BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Microgrids Pursuant to Senate Bill 1339 and Resiliency Strategies.	Rulemaking 19-09-009

ORDER DENYING REHEARING OF DECISION 21-07-011

I. SUMMARY

This decision addresses the application for rehearing of Decision (D.)21-07-011 (Decision) filed by San Diego Gas & Electric Company (SDG&E). In D.21-07-011,[1] we suspended the capacity reservation component of standby charges for certain qualified microgrid generation customers. In doing so, we eliminated those customers' need to pay the large investor-owned utilities, SDG&E, Pacific Gas & Electric Company, and Southern California Edison Company (IOUs) for the cost of providing standby service on their behalf in the event of a generation outage or shortage. The Decision requires that, should a customer's microgrid generation fail or be insufficient to meet its demand, the customer must pay the IOU a "Demand Assurance Amount" to compensate the IOU for the customer's reliance on the grid during that time. The Decision found that the Demand Assurance Amount would avoid shifting to non-microgrid customers, the cost of providing standby service to microgrid customers. The Decision also ordered the IOUs to establish a two-way balancing account to track the costs associated with the suspension of the capacity reservation component of standby charges for those customers.

SDG&E filed a timely application for rehearing of D.21-07-011. In its rehearing application, SDG&E alleges: (1) the suspension of the capacity reservation charge was

[1] Unless otherwise noted, citations to Commission decisions issued since July 1, 2000 are to the official pdf versions, which are available on the Commission's website at: http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx.

adopted without proper notice and an opportunity to be heard; (2) the suspension of the capacity reservation charge for microgrid customers unlawfully shifts costs to non-microgrid customers; (3) there is no support for the determination that the Demand Assurance Amount will adequately compensate SDG&E for reserving the energy necessary to serve microgrid customers; (4) the Commission should explore other methods to compensate microgrid customers that do not involve reducing their standby charges; and (5) the Commission should consider modifying standby charges in the utilities' General Rate Case proceeding. SDG&E also requests oral argument.

Bloom Energy Corporation (Bloom Energy) filed a response to SDG&E's application for rehearing. In its response, Bloom Energy recommended the Commission deny SDG&E's rehearing application.

The Microgrid Resources Coalition (MRC), National Fuel Cell Research Center, and the Green Power Institute (collectively, Joint Parties) also filed a response to SDG&E's application for rehearing. In their response, Joint Parties recommended the Commission deny SDG&E's rehearing application and exclude from the record SDG&E's attached Declaration of Jennell T. McKay.

We have carefully considered the arguments raised in the application for rehearing and do not find grounds for granting rehearing. Rehearing of D.21-07-011 is denied.

II. DISCUSSION

SDG&E's rehearing application challenges the Decision's orders exempting the capacity reservation component of the standby charge for certain qualified microgrid customers, alleging it will result in cost shifts prohibited by Public Utilities Code section 8371.[2] Section 8371, in relevant part, states that the Commission "shall take all of the following actions by December 1, 2020, to facilitate the commercialization of microgrids for distribution customers of large electrical corporations: . . . (b) Without shifting costs between ratepayers, develop methods to reduce barriers for microgrid deployment. . . .(d)

[2] All section references are to the Public Utilities Code, unless otherwise noted.

Without shifting costs between ratepayers, develop separate large electrical corporation rates and tariffs, as necessary, to support microgrids . . . .”

SDG&E’s interpretation of cost shifts is so narrow that it would nullify the Legislature’s mandate that the Commission facilitate the commercialization of microgrids by December 1, 2020. Senate Bill (SB) 1339 makes the Legislature’s purpose clear:

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

(Sen. Bill No. 1339 (2017-2018 Reg. Sess.) §1 subd. (e).) In its effort to comply with section 8371, the Commission must consider all of the requirements of that section. As discussed below, section 8371 requires the Commission to facilitate the commercialization of microgrids, and in doing so, it must avoid cost shifts.

A. The suspension of the capacity reservation charge for microgrid customers avoids unlawful cost shifts to non-microgrid customers.

