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Decision 24-05-066 May 30, 2024

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the 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
And Related Matter.	Application 22-05-016

ORDER DENYING REHEARING OF DECISION 24-02-010

I. INTRODUCTION

This Order addresses the application for rehearing of Decision 24-02-010 (Decision) filed by the Protect Our Communities Foundation (PCF).[1] The Decision granted, in part, the October 27, 2023, San Diego Gas & Electric Company (SDG&E) Motion to recover, on an interim basis and subject to refund, its potentially undercollected wildfire mitigation plan memorandum account (WMPMA) recorded balance as of December 31, 2022.

In particular, the Decision authorized SDG&E to recover $289.9 million of the potentially undercollected WMPMA balance in rates during 2024 and 2025. The Decision, citing *Toward Utility Rate Normalization v. Public Utilities Com.* (1988) 44 Cal.3d 870 (*TURN*), reasoned that interim rate relief is (1) just and reasonable; (2)

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

consistent with California Public Utilities Code section 451;[2] (3) justified per section 454; and (4) reduces intergenerational equity financial risk to ratepayers and SDG&E in accordance with section 454.8. (Decision, p. 21, Conclusions of Law 4-5.)

PCF timely filed an application for rehearing. In its rehearing application, PCF alleges that we engaged in retroactive ratemaking in violation of section 728 and cannot rely on *TURN* to do so. (App. Rehg., p. 2.) PCF also asserts that the Decision's conclusion that the Motion is consistent with section 8386.4 is without any evidentiary support or legal basis. (*Id*.) Additionally, PCF claims that the Decision is unsupported by substantial evidence, interprets sections 451, 454, 454.8, and 8386.4 in a manner that contradicts the prohibition against retroactive ratemaking, and deprives parties of their right to due process by granting interim rate relief prior to holding hearings on SDG&E's final rates. (*Id*. at pp. 3-4, 11-13.)

SDG&E filed a response opposing PCF's application for rehearing. In its response, SDG&E asserts that PCF's application for rehearing does not demonstrate legal error because it relitigates issues and is unsubstantiated. (*San Diego Gas & Electric Company's (U 902 M) Response to Application for Rehearing of D.24-02-010*, pp. 1-2.)

We have carefully considered the arguments raised in the application for rehearing and do not find grounds for granting rehearing, as explained below. Rehearing of the Decision is denied.

II. DISCUSSION

A. The Decision Did Not Engage in Retroactive Ratemaking in Violation of Section 728.

PCF asserts that the Decision erred by relying on inapposite case law to justify retroactive ratemaking. (App. Rehg., p. 5.) However, the Decision did not engage in retroactive ratemaking since it did not claw back previously approved rates.

As an initial matter, section 728 requires rates to be set prospectively. Section 728 provides:

[2] Unless otherwise indicated, all subsequent section references are to the California Public Utilities Code.

> Whenever the commission, after a hearing, finds that the rates or classifications, demanded, observed, charged, or collected by any public utility for or in connection with any service, product, or commodity, or the rules, practices, or contracts affecting such rates or classifications are insufficient, unlawful, unjust, unreasonable, discriminatory, or preferential, the commission shall determine and fix, by order, the just, reasonable, or sufficient rates, classifications, rules, practices, or contracts to be ***thereafter*** observed and in force.

(emphasis added.) The California Supreme Court has interpreted section 728 to prohibit refunds of final rates, even on grounds of unreasonableness. (*City of Los Angeles v. Public Utilities Commission* (1972) 7 Cal.3d 331, 356 (*City of Los Angeles I*).) As such, retroactive ratemaking is the rolling back of general rates already approved by a Commission order that has become final. (*See Pac. Tel. & Tel. Co. v. Pub. Util. Com.* (1965) 62 Cal.2d 634, 649-650 (*Pacific*); *The Ponderosa Telephone Co. v. Public Utilities Com.* (2011) 197 Cal.App.4th 48, 62 ["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."]) To avoid retroactive ratemaking, the Commission has developed a longstanding practice of establishing memorandum accounts. (D.03-05-076, p. 6; see D.92-03-094, 43 CPUC 2d 596 (1992), 1992 Cal PUC LEXIS 236, at p. 7 ["The Commission's practice is not to authorize increased utility rates to account for previously incurred expenses, unless, before the utility incurs those expenses, the Commission has authorized the utility to book those expenses into a memorandum or balancing account for possible future recovery in rates. This practice is consistent with the rule against retroactive ratemaking."])

