BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

FILED
03/10/26
04:59 PM
A2205015

Application of Southern California Gas Company (U 904 G) for Authority, Among Other Things, to Update its Gas Revenue Requirement and Base Rates Effective on January 1, 2024.	Application No. 22-05-015 (Filed May 16, 2022)
And Related Matter.	Application No. 22-05-016 (Filed May 16, 2022)

SAN DIEGO GAS & ELECTRIC COMPANY'S (U 902 M) RESPONSE TO APPLICATION FOR REHEARING OF D.26-01-021

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March 10, 2026

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I. INTRODUCTION

San Diego Gas & Electric Company ("SDG&E") submits this Response to the Protect Our Communities Foundation's ("PCF") Application for Rehearing ("AFR") of Decision ("D.") 26-01-021, *Decision Addressing San Diego Gas & Electric Company's Track 2 Request for Recovery of Wildfire Mitigation Plan Memorandum Account Costs* ("Decision").[1]

PCF's AFR fails to demonstrate legal error. Instead, PCF largely re-raises the same arguments that the Commission considered and rejected in its Decision. But the purpose of an AFR is not to relitigate a decision, as PCF seeks to do here.

The fact that PCF disagrees with the Decision does not justify its AFR, nor does it excuse PCF using its AFR as a vehicle to challenge the Commission (and utility commissions nationwide) long-standing standard for reasonableness reviews of already incurred costs. As the Commission has repeatedly held, the "prudent manager standard" is merely a shorthand for a prudence review—*i.e.*, how the Commission determines whether already-incurred costs were just and reasonable. PCF's AFR should thus be rejected.

[1] This response is submitted pursuant to Rule 16.1(d) of the Rules of Practice and Procedure ("Rule") of the California Public Utilities Commission (the "Commission" or "CPUC").

II. PCF FAILS TO DEMONSTRATE LEGAL ERROR

An AFR must demonstrate legal error, setting "forth specifically" the ground or grounds for why the decision is unlawful.[2] An AFR is not "a vehicle for relitigation of policy positions or to reweigh evidence."[3] The Commission not weighing the evidence in the applicant's favor does not constitute legal error.[4]

Despite PCF's acknowledgement that an AFR is limited to identifying a legal error,[5] PCF's AFR merely entails PCF raising many of the same arguments that the Commission already rejected in the Decision or other extraneous and ill-founded arguments.

A. The Commission Followed the Track 2 Scoping Memo

PCF's arguments regarding the Commission's Decision purportedly acting outside of the Track 2 scoping memo merely reflect PCF:

- Misunderstanding the Commission determination at issue;
- Misunderstanding of the applicable statutes; and/or
- Rehashing arguments that the Commission already rejected.

1. The Commission's Decision Was Limited to Costs Incurred by SDG&E from 2019-2022

PCF assertion that the Commission "erred in considering and awarding SDG&E costs for its spending after 2022"[6] by allowing SDG&E to recover its capital-related costs for 2023-2027—which result from that 2019-2022 spending until those costs can be incorporated into SDG&E's

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2 California Public Utilities Code ("Pub. Util. Code") Section ("§") 1732; CPUC Rule 16.1(c).

3 D.21-08-022 at 2 ("an application for rehearing should raise legal error and should not be used as a vehicle for relitigation of policy positions or to reweigh evidence"); D.18-06-036 at 11-12, n.27 ("[T]he purpose of a rehearing application is to specify legal error, not to relitigate issues.").

4 D.21-08-022 at 3.

5 PCF AFR at 3.

6 *Id.* at 6.

2028 GRC—reflects a fundamental misunderstanding of how capital costs are recovered. The scoping memo provides that the Commission would consider the "reasonableness of the 2019-202[2] actual costs recorded in the named memorandum accounts."[7] This is what the Commission did. It only addressed whether costs that SDG&E incurred between 2019-2022 were just and reasonable and, if so, authorized the recovery of those costs.[8]

The Decision thus did not award "SDG&E costs for its spending after 2022."[9] PCF's objection to the Decision permitting the recovery of "ongoing capital-related costs for 2023 to 2027"[10] thus reflects PCF not understanding how capital-related costs are recovered. When the Commission finds that capital-related costs are just and reasonable, SDG&E then recovers those costs through depreciation, return, and taxes over the life of the asset, which can be decades.[11] In other words, consistent with the Scoping Memo, the Decision resolved the reasonableness of SDG&E's recorded capital costs placed in service between 2019-2022 and then set the recovery mechanics for those capital costs between 2023-2027. It only allowed SDG&E to recover costs for its spending between 2019-2022.

