

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

Application of SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) For Authority To Update Marginal Costs, Cost Allocation, And Electric Rate Design.	Application 11-10-002 (Filed October 3, 2011)
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**OPENING COMMENTS OF THE SAN DIEGO CONSUMERS' ACTION  
NETWORK (SDCAN) ON THE ALJS' PROPOSED DECISION**

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December 10, 2013

## **I. INTRODUCTION**

Pursuant to Rule 14.1 of the Commission's Rules of Practice and Procedure, the San Diego Consumers' Action Network submits its comments on the ALJs' Proposed Decision in this matter. The Proposed Decision (PD) contains four factual oversights that should be corrected within the PD's narrative. However, SDCAN does not recommend any changes to the Findings of Fact or Law in regards to these four oversights. As will be explained below, SDCAN recommends language changes to the PD's characterization of SDCAN's positions in regards to the following topics because it overlooks or mischaracterizes SDCAN's recommendations:

- Basic Service Fee
- Tiers 3&4 Consolidation
- Prepay Option

Finally, SDCAN submits that the PD inappropriately rejects ORA's CARE allocation. A plain reading of SB695 conflicts with the PD's position. This part of the PD must be revised.

## **II. CHANGES TO DECISION NARRATIVE**

At page 40, the PD discusses parties' opposition to SDG&E's Basic Service Fee (BSF). The PD summarizes the opposing parties' position with a citation to TURN's brief. The PD fails to indicate SDCAN's first and primary argument against the BSF, namely, that the propriety of a BSF is a statewide issue and is more appropriately addressed in R. 12-06-013.<sup>1</sup> SDCAN made this argument in both its opening and reply briefs. Given that the PD declines approval of the BSF for the reasons advanced by SDCAN, the decision should acknowledge SDCAN's argument.

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<sup>1</sup> SDCAN Opening Brief, p. 9, SDCAN Reply Brief, p. 4

At page 43-44, the PD again declines to adopt SDG&E's proposed tier structure on the basis that this matter is being addressed in R. 12-06-013. The PD characterizes SDCAN's opposition to SDG&E's proposal as echoing ORA's points.<sup>2</sup> However, the PD ignores an argument presented twice by SDCAN that was not made by other parties:

Concerns over the actual benefits and impacts of tiered rates have arisen in recent proceedings for each of the three large investor-owned utilities.<sup>3</sup> In order to maintain a consistent policy statewide and to fully consider the relevant issues, SDCAN recommends that the Commission use the referenced OIR on Residential Rate Design (R. 12-06-013) to address any changes to the tiers. Thus, any ruling on SDG&E's proposed consolidation should be deferred to this rulemaking proceeding.<sup>4</sup>

The PD should be revised to recognize SDCAN's repeated argument that R. 12-06-013 was the appropriate proceeding to address SDG&E's rate design proposals.

Finally, in regards to the Prepay Option presented by SDG&E, the PD references a portion of SDCAN's Reply Brief, but miscites the SDCAN argument as one contained in ORA's Reply Brief. Footnote 71 in the PD should be revised to reflect a citation to SDCAN's Reply Brief at page 8, rather than referencing ORA's brief.

In addition, the PD expressly references SDCAN's assessment that SDG&E's 'prepay program' is not designed for any customer who is not poor or cash-strapped." While it is accurate citation of SDCAN's Reply Brief, SDCAN was only summarizing the arguments presented by the Consumer Groups. However, SDCAN did make a unique argument that was wrongfully omitted from the PD. SDCAN observed in its Reply Brief that:

"SDCAN concurs with the Consumer Groups' assertions but even if the impacts weren't clear, the Commission must take an additional analytical step; the Commission needs to determine whether SDG&E is really offering an "energy management option" for customers who might value such a service or whether it is exploring new ways of reducing its disconnection and bill collection costs. Had SDG&E been honest about designing an 'energy management option' to its customers, it would have presented to the