PCF confuses the prohibition against retroactive ratemaking. PCF argues that authorizing interim rate relief constitutes retroactive ratemaking under section 728 because the Commission has not first held a hearing and then made an order fixing rates prospectively. (App. Rehg., pp. 5-6.) However, the lack of a hearing is not what defines the prohibition against retroactive ratemaking. Rather, as explained above, it is the clawing back of final rates that constitutes retroactive ratemaking.

To be clear, the Decision did not engage in retroactive ratemaking because the rate relief granted did not order refunds to customers or compensate SDG&E for a revenue shortfall caused by inadequate rates. Instead, we will conduct a reasonableness review of SDG&E's 2019-2022 WMPMA costs in Track 2 of SDG&E's current General Rate Case Application proceeding—at which point, we will determine what costs may be recovered. (Decision, p. 18, Finding of Fact 1 and p. 19, Conclusion of Law 8.) Put differently, there are no final rates to claw back during the pendency of SDG&E's General Rate Case proceeding because the costs' reasonableness determination is pending before their inclusion into an approved revenue requirement.

Moreover, the costs recorded in SDG&E's 2019-2020 WMPMA that SDG&E seeks to recover in its current General Rate Case Application are incremental to those authorized in its TY 2019 General Rate Case Application proceeding. As PCF notes, SDG&E did not seek recovery of these costs in its TY 2019 General Rate Case Application. (App. Rehg., p. 12.) SDG&E also provides that the 2019-2022 WMPMA balance excludes "amounts previously authorized in SDG&E's TY 2019 General Rate Case Application." (Motion, p. 6.) Therefore, authorizing interim rate relief for 2019-2022 WMPMA recorded costs does not constitute retroactive ratemaking with respect to either SDG&E's approved TY 2019 General Rate Case revenue requirement or its pending TY 2024 GRC revenue requirement.

Further, despite PCF's contention to the contrary, the California Supreme Court has not mandated hearings to be held prior to the imposition of interim rate relief. PCF relies on *Pacific* for the premise that section 728 requires hearings to be held prior to the setting of interim rates. (App. Rehg., p. 5.) As thoroughly addressed in D.23-11-049, which denied PCF's application for rehearing of D.23-05-012, *Pacific* is distinguishable here:

> In *Pacific*, the Commission ordered the utility to refund to ratepayers revenues that were final and had been collected from ratepayers. The Court held that the ordered refund violated section 728 because those new rates must be applied prospectively. The Court concluded that the Legislature had not authorized the Commission to 'roll back general rates already

> approved by it under an order which has become final.' . . . Here, we have established a memorandum account to track the revenue requirement while we contemplate the [General Rate Case] proceeding to develop the 2024 revenue requirement. Accordingly, the rates that we will adjust are not final rates. Final rates for 2024 will be determined at the conclusion of the [General Rate Case] proceeding.

(D.23-11-049, p. 3, citing *Pacific, supra,* 62 Cal.2d at pp. 649-650.) This same analysis is applicable here. The Decision did not roll back final rates. Instead, it authorized interim rate relief while we contemplate SDG&E's general rate case proceeding to develop the TY 2024 revenue requirement, including a review of the reasonableness of SDG&E's 2019-2022 recorded WMPMA balance.

Our authority to grant interim rate relief pending a general rate case is longstanding. (S*ee City of Los Angeles I*, *supra,* 7 Cal.3d at p. 354 [concluding that the Commission may grant interim rate increases upon appropriate findings while it considers the propriety of the application for rate increase]; see also *City of Los Angeles v. Public Utilities Com.* (1975) 15 Cal.3d 680, 707 (*City of Los Angeles II*) [concluding that the Commission can promulgate an interim rate subject to refund pending a rehearing of a general rate case because the rate had not become final.])

