Brief, p. 12.

[50] PFM, pp. 46-48 (referencing the comparisons presented in Attachment B (SoCalGas results) and Attachment C (SDG&E results); Ex. FEA-01, p. 42 (comparing the PTY increases for SDG&E resulting from averaging various recorded and forecast years, including the 7-year 2015-2021 recorded average).

Public Advocates Office, and The Small Business Utility Advocates for Adoption of Settlement Agreement (October 24, 2023) at Attachment A" for the proposition that "key intervenors … agreed to settle on a seven year average for a post-test year mechanism."[51] On October 24, 2023, the Utilities filed a joint motion for adoption of their Settlement Agreement with Cal Advocates that addressed PTY ratemaking. That proposed Settlement Agreement was broadly opposed, as noted above. Also on October 24, 2023, the Utilities filed a separate joint motion for the adoption of a Settlement Agreement with Cal Advocates, TURN, and Small Business Utility Advocates solely concerning SoCalGas's and SDG&E's Customer Services – Information (CSIN) request, which the Commission adopted in D.24-12-074.[52] The CSIN Settlement did not address post-test year mechanisms.

Contrary to the Utilities' suggestion that the record supports the PFM relief, the record here in fact reflects vigorous litigation of PTY issues until the very end of this proceeding. The record includes an array of PTY ratemaking proposals sponsored and defended by multiple parties; a contested and rejected Settlement Agreement between the Utilities and Cal Advocates; a proposed decision that garnered significant opposition from the Utilities at oral argument[53]; comments on the proposed decision from the Utilities and other major energy utilities, which raised issues very similar to those presented in the PFM[54]; and a final decision fully reflective of this robust record, presenting the Commission's determination of reasonable test year increases and post-test year adjustments to impose upon SDG&E's and SoCalGas's ratepayers. The Commission must flatly reject the contention that the record "supports" the PTY capital

[51] PFM, p. 46.
[52] D.24-12-074, pp. 919-923.
[53] Reporters' Transcript, Vol. 26, Oral Argument – Nov. 4, 2024; PFM, p. 39.
[54] *See, e.g.,* TURN-SCGC Reply Comments on Proposed Decision, 11/12/24, pp. 1-3.

mechanism requested in the PFM.

F. Granting the Petition May Raise Retroactive Ratemaking Concerns.

The Utilities ask the Commission to grant the PFM "and adopt a two-part attrition mechanism for the post-test year period (January 1, 2025 through December 31, 2027) that permits recovery of the PTY capital-related costs authorized in D.24-12-074."[55] They propose to use the GRC memorandum accounts authorized by the Commission in this GRC to implement the modified PTY mechanism.[56]

In D.23-05-012, the Commission granted the Utilities' joint motion to establish GRC memorandum accounts to ensure that the TY 2024 authorized revenue requirement could take effect on January 1, 2024, irrespective of the timing of the GRC decision. The Commission gave two reasons for authorizing the establishment of the GRC memorandum accounts. First, the Commission concluded it would be "appropriate to establish GRC memorandum accounts" due to the adopted proceeding schedule, which called for the issuance of "a Commission decision regarding Sempra Utilities 2024 GRC revenue requirement under Track 1 after the proposed effective date of January 1, 2024."[57] Second, the Commission reasoned:

> Adopting the relief requested in the Joint Motion will leave both ratepayers and shareholders relatively indifferent to the date the final decision is adopted. Establishing GRC memorandum accounts would reduce incentives for any party to achieve gains that could be realized through delay in the effective date of the proceeding's outcome and allow time for parties, the public, and the Commission to review and analyze the record.[58]

There is no doubt that the Commission authorized the establishment of the Utilities' GRC memorandum accounts to avoid retroactive ratemaking with a January 1, 2024 effective date for

[55] PFM, p. 5.
[56] PFM, pp. 49-50.
[57] D.23-05-012, p. 4.
[58] D.23-05-012, p. 4.

TY 2024 revenue requirements authorized after January 1, 2024.[59] What is far less clear is whether the Commission intended to insulate from retroactive ratemaking concerns subsequent revenue requirement changes that might occur pursuant a petition for modification, filed at any time during the GRC cycle. D.24-12-074 became a final and non-appealable decision when the Commission in D.25-07-044 denied the only application for rehearing filed and no appeal was filed with the Court.[60] Rule 16.4(a) makes clear that "[f]iling a petition for modification does not preserve the party's appellate rights; an application for rehearing (see Rule 16.1) is the vehicle to request rehearing and preserve a party's appellate rights."