In so doing, in the Decision the Commission considered—and rejected—this very same argument from PCF regarding permitting SDG&E's recovery of capital related costs arising out of 2019-2022 capital additions.

> PCF and other intervenors recommend denying SDG&E's request for capital-related revenue requirements for its 2023-2027. This recommendation is based on the contention that such costs are out of scope because the request is based on spending that occurred after the 2019-2022 period of costs . . . We reject this argument because SDG&E's request is for undercollected revenue requirement

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7 A.22-05-015/016, Assigned Commissioner's Scoping Memo and Ruling (Oct. 3, 2022) at 17.

8 *See* Decision at 159.

9 PCF AFR at 6.

10 *Id.* (internal quotation omitted).

11 D.22-06-032 at 7 n.10 (describing ongoing capital-related requirements as "depreciation, taxes, and return").

> that results from components of the rate formula that are only associated with costs authorized during the May 2019 through December 31, 2022 time period. When these costs were placed in service is also evident throughout the record. When the capital costs authorized for the 2019-2022 period are authorized, the Commission also authorizes the revenue requirement, including the depreciated capital and other associated costs, that are party recovered through 2027.[12]

PCF's rehashed, incorrect argument does not give rise to legal error.

2. The Commission Did Not Authorize Securitization

Nor is PCF accurate in asserting that the Commission "considered" SDG&E's securitization proposal.[13] Again, the Commission in the Decision did no such thing. In reality, the Commission "decline[d] to rule on a securitization order without information that would accompany a financing application."[14]

The Commission merely stated that "SDG&E may file an application to securitize the WMPMA costs approved by this application."[15] Observing that SDG&E has a statutory right to file for securitization has nothing to do with the Scoping Memo because it is a right granted by statute[16]—not the Decision—and thus does not represent legal error.

3. The Commission Did Not Authorize a Proceeding to Consider 2024-2025 WMPMA Costs

Finally, PCF is likewise incorrect in asserting that the Decision improperly "authoriz[e] yet another [WMPMA] proceeding for the years 2024 and 2025."[17] Again, PCF is seemingly improperly conflating the Decision's authorization of the resulting revenue requirement for 2024-

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12 Decision at 158-159.

13 PCF AFR at 7.

14 Decision at 164.

15 *Id.* at 165.

16 Pub. Util. Code § 850(a)(2).

17 PCF AFR at 7.

2027 for capital projects that SDG&E placed into service 2019-2022,[18] with the Commission's review of capital projects that would be placed into service in 2024-2027. The Commission did the former, not the latter. As noted, the Commission already rejected PCF's argument; an argument that reflects PCF's fundamental misunderstanding of how just and reasonable capital costs are recovered over the life of the asset.

And if PCF's complaint is instead with SDG&E's right to bring a request for the recovery of any undercollected 2024 and/or 2025 incremental costs incurred that were placed SDG&E's WMPMAs, then PCF's complaint, again, is with the Public Utility Code's statutory scheme—here, Section 8386.4—not the Decision itself. As the Decision cites, "Section 8386.4 specifies that utilities may seek recovery of incremental WMP costs through two approaches: (1) the utility's General Rate Case; or (2) a separate application filed at the end of the time period covered by the applicable three-year WMP."[19] It is that statutory provision—not the Decision—that permits SDG&E to seek the recovery of any incremental WMPMA costs in its validly authorized WMPMA for 2024 and/or 2025.[20]

SDG&E does note, however, that the Decision's Ordering Paragraph ("OP") 11 is inconsistent with Pub. Util. Code Section 8368.4 and the body of the Decision itself. Ordering Paragraph 11 states that if SDG&E "seeks recovery of wildfire mitigation costs for years 2024 and 2025, SDG&E shall file an application before" SDG&E files its next GRC.[21] But as the Decision correctly notes elsewhere, Section 8386.4 "specifies" that a utility may seek recovery of incremental WMP costs through a GRC ***or*** "a separate application filed at the end of the time period covered by

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[18] *Id.* at 8.

[19] Decision at 166.

[20] *Id.* at 167.

[21] *Id.* at 189, OP 11.

the applicable three-year WMP."[22] Nor does 8386.4(b)(1) mandate that a utility file for incremental WMP costs before that utility's GRC. SDG&E thus assumes that OP 11 is in error due to its inconsistency with Section 8386.4.