In sum, the Decision did not claw back previously approved rates and, therefore, did not engage in retroactive ratemaking. Consequently, PCF's subsequent theories hinging on retroactive ratemaking necessarily fail because PCF has not established that the Decision engaged in retroactive ratemaking.

B. Setting Interim Rates Effective March 01, 2024, Did Not Violate the Prohibition Against Retroactive Ratemaking.

PCF asserts that section 8386.4 does not authorize the Commission to engage in retroactive ratemaking or allow rates to become effective prior to a showing and finding that they are justified. (App. Rehg., p. 13.) PCF reasons that the Commission cannot make SDG&E's Track 1 wildfire related revenue requirements effective January 1, 2024 or any time before hearings are held and a decision on the reasonableness of SDG&E's 2019 and 2020 WMP costs is issued. (*Id*.) This argument is nearly identical to that in

PCF's rehearing application of D.23-05-012, and which was rejected in D.23-11-049. (S*ee The Protect Our Communities Foundation Application for Rehearing of D.23-05-012*, p. 10.) However, SDG&E's Track 1 revenue requirement is not in the Decision's scope. In the event PCF attempts to argue that the Commission may not authorize SDG&E to recover, on an interim basis, a portion of its 2019-2022 WMPMA balance starting on March 01, 2024, prior to a reasonableness review of its 2019 and 2020 WMP costs, PCF's claim does not amount to legal error. As detailed above, the Decision did not engage in retroactive ratemaking. Nor did the Decision set SDG&E's revenue requirement.

C. The Decision Did Not Erroneously Rely on *TURN*.

PCF's errs in asserting that the Decision may not rely on "inapposite" case law to justify retroactive ratemaking. PCF reasons that the Decision may not rely on *TURN* to authorize interim rate relief because (1) retroactive ratemaking was not at issue in *TURN*; (2) *TURN* was decided under a previous version of section 1757; and (3) a reviewing court would reach a different outcome. (App. Rehg., pp. 7-9.) While PCF's premise that the Decision constituted retroactive ratemaking is incorrect, as detailed above, PCF also errs in asserting that *TURN* may not be used to support our position.

Regarding PCF's assertion that retroactive ratemaking was not at issue in *TURN,* the Court in *TURN* explicitly noted that parties correctly assumed that the Commission did not violate the prohibition against retroactive ratemaking when it authorized interim rates followed by a true-up adjustment. (*TURN, supra,* 44 Cal.3d 870, fn 1.) And, whether *TURN* addressed retroactive ratemaking is irrelevant since granting interim rate relief does not amount to retroactive ratemaking, as detailed above.

PCF also asserts that the Decision may not rely on *TURN* because *TURN* was decided under a previous version of section 1757 and would not have the same result if decided under the standard of review applicable today. (App. Rehg., p. 7.) PCF states that, in *TURN*, "the Supreme Court affirmed the Commission's decision because, at that time, judicial review was 'generally limited to a determination whether the commission has regularly pursued its authority.'" (*Id.*, internal citation omitted.) PCF reasons that,

because of amendments to sections 1757, courts cannot properly defer to the Commission's legal interpretation of the Public Utilities Code and must independently review whether the Commission adhered to its legislative mandates and the statute's plain meaning. (*Id*. at p. 9.) PCF errs in several respects.

First, PCF largely relitigates its argument made in comments to the Decision. (*See* PCF PD Comments, pp. 2-4.) But, applications for rehearing should not be used as a vehicle to relitigate prior arguments. (S*ee* section 1732; Commission's Rules of Practice and Procedure, Code of Regs., tit. 20, section 16.11(c).) As the Decision duly noted, "[n]ot only do California courts continue to cite [*TURN*] as good case law, PCF's position on the value of the CPUC's interpretation of the Public Utilities Code—in this case, whether interim rate relief can be 'just and reasonable' or whether it violates the rule against retroactive ratemaking—does not align with that held by California courts." (Decision, p. 17, fn. omitted.)

Second, the Court in *TURN* did not solely rely on our interpretation of the Public Utilities Code. Instead, the Court conducted its own analysis and determination as to the consistency of interim rate relief with sections 451, 454, and 454.8 even though it assessed the Commission's actions under the previous version of section 1757. (*TURN, supra,* 44 Cal.3d 870 at pp. 875, 880.)