In its rehearing application, SDG&E agrees with the Decision’s rejection of other parties’ requests for “complete, blanket waivers or significant reductions of different components of the standby charge” as it would lead to unjustifiable cost-shifts for all distribution ratepayers. (Decision, p. 25; Rehrg. App., p. 6.) However, SDG&E asserts that there is no practical distinction between such waivers or reductions and the Decision’s suspension of the capacity reservation component of the standby charge. SDG&E argues that “there are no facts to support a standby charge waiver or reduction” and the suspension program will inevitably result in illegal cost shifts. (Rehrg. App., p. 8.) SDG&E misconstrues the Decision and ignores the record in making these allegations. The Decision is narrowly tailored to exempt certain qualified microgrid customers from a specific component of standby charges, authorizes the IOUs to charge a

Demand Assurance Amount for the service the utility system provides during a microgrid customer's generation outage, and orders the utilities to create balancing accounts to track the costs and revenues associated with this exemption for later evaluation, thereby avoiding cost shifts. (Decision, pp. 2-4.)

1. The Decision, based on cost-causation principles, does not create cost shifts, even limited or temporary cost shifts.

SDG&E claims that section 8371 does not permit cost shifts, even limited or temporary cost shifts. More specifically, it argues the various provisions in the Decision to suspend the capacity reservation component of the standby charge to eligible microgrid customers, even with limited qualification criteria and program parameters, shifts costs and thereby violates section 8371. (Rehrg. App., p. 9.) SDG&E is incorrect; as discussed more fully below, the Decision is specifically crafted to avoid cost shifts.

The Decision explains clearly that the exemption is applicable to a limited group of microgrid customers that meet California Air Resources Board (CARB) distributed generation standards and can demonstrate high availability and high reliability, because those customers have systems with such high reliability that they are unlikely to require standby service. (Decision, p. 27.) In fact, the Decision pointed out that multiple parties' comments questioned whether, given their infrequent need for standby service, these microgrid customers have been paying for costs that were caused by other customers. (Decision, pp. 18-21.) The Decision discusses that the suspension is implemented "to test a more precise policy mechanism to assess whether certain technologies may be less costly to serve with standby power, thereby avoiding long-term cost shifts." (Decision, p. 27.) The Decision explains how this assessment will occur:

> Costs and data will be gathered to support an evaluation of this suspension. The evaluation shall be conducted in five years, 2026. This will support our understanding of the costs associated with certain microgrid technologies. The Commission, the utilities, and stakeholders can gain experience, learn lessons, collect data and information, and determine whether this suspension is fair and provides value to the public. This evaluation will also help us

> determine whether changes are needed to the suspension or the Demand Assurance Amount.

(Decision, p. 27.) This assessment is necessary to determine the costs of the suspension and the benefits provided by microgrid customers. Indeed, parties have expressed, in their comments, that it is difficult to quantify the costs and benefits to determine whether any cost shifting would occur under the suspension. (Decision, p. 22, citing Cal Advocates Opening Comments, pp. 1-2; Decision, p. 23, citing SCE Opening Comments, p. 2.)

Nonetheless, SDG&E argues that, in order to "avoid such cost shifting, any suspension must be accompanied by benefits to those other ratepayers, and those benefits must be "commensurate" with the incremental costs they bear due to the suspension. That is, to satisfy the statute, if the Commission provides an exemption from standby charges without reducing the need for standby service, it must first identify and quantify specific benefits that accrue to non-participants, and then ensure any benefits to non-participants are sufficient to offset the cost shifts resulting from the suspension." (Rehrg. App., pp. 9-10, fn. omitted.)

SDG&E misconstrues the statute. Section 8371(b) and (d) merely require the Commission to act "[w]ithout shifting costs between ratepayers." The Legislature left it to the Commission to determine how it would comply with its mandates. In balancing competing ratepayer interests, the Decision states:

> To comply with Section 8371(d), we must protect customers from inequitable cross-subsidies by separating customers' fair-share responsibility for a utility's cost of service from those who do not benefit from a resiliency technology, like a microgrid. Thus, our goal under Section 8371(d) is to ensure that non-participating microgrid customers remain indifferent.

(Decision, p. 25.) To ensure indifference, the Decision establishes processes to avoid cost shifting in its compliance with the Legislature's mandate to facilitate the commercialization of microgrids. Our process to evaluate the effects of the suspension will provide the data necessary to determine whether there are resulting cost shifts, even

with the authorization of the Demand Assurance Amount. With this information, the Commission will be able to make adjustments to eliminate any potential residual cost shifting.