B. PCF Fails to Identify a Legal Error with the Commission's Application of its Longstanding Prudent Manager Standard to Determine whether Costs are Just and Reasonable

PCF likewise misunderstands the Commission's application of the prudent manager standard.[23] As the Decision reiterates, under the Commission's longstanding precedent, the "prudent manager standard" is just an articulation of how the Commission reviews the prudency of already-incurred costs to determine whether they were just and reasonable under Pub. Util. Code Section 451.[24] As the Decision continues, the "Commission uses the established prudent manager standard to evaluate whether SDG&E's costs are just and reasonable."[25]

The prudent manager standard's purpose is to determine whether the utility acted in a just and reasonable manner at the time that the costs were incurred.[26] The application of this long-established standard is within the Commission's ratemaking discretion.[27]

Nor can PCF seriously allege that the prudent manager standard is a Commission-creation. Although the Commission refers to the "prudent manager standard," this merely reflects shorthand for the Commission's application of the longstanding prudence review concept routinely applied by the Federal Energy Regulatory Commission ("FERC") and state commissions nationwide to

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[22] *Id.* at 166; *see* Pub. Util. Code § 8386.4(b)(2) ("In lieu of paragraph (1), an electrical corporation may elect to file an application for recovery of the cost of implementing its plan as accounted in the memorandum account at the conclusion of the time period covered by the plan.").

[23] PCF AFR at 8.

[24] Decision at 40 (quoting D.22-06-032 at 8, quoting D.02-08-064 at 6, quoting D.87-06-021).

[25] Decision at 40; *accord* D.22-06-032 at 8.

[26] Decision at 41 (quoting D.22-06-032 at 8).

[27] *See Pac. Tel. & Tel. Co. v. CPUC,* 62 Cal.2d 634, 647 (1965) (The "commission may choose its own criteria or method" at arriving at a rate determination").

determine whether already-incurred costs were just and reasonable.[28] As the Commission itself has repeatedly found:

- D.21-08-024: SCE must "demonstrate that it operated its system prudently under the prevailing standard at that time;"[29]
- D.17-11-033: For "costs to be found reasonable, the utility must prove that they were 'prudently incurred;'"[30]
- D.14-06-007: Under "California law, Commission practice and precedent, and common sense, all essentially require that before ratepayers bear any costs incurred by the utility, that those costs must be just and reasonable. That is, the costs must have been prudently incurred by competent manager exercising the best practices" at that time.[31]

In fact, the very statutory section that PCF later relies upon to argue that the Decision should have disallowed SDG&E's Drone Inspection and Repair Costs—Pub. Util. Code Section 463(b)[32]—explicitly requires the Commission to conduct a "prudence" review in evaluating a utility's already incurred costs.[33]

PCF is likewise incorrect in asserting that the Commission "significantly revised the Proposed Decision to rely on the Commission-created prudent manager standard."[34] Putting aside the fact that any Proposed Decision must follow the Commission's longstanding precedent for reviewing the just and reasonableness of already-incurred costs—and that it is only the Commission

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[28] *See SDG&E*, 146 FERC ¶ 63,017, P 46 (2014) (FERC "presumes that a utility's expenditures are prudence in the absence of a challenge casting 'serious doubt' on such prudence.") *(citing Potomac-Appalachian Transmission Highline, LLC*, 140 FERC P 61,229, at P 81 (2012); *Entergy Services, Inc., Opinion 505*, 130 FERC P 61,023, at P 52 (2010)).

[29] D.21-08-024 at 18.

[30] D.17-11-033 at 6 (quotation omitted).

[31] D.14-06-007 at 31.

[32] PCF AFR at 12.

[33] Pub. Util. Code § 463(b); *see* Pub. Util. Code § 451.5 (statute governing the recovery of procurement-related costs that have been "prudently incurred").

[34] PCF AFR at 10.

that speaks through its orders and decisions[35]—the original Proposed Decision likewise applied the prudent manager standard.[36] PCF thus had ample opportunity to raise whatever objection it desired in comments to the Commission's longstanding standard. Far from identifying legal error then, PCF's argument against the Decision's application of the prudent manager standard is without merit and should be rejected.

C. PCF Lacks any Basis to Claim that the Commission was Required to Deny Costs

Finally, PCF similarly lacks any basis to argue that the Commission committed legal error in failing to deny SDG&E's request Drone Inspection and Repair ("DIAR") program costs in the Decision.[37] Instead, the Commission was within its ratemaking discretion to defer a determination regarding requested costs associated with the underlying safety work for further development of the evidentiary record that could then be reviewed in a later track of the same proceeding.[38] As the Decision itself notes, the Commission previously used the same approach regarding Southern California Gas Company's Pipeline Safety and Enhancement Program Costs.[39] The statutes that PCF cites do not require a contrary result.

Pub. Util. Code Section 463(b) only provides that whenever a utility "fails to prepare or maintain records sufficient to enable the commission to completely evaluate any potentially relevant issues related to the reasonableness and prudence of any expense . . . the commission shall disallow" that expense.[40] The Commission did not find that SDG&E failed to prepare or maintain

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35 *SCE v. CPUC*, 140 Cal.App.4th 1085, 1105 (2006).