Third, beyond reciting the Public Utilities Code, PCF fails to substantiate its conclusory statements that a court would not have reached the same result if decided under section 1757 currently in effect. As we have previously stated, "[m]erely identifying a law, without providing an explanation of how it applies to the instant case, is insufficient to meet the requirements of section 1732, which requires that a rehearing application 'set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful.'" (D.23-11-049, p. 8, citing Section 1732 and D.10-07-050, p. 19.) In contrast, PCF's rehearing application does not provide any explanation as to how or why a court's interpretation and application of sections 451, 454, or 454.8, or prior case law would result in a holding that we did not proceed in a manner required by law under section 1757 currently in effect. It is unclear from PCF's

rehearing application why the court's statutory analysis would differ.

Lastly, amendments to section 1757 post-*TURN* do not foreclose deference to our decisions or interpretation. PCF states that the amendment to section 1757 requires courts to "give no extra weight or validity—presumption or deference—to the Commission's interpretations of law." (App. Rehg., p. 2.) Not only does PCF fail to provide any support for this contention, it is also incorrect. While section 1757 has since been amended to expand judicial review,[3] courts may defer to agency decisions and statutory interpretation. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7.)

D. There is No Support for PCF's Allegation that Evidentiary Hearings were Required.

PCF relies on two theories to allege that hearings are required. First, PCF asserts that the Decision unlawfully interpreted sections 451, 454, and 454.8 in a manner that contradicts the prohibition against retroactive ratemaking, the plain language of section 728, and other statutes that require a hearing be held first (sections 729, 761, 762, 768, and 770) before we can make a decision and order certain actions. (App. Rehg., p. 9, fn. 33.) Second, PCF alleges that increasing rates without first providing intervenors the right to be heard including the right to confront the evidence, violates fundamental due process principles. (App. Rehg., p. 10.) PCF's assertions under both theories are frivolous.

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[3] Per Section 1757(a), review by the court is limited to whether:

1) The Commission acted without, or in excess of, its powers or jurisdiction;
2) The Commission has not proceeded in the manner required by law;
3) The decision of the Commission is not supported by the findings; The findings in the decision of the Commission are not supported by substantial evidence in light of the whole record;
4) The order or decision of the Commission was procured by fraud or was an abuse of discretion;
5) The order or decision of the Commission violates any right of the petitioner under the Constitution of the United States or the California Constitution.

1. Hearings as a Matter of Right Under the Public Utilities Code

PCF has not demonstrated that the Decision unlawfully interpreted the Public Utilities Code in a manner that contradicts the prohibition against retroactive ratemaking and statutes that require a hearing be held before the Commission can make a decision and order certain actions. As an initial matter and as detailed above, the Decision did not engage in retroactive ratemaking. Therefore, the Decision did not interpret the Public Utilities Code in a manner that contradicts the prohibition against retroactive ratemaking and section 728.

Similarly, PCF's assertion that the cited statutes require hearings before granting interim rate relief is meritless. As provided above, the courts have determined that, under section 728, full evidentiary hearings must be held before it promulgates a general rate tariff, but such hearings are not required where we are establishing interim rates. (*Securus Technologies, LLC v. Public Utilities Commission* (2023) 88 Cal.App.5th 787, 801, citing *Southern California Edison Co. v. Public Utilities Com*., *supra,* 20 Cal.3d at pp. 815 and 829; *City of Los Angeles II*, *supra,* 15 Cal.3d at pp. 684 and 698.)

Moreover, sections 451 and 454 do not require hearings. (*Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 804 ["section 454 does not require PUC to hold a 'public hearing' before allowing a change in rates. Indeed, the statute provides that PUC may adopt rules governing 'the nature of the showing required' and 'the form and manner of the presentation of the showing, *with or without a hearing*'"] [emphasis original]; *Wood v. Public Utilities Com.* (1971) 4 Cal.3d 288, 292 ["The Public Utilities Code does not require public hearings before rate increases or rule changes resulting in rate increases may be authorized"]; *Pacific Gas & Electric Co. v. Department of Water Resources* (2003) 112 Cal.App.4th 477, 500 [holding that section 451, on its face, says nothing about a hearing.])