2. The determination that the suspension of the capacity reservation component of the standby charge to eligible microgrid customers will not result in cost shifts is supported by the record.

Next, SDG&E alleges that Finding of Fact 16 is not supported by the record or the Decision itself:

> The Decision's only attempt to suggest that any cost shift impact from the suspension might be offset by equal benefit is a single conclusory assertion in Finding of Fact 16, which states that the Demand Assurance Amount "ensures that the utility receives an equal exchange from the microgrid customer's reliance on the utility system if the microgrid's generation fails or the microgrid cannot serve its load."

(Rehrg. App., p. 10.) SDG&E provides several arguments that this holding is faulty, however, it fails to provide references to any evidence in the record that contradicts that premise. (Rehrg. App., pp. 10-12.) Rule 16.1 (c) requires rehearing applicants to make specific references to the record or law. (Code of Regs., tit. 20, § 16.1, subd. (c).) SDG&E's arguments are simply speculation that the suspension will result in cost shifting.

Despite these allegations, there is ample record evidence to support this Finding of Fact. In developing the Demand Assurance Amount, we relied on our long-held cost-causation principles that require that customers' rates reflect the costs the utility incurs to serve those customers. (See generally D.17-08-030, p. 28 ["This shift supports our rate design principles favoring rates that are based on cost causation principles and making incentives explicit and transparent . . . ."]; D.15-07-001, p. 97 ["A fundamental principle of rate design that we seek to achieve is that rates should reflect the cost of service, so that customers receive bills roughly consistent with how the utility incurs costs to serve those customers."]; D.14-12-080, p. 14 ["In rate design the objective is to set retail

electric prices so that the utility has a reasonable opportunity to recover its authorized revenue requirements while the customers pay a fair rate that is based on the cost to serve them."].)

Recognizing these principles, we agreed with PG&E and SCE that utility system integrity would be jeopardized without some assurance protection, if the reservation capacity standby charge is suspended for eligible microgrid customers. (Decision, p. 31.) We also agreed with Cal Advocates' comments that "[w]hile the changing nature of distributed generation could justify updating standby charges, recalibrating standby charges to align with modern distributed generation resources should not be confused with an outright waiver, which would have drastically different effects." (*Ibid*., citing Cal Advocates' Reply Comments, p. 3.)

In response to those concerns, we rejected a blanket waiver of standby charges for all microgrid customers and, instead, suspended the capacity reservation component of standby charges for certain qualified microgrid generation customers. (Decision, pp. 27-29.) To account for the unlikely event that standby service is needed, the Decision imposed a Demand Assurance Amount, which will better align costs with their causation because this limited group of microgrid generation customers have less need for standby service. (Decision, pp. 30-31.) As discussed above, later evaluation of balancing accounts will assist the Commission in making adjustments that further align costs with their causation.

The Decision discusses that certain parties, who support waivers or reductions in standby charges, claim that current standby charge policy fails to properly assign costs. For example, parties' comments claim that 1) generation and distribution costs are paid for twice by microgrid customers since increased demand charges are imposed when standby power is required; 2) all microgrids capable of long duration or indefinite islanding, should be exempt from standby reservation charges and any other non-bypassable charges; 3) customers pay the cost of distribution infrastructure when paying utility service connection fees; 4) the design of the standby charge does not reward systems with increased redundancy, resulting in similar charges even if the generation is

provided by multiple units; and 5) a more appropriate starting point for determining the level of a standby charge is the customer's nomination of required backup rather than the maximum hourly peak demand. (Decision, pp. 20-21.)

Even SDG&E's rehearing application supports this premise. When discussing the Demand Assurance Amount, it states that "it is very unlikely that, for a given eligible microgrid, that Demand Assurance Amount charges will be paid at all, much less for half the year." (Rehrg. App., p. 12, fn. omitted.) If Demand Assurance Amount charges are not paid at all by microgrid customers, then that proves that microgrid customers were paying for standby costs that they did not cause, thereby validating our reallocation of costs.