36 *See* A.22-05-015/016, Proposed Decision at 34 (Nov. 14, 2025) ("Commission uses the established prudent manager standard to evaluate whether SDG&E's requested costs are just and reasonable.").

37 PCF AFR at 12.

38 *See Wood v. PUC*, 4 Cal.3d 288, 294-295 (1971) (The Commission has "wide discretion to make rate classifications that reflect a broad and varied range of economic considerations.").

39 Decision at 109 (citing D.24-12-074 at 233, 239).

40 Pub. Util. Code § 463(b).

records. Instead, the Commission required SDG&E to submit supplemental testimony regarding the reasonableness and prudency of SDG&E's DIAR costs.

Similarly, Pub. Util. Code Section 8386.4 merely provides that the Commission shall "disallow recovery of those costs the commission deems unreasonable."[41] But the Commission did not find SDG&E's DIAR program costs "unreasonable." Instead, the Commission found that the current evidentiary record was insufficient to demonstrate the prudency of those costs and required supplemental testimony. Again, the Commission considered—and rejected—PCF's arguments on these points.[42]

PCF's complaints about the Commission's approval of other costs are merely impermissible efforts to rehash arguments against those programs that the Commission already rejected. In other instances, PCF's arguments reflect misstatements of the Commission's findings.[43] For example,

- Strategic Undergrounding: The "Commission is unpersuaded by intervenor arguments claiming their proposed alternatives were superior alternatives compared to SDG&E's. PCF fails to demonstrate how much—if any—SPS can substitute for undergrounding;"[44]

- Distribution Overhead System Hardening Capital: The "Commission finds PCF's arguments in relation to this cost category fail to address the amount by which SDG&E's requested recovery of capital expenditures exceeds the amount authorized."[45]

- Covered Conductor: "The Commission is not persuaded by PCF. The Commission finds PCF's argument to reject the entire Covered Conductor program unreasonable."[46]

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41 Pub. Util. Code § 8386.4(b)(1).

42 *See* Decision at 173 (finding that Section 463(b) and 8386.4 did not require the Commission to disallow SDG&E's DIAR costs and instead that, "to repair infrastructure presenting fire risk," the Commission would permit the entry of additional evidence as provided for in Section 7.6).

43 PCF AFR at 14-15.

44 Decision at 67.

45 *Id.* at 53.

46 *Id.* at 56.

PCF's complaint about the Decision's findings regarding the CPUC's Performance Audit of SDG&E's WMP expenditures, performed by Crowe LLP (Crowe Performance Audit), similarly relitigates PCF's expressly-rejected arguments on this point.[47] As PCF itself acknowledges in its AFR, the Commission found that the Crowe Performance Audit was not directly relevant because it only covered a partial period of the 2019-2022 Track 2 timeframe.[48] Nor it is clear what PCF is even claiming how an alternative finding would have changed about the Decision, instead just reflecting a general desire to complain about the ultimate decision.

Finally, PCF's objection to the admission of the Track 2 Supplemental Exhibit is outside the scope of an AFR, because PCF's complaint is regarding the admission of that exhibit into the record, not a request for rehearing of the Decision.[49] PCF's appropriate procedural pathway to address the admission of the exhibit itself. Nor is PCF correct that it has a right to cross-examine the parties regarding that exhibit.[50]

And PCF is incorrect on the merits, again misreading the provision at issue. Commission Rule 13.11 contains two separate sentences. The first one provides that "the Administrative Law Judge or presiding officer, as applicable, may require the production of further evidence upon any issue." That is what occurred here. In sum, PCF's AFR fails to identify a failure of law in the Commission's granting and/or deferral of consideration of certain costs or in these other matters where the Commission has already rejected PCF's arguments. It should be rejected.

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47 PCF AFR at 16-17.

48 *Id.* at 17 (quoting Decision at 168-169).

49 *See* PCF AFR at 18.

50 *See* D.21-09-045 at 20 (rejecting PCF's assertion that Sections 728, 729, and 761 of the Pub. Util. Code required it to hold evidentiary hearings, noting that "[n]one of these sections are applicable to this proceeding"); D.05-11-029 at 35 ("there is . . . no law or rule of procedure that requires a hearing for ratemaking proceedings").

III. CONCLUSION

PCF fails to demonstrate legal error with the Commission's Decision. PCF instead only re-raises the same arguments that the Commission has already rejected and/or misunderstands long-established Commission legal principles. The AFR should thus be denied.

Respectfully submitted,

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