Also, section 454.8 does not require hearings.[4] PCF does not explain how sections 729, 761, 762, 768, and 770 support its application or require the Commission to hold hearings prior to authorizing interim rates. Section 729 pertains to investigations while sections 761, 762, and 768 do not pertain to rates. Therefore, PCF's assertion does not amount to legal error.

2. Due Process

PCF states that "increasing rates without first providing intervenors the right to be heard including the right to confront the evidence, violates fundamental due process principles." (App. Rehg., p. 10.) In support of its position, PCF cites section 1757(a)(2) and (6) and the California and United States Constitutions. However, beyond claiming "due process principles," PCF fails to identify what obligation the Commission had to hold hearings prior to authorizing interim rate relief. Neither the California and United States Constitutions, in general, nor sections 1757(a)(2) and (6) in particular, require hearings prior to authorizing the relief granted in the Decision.

While due process, generally, requires that parties be given notice and a meaningful opportunity to be heard, due process does not require full evidentiary hearings in all cases. Both the California and the U.S. Supreme Courts have been clear on the absence of due process rights in ratesetting proceedings. As articulated by the California Supreme Court in *Wood v. Public Utilities Commission*, *supra,* 4 Cal.3d at p. 293:

> Public utility regulation, historically, has been a function of the legislature; and the prescription of public utility rates by a regulatory commission, as the authorized representative of the legislature, is recognized to be essentially a legislative act. [Citation omitted]. As a ratepayer would have

[4] Pub. Util. Code, § 454.8 provides:

> In any decision establishing rates for an electrical or gas corporation reflecting the reasonable and prudent costs of the new construction of any addition to or extension of the corporation's plant, when the commission has found and determined that the addition or extension is used and useful, the commission shall consider a method for the recovery of these costs which would be constant in real economic terms over the useful life of the facilities, so that ratepayers in a given year will not pay for the benefits received in other years.

> no constitutional right to participate in a legislative procedure setting rates, this right to be heard in a commission proceeding exists at all only as a statutory and not a constitutional right.

As this proceeding is a ratesetting proceeding, PCF does not have a due process right to an evidentiary hearing under the California Constitution unless provided by statute. (*Pacific, supra,* 62 Cal.2d at p. 647, *citing American Toll Bridge Co. v. Railroad Commission* (1938) 12 Cal.2d at p. 191, *aff'd sub nom. American Toll Bridge Co. v. Railroad Commission of California* (1939) 307 U.S. 486.)

Similarly, federal due process does not guarantee a right to evidentiary hearings in all cases. Under the federal Constitution "[p]rocedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." (*Burt v. County of Orange* (2004) 120 Cal.App.4th 273, 283; see also *Southern California Gas Company v. Public Utilities Commission* (2023) 87 Cal.App.5th 324, 340, *as modified on denial of reh'g (Feb. 3, 2023), review denied (Apr. 19, 2023*) citing *Board of Regents of State Colleges v. Roth* (1972) 408 U.S. 564, 569-571.) Here, PCF has not alleged any deprivation of "liberty" or "property" interests that would warrant evidentiary hearings. Therefore, PCF does not have an absolute right to evidentiary hearings in this proceeding under the federal Constitution either.

Absent a constitutional right to hearings, the next consideration is whether hearings are statutorily required. PCF cites sections 1757(a)(2) and (6) as support for its due process claim, but neither subsection provides a right to evidentiary hearings. Rather, the provisions identify the standard of review for challenged Commission decisions.

The relevant statutes are sections 1701-1736, which establish our standards for notice and hearing procedures in Commission proceedings. Specifically, section 1701.1(b)(1) governs ratesetting proceedings, such as the present case, and states:

> The commission, upon initiating an adjudication proceeding or ratesetting proceeding, shall assign one or more commissioners to oversee the case and an administrative law judge when appropriate. The assigned commissioner

> shall schedule a prehearing conference and shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered and the applicable timetable for resolution and that, consistent with due process, public policy, and statutory requirements, determines ***whether*** the proceeding requires a hearing.