Retroactive ratemaking arises when the Commission changes the lawfully established rates *applicable to a prior time period*. "The rule against retroactive ratemaking prevents the agency from forcing a utility to disgorge the proceeds of rates that have been finally approved and collected, as well as the fruits of those proceeds."[61] Courts have made clear that the Commission may not retroactively increase or decrease the rate previously adopted by the Commission after a full hearing or require a refund of lawfully collected revenues.[62] This limitation on the Commission's authority arises from the legislative character of its powers and

[59] D.23-05-012, p. 5.

[60] D.25-07-044, *Order Denying Rehearing of Decision 24-12-074* (addressing the application for rehearing filed by the Protect Our Communities Foundation pursuant to Rule 16.1 on January 22, 2025).

[61] *The Ponderosa Telephone Co. v. Public Util. Com.* (2011) 197 Cal.App.4th 48, 62.

[62] *Pacific Telephone and Telegraph Co. v. Public Util. Com.* (1965) 62 Cal.2d 634, 650; *The Ponderosa Telephone Co. v. Public Util. Com.* (2011) 197 Cal.App.4th 48, 63-64. Exceptions to the general rule prohibiting retroactive ratemaking exist where the Commission finds utility imprudence or failure to disclose pertinent information when the initial rate was set, or where the rate change occurs through an automatic adjustment clause as opposed to Commission ratemaking after a full hearing. *See, e.g.,* D.15-11-021 (SCE 2015 GRC), p. 445 ("California case law clearly establishes that a utility may not invoke the rule against retroactive ratemaking when the utility's own conduct has prevented the establishment of just and reasonable rates."); *Los Angeles v. Public Util. Com.* (1975) 15 Cal.3d 680, 695-697, *Southern California Edison Co. v. Public Util. Com.* (1978) 20 Cal.3d 813, 828-830 (holding that the implementation of automatic adjustment clauses are not "ratemaking" and thus are not subject to the prohibition on retroactive ratemaking).

Section 728 of the Public Utilities Code, which authorizes the Commission to establish rates after a hearing "to be thereafter observed and in force."[63] Courts have accordingly invalidated Commission orders that directly "roll back" the rates previously charged by the utility through refunds, as well as orders indirectly accomplishing the same effect through reductions to future collections intended to correct for excesses previously collected by the utility.[64]

Here, the Utilities ask, in pertinent part, that the Commission increase the lawfully established rates applicable to a prior time period, specifically, the rates collected from ratepayers in 2025 pursuant to D.24-12-074 for services rendered.[65] Without the GRC memorandum accounts authorized in D.23-05-012, this part of the Utilities' requested relief would be prohibited retroactive ratemaking. Using the GRC memorandum accounts to implement the relief requested in the PFM, as the Utilities propose, exceeds the spirit of the purpose for those accounts articulated by the Commission in D.23-05-012, if not the letter. The Commission should be mindful of this concern when disposing of the PFM.

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[63] Cal. Pub. Util. Code § 728; *Pacific Telephone and Telegraph Co. v. Public Util. Com.* (1965) 62 Cal.2d 634, 652 ("The fixing of a rate in the first instance is prospective in its application and legislative in its character. Likewise the reducing of that rate would be prospective in its application and legislative in its character.").

[64] *Pacific Telephone and Telegraph Co. v. Public Util. Com.* (1965) 62 Cal.2d 634 (concluding that the Commission exceeded its authority by ordering Pacific Telephone and Telegraph Company (Pacific) in June 1964 to refund $80,000,000 collected from customers from July 1962 – June 1964 to compensate customers for the difference between the rate of return the Commission set in 1958 and the lower rate the Commission found reasonable in 1964); *The Ponderosa Telephone Co. v. Public Util. Com.* (2011) 197 Cal.App.4th 48, 63-64.

[65] This relief is distinguishable from that requested in the petition for modification of D.24-12-074 filed by Natural Resources Defense Council et al. on November 25, 2025, which seeks the elimination of the funding cap established for the Rule 45 "Electric Vehicle Infrastructure Memorandum Account" for the 2024 GRC cycle, rather than a change in authorized revenue requirements or rates. It is also distinguishable from the relief granted by the Commission pursuant to a petition for modification filed in the SCE 2021 GRC, which reduced the authorized revenue requirement on a prospective basis for the remainder of the GRC cycle to account for changes to SCE's wildfire liability insurance. *See* D.23-05-013, *Decision Modifying Decision 21-08-036 and Adopting Agreement Regarding Wildfire Liability Insurance*, pp. 5-6; Ordering Paragraph 2.

IV. CONCLUSION

For the foregoing reasons, the Commission should conclude that the Utilities have not established extraordinary circumstances warranting a more generous PTY mechanism for 2025, 2026, and 2027 than established in D.24-12-074. As such, the Commission should deny the PFM.

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Respectfully submitted,

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