In addition to financial payments, the record shows that these microgrid customers provide myriad benefits to non-microgrid customers, which offset the effect of the suspension of the capacity reservation component. The Decision addresses the comments of parties that enumerate these benefits. For example, the Decision notes that "MRC argues that the Commission should waive standby charges for microgrid customers because microgrids provide customers with the capability to provide backup services to utilities who conduct public safety power shutoffs." Additionally, "Bloom asserts that during grid outage conditions, microgrids can either island or export power to the grid while also enabling some customers – like hospitals – to abandon their use of diesel generation and rely on cleaner microgrid technologies." In summary, "these parties claim that it is unfair to charge microgrid customers various standby charges when the customer has invested in "self-reliance against outages." (Decision, p. 19.)

The Decision lists other holistic benefits the parties claim microgrids provide:

> They claim microgrid services: (1) reduce the need for resource adequacy (including local resource adequacy) yet microgrids don't receive compensation in kind; (2) deliver high predictability and reliability output; (3) reduce grid congestion by reducing feeder load whose value likely offsets the difficulty of providing standby service on the feeder; (4) reduce carbon emissions; (5) reduce local air pollution; (6) helps meet state renewable energy goals; and (7) provide resiliency to communities' critical facilities.

(Decision, p. 19, fns. omitted.)

The value of these benefits provided by microgrids was noted in the December 5, 2019 Assigned Commissioner and ALJ Ruling, which states that "[t]he recent extensive and extended public safety power shut offs and wildfires make the point that resiliency solutions are needed both in the near and long-term. The uncertainty, economic impact, and disruption associated with the public safety power shut offs, wildfires, and potentially other disasters such as earthquakes are unsustainable over the long-term. (*Assigned Commissioner and Administrative Law Judge's Ruling Amending Proceeding Caption to Rulemaking 19-09-009*, p. 2.)

Contrary to SDG&E's allegations, the Decision identifies how the Demand Assurance Amount, and the many benefits microgrid customers provide, offsets any effect of the suspension of the capacity reservation component thereby avoiding cost shifts. SDG&E has not proven that D.21-07-011 will result in cost shifting or that Finding of Fact 16 is unsupported by the record. Therefore, it has failed to identify legal error.

B. SDG&E had proper notice and an opportunity to be heard before the suspension of the capacity reservation charge was adopted by the Commission.

SDG&E alleges the "Decision issued after the suspension program was proposed for the first time in the proposed decision" and "the failure to provide a proper opportunity to present evidence on the Decision's suspension program is legal error." (Rehrg. App., pp. 12-13.) SDG&E does not identify any rule or statute the Commission allegedly violated by introducing its changes to the standby charges of certain microgrid customers in its proposed decision. (See D.18-10-058 at pp., 24-27 [finding no denial of due process where there was a factual record basis for implementing a rule that was presented for the first time in the proposed decision].) Instead, SDG&E recognizes that Commission Rule 14.3 limits the scope of comments on a proposed decision and does not permit the introduction of evidentiary facts. Indeed, the purpose of issuing a proposed decision is to give parties the opportunity to identify factual, legal or technical errors in

proposed decisions so the Commission can correct any errors before the final decision is issued. (Code of Regs., tit. 20, § 14.3, subd. (c).) SDG&E's allegation is unfounded.

As discussed in the Decision, SDG&E had ample opportunity, during the course of the proceeding, to present evidentiary facts on the effect of any Commission modification of standby charges for certain microgrid customers. The February 9, 2021 Assigned Commissioner's Amended Scoping Memo and Ruling (Scoping Memo) identifies the issues for Track 3 of this proceeding:

> The issue for consideration is:
>
> 1. Whether the Commission should require PG&E, SCE, and SDG&E to waive standby charges for a customer operating a microgrid, regardless of fuel source, so long as: (1) waiving a standby charge will enable the microgrid customer to provide an incremental benefit to other customers; that is (2) commensurate with the magnitude of the otherwise applicable standby charges.
>   a. Should the Commission limit the eligibility of microgrid resources for the standby charge waiver to ensure compliance with the State's air pollution and greenhouse gas emissions reduction requirements?
>   b. Under what conditions should standby charges be waived or reduced?

(Scoping Memo, pp. 7-8, emphasis in original.) The Scoping Memo included a six-page attachment of questions designed to develop the record and "aid the Commission's ability to resolve and decide the above issues . . . ." (Scoping Memo, p. 8.)