(emphasis added.) In addition, section 1701.3(a) specifies the procedures that apply to ratesetting proceedings "if" the Commission determines a ratesetting proceeding requires hearings. (Section 1701.3(a).) Thus, there is no statutory requirement for the Commission to hold evidentiary hearings in a ratesetting proceeding. (*Pacific Gas and Electric Co. v. Dept. of Water Resources* (2003) 112 Cal.App.4th 477, 500-01.)

Lastly, PCF was afforded all the due process that it was due. Consistent with section 1701(b)(1), the prehearing conference for Track 1 and Track 2 was scheduled and held; the scoping memo, including the proceeding's schedule, was issued; and hearings were scheduled. Subsequent rulings have modified the procedural schedule for Track 2.[5] Also, the Motion was filed and served to the service list of the proceeding on October 27, 2023, providing notice to parties of the issues raised. Parties, including PCF, filed responses to the Motion and comments and reply comments to the Proposed Decision. No party requested hearings on the Motion and as the Decision identifies, "the responses to the Motion shows no factual dispute between the parties." (Decision, p. 11.) Also, the scope of the Decision is strictly interim relief, and the opportunity to be heard on the reasonableness of SDG&E's WMPMA costs will be in Track 2 of SDG&E's TY 2024 General Rate Case Application. (*Id.* at pp. 16, 18.) Therefore, PCF has not demonstrated that the Decision violated its due process rights.

E. The Decision Correctly Concluded that the Motion Complied with section 8386.4.

PCF asserts that the Decision erroneously concluded that SDG&E complied with section 8386.4. (App. Rehg., p. 11.) PCF reasons that "instead of adhering to the statute,

[5] A.22-05-015, Email Ruling granting the Joint Motion and modifying Track 2 GRC Procedural Schedule, issued February 8, 2024, and a subsequent Ruling further modifying the schedule and Granting Cal Advocates' Motion to Extend the Time of the Track 2 Schedule issued on May 8, 2024.

SDG&E elected to wait until its TY 2024 [General Rate Case] application" to request a reasonableness review of its 2019-2020 WMPMA balance. (*Id*. at pp. 11-12.) PCF's policy argument does not establish legal error and otherwise lacks merit.

A court can defer to an agency's interpretation of the law when the question at issue is the interpretation of statute. (*Yamaha Corp. of America v. State Bd. of Equalization*, *supra,* 19 Cal.4th at 7 ["An agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts" and "the binding power of an agency's interpretation of a statute or regulation is contextual."]) While not explicitly stated, the Decision's conclusion that SDG&E complied with section 8386.4 is consistent with the plain language of the statute.

Section 8386.4 states in pertinent part:

> (b)(1) The commission shall consider whether the cost of implementing each electrical corporation's plan is just and reasonable in its general rate case application. Each electrical corporation shall establish a memorandum account to track costs incurred for fire risk mitigation that are not otherwise covered in the electrical corporation's revenue requirements. The commission shall review the costs in the memorandum accounts and disallow recovery of those costs the commission deems unreasonable.
>
> (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. …

The plain language of section 8386.4 explicitly allows electrical corporations to seek cost recovery of its WMPMA recorded costs in either a general rate case application or in a separate cost recovery application at the conclusion of the time period covered by the WMP. As the Decision provided, SDG&E seeks to recover costs associated with its WMP, including its WMPMA and other incremental operation and maintenance and capital expenses, in Track 2 of its TY 2024 General Rate Case Application proceeding. (Decision, p. 18, Finding of Fact 1.) Therefore, the Decision correctly concluded that SDG&E complied with section 8386.4 by using one of the two cost recovery options provided by the statute.

Moreover, while SDG&E could have also complied with section 8386.4 by filing a separate cost recovery application prior to its TY 2024 General Rate Case Application, PCF fails to establish that SDG&E was required to do so. Thus, based on the plain language of sections 8386.4(b)(1) and (2), the Decision correctly concluding that SDG&E's request for a reasonableness review of its 2019-2022 recorded WMPMA costs in its TY 2024 General Rate Case Application is consistent with section 8386.4.