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<sup>2</sup> PD, p. 43-44

<sup>3</sup> Exh. SDCAN-2, p. 24

<sup>4</sup> SDCAN Opening Brief, p. 19-20, see also SDCAN Reply Brief, p. 7

Commission a pilot program that excluded CARE or previously disconnected customers from the pilot so that economic coercion wouldn't factor into the customers' decision making. Such a pilot program could have presented the Commission with a useful glimpse into whether budget-minded customers who are not under financial distress nor who can be subject to utility coercion would participate in a prepay program. Such a program might have been legally permissible and, more importantly, would have been a true test of the viability of prepay service where customers gain some budgetary protections, similar to those utilized by cell phone customers..... SDG&E did not present such a plan. Instead, it offers a program to the Commission that is not analogous to cell phone prepay service; it is targeted to SDG&E's most financially vulnerable customers.<sup>5</sup>

In sum, SDCAN pointed out how SDG&E was mischaracterizing its Prepay Option as an energy management tool but that this program had the effect of coercing customers into waiving their statutory rights rather than offering a benign energy management program. SDCAN's observation parallels the PD's discussion of D.06-10-051, which characterizes a CPP tariff as an overlay to an existing E-1 tariff.<sup>6</sup> The PD distinguishes the CPP as an overlay tariff and not an experimental payment program. The PD's finding echoes SDCAN's position that SDG&E's Prepay Option is not an overlay of an existing tariff nor is it an "energy management tool" as much as it is targeted at a vulnerable population that would be asked to forego fundamental protections. The PD properly notes that the Prepay Option could induce customers to forego fundamental protections regarding their basic service; just as SDCAN argued.

The accuracy of the PD would be enhanced by recognizing SDCAN's point that the PrePay Option is not a management tool as much as a program that, at its core, requires customers to forego statutory protections in exchange for payment flexibility.

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<sup>5</sup> SDCAN Reply Brief, p. 9

<sup>6</sup> PD, p. 55, see also D. 06-10-051, p. 3

### **III. CARE DISCOUNT ALLOCATION**

The PD wrongfully adopts SDG&E's proposed allocation method for the costs of the CARE discount. The PD inaccurately interprets SB695, which created the statutory language in Public Utilities Code §327(a)(7). That statute, co-authored by CPUC Commissioner Mike Florio, required that electric and gas utilities "allocate the costs of the CARE program on an equal cents per kilowatthour or equal cents per therm basis to all classes of customers that were subject to the surcharge that funded the program on January 1, 2008."

The plain language of §327(a)(7) clearly applies to the costs of the entire CARE program regardless of where it is situated within the code and is not limited to weatherization costs, as asserted in the PD. The PD offers no precedent for its contention that the Commission has defined CARE program costs" as inclusive weatherization and efficiency. In contrast, ORA and TURN clearly described how legislative history and Commission interpretations of Public Utilities Code §327(a)(7) support the ORA allocation method.<sup>7</sup> These intervenors point out that the allocation proposed by ORA has not only been utilized by PG&E and SCE but that the "costs of the CARE program" clearly refers to the rate discount provided pursuant to §739.1. The PD appears to substitute its judgment for that of the legislators and, is thus, legal error. SDCAN submits that the TURN/ORA interpretation of §327(a)(7) should be applied.

### **IV. RECOMMENDATIONS**

For the foregoing reasons, SDCAN respectfully requests that the Commission reflect the three language changes and factual errors identified above. However, SDCAN supports the Findings of Fact and Law contained within the PD and suggests no substantive changes except

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<sup>7</sup> TURN Reply Brief, p.4-8 ; ORA Opening Brief, 14-16

for Conclusions of Law 14 and 15 which must be revised as proposed below to reflect an appropriate construction of Public Utilities Code §327(a)(7).

Respectfully submitted,

Dated: December 10, 2013

/s/

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## **REVISED CONCLUSIONS OF LAW**

### **Conclusion of Law 14**

Section 327(a)(7) of the Public Utilities Code applies ~~only to the cost of the CARE program including the entire rate discount and related program budgets. described in Public Utilities Code Section 2790, the administration of home weatherization services programs for low income customers.~~ only to the cost of the CARE program including the entire rate discount and related program budgets.

### **Conclusion of Law 15**

SDG&E's CARE cost allocation does not comply with Section 327(a)(7) and should not be changed to ensure that all CARE costs are allocated on an equal cents per kilowatt-hour basis.