Parties filed opening and reply comments to address these questions on March 3, and March 10, 2021, respectively. All parties, including SDG&E, were afforded the opportunity to submit evidentiary facts to support their responses to these questions. In fact, SDG&E's opening and reply comments consisted of 34 and 8 pages, respectively. This is inconsistent with its allegation that it did not have the opportunity to present evidence on the Decision's suspension program.

In its rehearing application, SDG&E included a Declaration of Jenell McKay purportedly to show what sort of evidence it would have introduced if the Commission had sought comment on its proposed rules prior to issuing the proposed decision. (Rehrg.

App., p. 13.) As stated above, SDG&E identifies no rule that requires the Commission to afford such party comments before issuing its proposed decision. Moreover, SDG&E does not identify any reasons that it could not have included that evidence in its opening and reply comments. It is procedurally improper for SDG&E to include new evidentiary facts in its rehearing application. (Code of Regs., tit. 20, § 16.1, subd. (c).) Accordingly, we will give no weight to the evidence presented in the Declaration of Jenell McKay.

C. SDG&E's recommendation that the Commission explore other methods to compensate microgrid customers does not identify legal error.

SDG&E contends that the Commission should explore other methods to compensate microgrid customers that do not involve reducing their standby charges. (Rehrg. App., pp. 15-17.) SDG&E recommends 1) compensating microgrids for benefits they provide through a distinct incentive payment rather than a standby charge exemption, 2) implementing physical assurance agreements instead of standby charge exemptions, and 3) addressing the standby exemption in General Rate Case Phase Two proceedings or Rate Design Windows. (*Ibid*.) These suggestions do not identify legal error; they simply list alternatives that we could have adopted.

SDG&E fails to "set forth specifically the ground on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and make specific references to the record or law." (Code of Regs., tit. 20, § 16.1, subd. (c).) Rather than identifying legal error, SDG&E is actually requesting that we reconsider the arguments SDG&E raised during the proceeding, i.e., reweigh the evidence. A rehearing application is not a permissible vehicle for a party to ask the Commission to reweigh the evidence. Such a request does not constitute an allegation of legal error. (Pub. Util. Code, § 1732.)

As discussed above, we provide ample support for the findings and orders in the Decision. The fact that the Decision refrained from adopting SDG&E's recommendations does not provide a basis for legal error.

D. Oral argument is not necessary.

SDG&E requests oral argument pursuant to Commission Rule 16.3 (Cal. Code Regs., tit. 20, Rule 16.3). SDG&E contends that oral argument is appropriate because it will materially assist the Commission in resolving its rehearing application by providing a forum for interested parties to answer the Commission's questions. (SDG&E, p. 18.) SDG&E argues it is appropriate because the Decision departs from precedent and raises issues of exceptional controversy, complexity, or public importance. (*Ibid*.)

Rule 16.3 provides that requests for oral argument for applications for rehearing shall demonstrate oral argument would materially assist the Commission in resolving the application and that the challenged decision:

(1) adopts new Commission precedent or departs from existing Commission precedent without adequate explanation;

(2) changes or refines existing Commission precedent;

(3) presents legal issues of exceptional controversy, complexity, or public importance; and/or

(4) raises questions of first impression that are likely to have significant precedential impact.

The Commission has complete discretion to determine the appropriateness of oral argument in any particular matter. (Commission Rule 16.3, subdivision (a), Cal. Code Regs., tit. 20, Rule 16.3, subd. (a).) Applicants have had ample opportunity to explain their positions on the Decision's holdings in filed comments during the proceeding, in response to the proposed decision, as well as in their application for rehearing. An oral argument would not materially assist us in resolving those concerns. While the holdings are of public importance, the Decision explains why it is appropriate to depart from precedent to exempt certain qualified microgrid customers from standby charges. For these reasons, oral argument would not materially assist in the resolution of the application for rehearing and is therefore not warranted.

III. CONCLUSION

For the reasons discussed above, rehearing of D.21-07-011 is denied as SDG&E has not shown legal error.

THEREFORE, IT IS ORDERED that:

1. Rehearing of Decision 21-07-011 is denied.
2. This proceeding, Rulemaking 19-09-009 remains open.

This order is effective today.

Dated August 5, 2022, at San Francisco, California.

ALICE REYNOLDS
President
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
DARCIE L. HOUCK
JOHN REYNOLDS
Commissioners