Additionally, even if SDG&E were required to seek cost recovery as early as possible, SDG&E could not have sought a reasonableness review of its recorded 2019 WMP costs in its TY 2019 General Rate Case Application. (See *San Diego Gas & Electric Company's (U 902 M) Response to Application for Rehearing of D.24-02-010*, p. 6; *see also* D.22-05-001, p. 6.) The Commission authorized SDG&E to track 2019 WMP costs in a memorandum account with an effective date of May 30, 2019. (D.19-05-039, *Decision on San Diego Gas & Electric Company's 2019 Wildfire Mitigation Plan Pursuant to Senate Bill 901*, Ordering Paragraph (OP) 13.) In comparison, SDG&E's TY 2019 General Rate Case Application proceeding was deemed submitted on March 5, 2019. (D.19-09-051, p. 13; *see* Commission's Rules of Practice and Procedure, Rule 13.5.) Thus, the evidentiary record underlying the decision authorizing SDG&E's TY 2019 and post-TY 2020 and 2021 revenue requirements was closed months before SDG&E was authorized to record post-May 30, 2019 WMP implementation costs. As such, contrary to PCF's assertion, SDG&E could not have sought a reasonableness review of its 2019 WMP implementation costs in its prior General Rate Case Application.

Similarly, PCF asserts that instead of adhering to statute and seeking recovery of its 2020 WMP implementation costs in a separate application, SDG&E elected to wait until its TY 2024 General Rate Case Application. (App. Rehg., p. 12.) However, based on the plain language of section 8386.4(b)(2), SDG&E could not have requested a reasonableness review of its recorded 2020 WMPMA costs in a separate application prior to 2022, the same year SDG&E filed its TY 2024 General Rate Case Application. (See section 8386(b) ["[i]n calendar year 2020, and thereafter, the [wildfire mitigation] plan

shall covert at least a three-year period."]) The period covered by SDG&E's 2020 WMP is 2020-2022. (Motion, p. 6 and fn. 10.) Therefore, the timing of a reasonableness review of SDG&E's 2020 WMP implementation costs would have been the same whether SDG&E sought cost recovery through a separate application or its TY 2024 General Rate Case Application. As such, contrary to PCF's argument, the Decision correctly concluded that SDG&E complied with section 8386.4 because requesting a reasonableness review of WMPMA costs in a utility's General Rate Case Application is consistent with the plain language of section 8386.4(b)(1).

PCF fails to identify legal error because, as the plain language in section 8386.4 reveals, SDG&E's request to recover the costs recorded in its WMPMA is timely. As such, PCF's allegation is nothing more than a policy argument that asks us to "hold SDG&E accountable for the delays involved with its imprudent decision-making and its unreasonable wildfire mitigation spending." (App. Rehg., p. 13.) We have already considered the evidence and authorized interim rate relief. PCF's suggestion that we should reweigh the evidence does not constitute an appropriate allegation of legal error. (See section 1732; D.23-11-049, p. 2.)

F. The Decision is Supported by Substantial Evidence.

PCF states that the Decision is not supported by substantial evidence because it "fail[s] to account for the impacts of the forthcoming Trak 1 decision." (App. Rehg., p. 11.) Specifically, PCF claims that we "cannot make any determination about the impacts of securitization or the reasonableness of interim rates when [the Commission] does not have the information necessary to conclude that rates will in fact decrease in 2024." (*Id*.) Additionally, PCF also states that Findings of Fact 8, 11, 12, 15, 17, 20-21 and Conclusions of Law 1-7 and 9 are not supported by substantial evidence. (*Id.* at p. 3.) However, PCF's allegations are without merit.

1. Securitization

The Decision explicitly refrained from making any determinations on the impacts or feasibility of securitization. (Decision, p. 16.) As the Decision elaborated, "[s]ecuritization will be reviewed during the reasonableness review under Track 2

[of SDG&E's General Rate Case Application] because securitization requires a more detailed analysis of the costs and rate impacts. (*Id*. at p. 15.) Thus, PCF's allegation regarding securitization is without merit.

2. Promoting Rate Stability and Alleviating Rate Shocks

Additionally, record evidence supports our determination that interim rate relief promotes rate stability by taking advantage of a projected temporary decrease in revenue requirements and rates. As the courts have detailed, it is for us:

> to weigh the preponderance of conflicting evidence, and its findings are not open to attack for insufficiency if they are supported by any reasonable construction of the evidence. Thus, the PUC's factual findings based on conflicting evidence or on undisputed evidence from which conflicting inferences may reasonably be drawn are final and not subject to review.

(*The Ponderosa Telephone Co. v. Public Utilities Com.* (2019) 36 Cal.App.5th 999, 1013 (internal citations omitted).) If our "findings are supported by any substantial evidence, they may not be set aside. Accordingly, '[t]o accomplish the overturning of a Commission finding for lacking the support of substantial evidence, the challenging party must demonstrate that based on the evidence before the PUC, a reasonable person could not reach the same conclusion." (*Id.*; see *Securus Technologies, LLC v. Public Utilities Commission*, *supra*, 88 Cal.App.5th at p. 802.)

In its Motion, SDG&E provides that allowing SDG&E to begin recovering a portion of its 2019-2022 WMPMA balance in 2024 will smooth out rates to minimize volatility. (Motion, p. 16.) SDG&E explains that authorizing interim rates before SDG&E's TY 2024 General Rate Case decision is anticipated to go into rates leverages a forecasted overall rate decrease on January 1, 2024, even with interim rate relief granted. (*Id*.) Further, SDG&E forecasts that if interim rate recovery continues into 2025, a lesser amount would be recovered over an interim basis with still a smaller impact at the same time SDG&E's TY 2024 General Rate Case goes into effect. (*Id.*) Moreover, SDG&E has already implemented its rate decrease for 2024. (*San Diego Gas & Electric Company (U 902 M) Reply Comments on Proposed Decision Granting in Part San Diego Gas & Electric Company's Motion for Interim Rate Relief and Extending the Statutory Deadline*

at 2; *San Diego Gas & Electric Company's (U 902 M) Response to Application for Rehearing of D.24-02*-010, p. 7.) Given this, the Decision reaches a reasonable inference that authorizing interim rate relief will promote rate stability and alleviate rate shocks by taking advantage of a potential 2024 rate decrease prior to the revenue requirement authorized in SDG&E's TY 2024 General Rate Case decision is incorporated into rates. (See *Lorimore v. State Personnel Board* (1965) 232 Cal.App.2d 183, 187 [findings based on inferences reasonably drawn from the record constitute substantial evidence and it will not be reversed.]) Also, PCF does not present any evidence to refute whether SDG&E's rates will decrease in 2024 prior to the implementation of SDG&E's TY 2024 General Rate Case decision. Therefore, PCF's allegation that the Decision is not supported by substantial evidence should be denied.

3. Findings of Fact and Conclusions of Law

PCF fails to substantiate its assertion that Findings of Fact 8, 11, 12, 15, 17, 20-21 and Conclusions of Law 1-7 and 9 are not supported by substantial evidence. PCF does not discuss why the referenced Findings of Fact or Conclusions of Law are not supported by substantial evidence. As stated above, identifying a law without providing an explanation of how it applies to the instance case, is insufficient to meet the requirements of section 1732. (D.23-11-049, p. 8.) Nonetheless, we cannot predict the outcome of Track 1 and there is no practical way of including an analysis of Track 1 impacts in our review of the Motion. (Decision, p. 16.) Additionally, as explained above, substantial evidence supports our determination that authorizing interim rate relief will promote rate stability by taking advantage of a potential 2024 rate decrease prior to SDG&E's TY 2024 General Rate Case decision is incorporated into rates. Therefore, these allegations do not amount to legal error and should be denied.

III. CONCLUSION

For the reasons stated above, we have determined that good cause has not been demonstrated to grant rehearing of D.24-02-010, as no legal error has been shown. Rehearing of D.24-02-010 is denied.

THEREFORE, IT IS ORDERED:

1. Rehearing of Decision 24-02-010 is denied.
2. This consolidated proceeding, Application 22-05-015, *et al*, remains open.

This order is effective today.

Dated May 30, 2024, at Sacramento, California.

ALICE REYNOLDS
President
DARCIE L. HOUCK
JOHN REYNOLDS
KAREN DOUGLAS
Commissioners

Commissioner Matthew Baker, being absent, did not participate.