

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric  
Company (U902M) for Authorization to  
Recover Costs of Several Catastrophic  
Events Recorded in Its Catastrophic  
Expense Memorandum Account (CEMA).

Application 22-10-021

**PUBLIC ADVOCATES OFFICE REPLY BRIEF**

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**I. INTRODUCTION**

Pursuant to Rule 13.12 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the February 28, 2023 *Assigned Commissioner's Scoping Memo and Ruling* (Scoping Memo), and ALJ DeAngelis' November 8, 2023 Email Ruling Modifying Briefing Schedule, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits this reply brief. As explained in Cal Advocates' opening brief and further argued in this reply, the Commission should disallow \$2.071 million of San Diego Gas & Electric Company's (SDG&E) requested overhead costs associated with capital work. The recorded costs are not incremental as additional funds are not necessary to cover SDG&E's Catastrophic Event Memorandum Account (CEMA) costs. SDG&E's ratepayers should not be saddled with additional costs that have not been proven to be incremental to costs SDG&E was previously authorized to recover in its General Rate Case (GRC), therefore such costs should be denied in accordance with Resolution E-3238, Public Utilities Code section 454.9, and Commission precedent.

**II. DISCUSSION**

Cal Advocates' position in this case is simple. Under Resolution E-3238, recovery for costs in CEMA accounts "may be limited by consideration of the extent to which losses are covered by insurance, the level of loss *already built into existing rates*, and

possible other factors relevant to the particular utility and event.”<sup>1</sup> Per the plain language of Resolution E-3238, SDG&E may not recover its CEMA costs that are *already included in existing rates*.<sup>2</sup> Specifically, SDG&E’s overhead costs associated with the non-labor portion of the capital work were already recovered in rates as part of SDG&E’s GRC’s previously authorized funding level.<sup>3</sup> In order to protect SDG&E’s ratepayers from unjustly bearing the burden of these costs, and in keeping with the language of Resolution E-3238, the Commission should exercise its discretion and disallow \$2.071 million of SDG&E’s requested overhead costs associated with capital work.

SDG&E argues that: (1) it has made a showing that the subject costs were not recovered in previous applications and that the costs are incremental,<sup>4</sup> (2) its Application complies with Resolutions E-3238<sup>5</sup> and (3) it has no duty or ability to prove that the subject costs were not recovered in its GRC’s previous authorized funding levels<sup>6</sup>. Contrary to SDG&E’s allegations, it has failed to make its *prima facie* showing as to incrementality, it has failed to comply with Resolution E-3238, and adoption of SDG&E’s position that all CEMA costs are inherently incremental if “CEMA-type” costs are not included in a GRC, would render key language in Resolution E-3238 meaningless.

**A. SDG&E fails to make a *prima facie* showing regarding the incrementality of the subject costs.**

SDG&E argues at length that it has made a *prima facie* showing that the overhead costs at issue are incremental.<sup>7</sup> However, SDG&E fails to provide substantive analysis

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<sup>1</sup> Resolution E-3238, at 2-3 (emphasis added).

<sup>2</sup> Cal Advocates Opening Brief at 5-6.

<sup>3</sup> Ex. CA-01, *Cal Advocates’ Report on the Results of Examination for San Diego Gas & Electric Company’s Application for Authorization to Recover Costs of Several Catastrophic Events Recorded in Its Catastrophic Event Memorandum Account* (Cal Advocates’ Report), at 7.

<sup>4</sup> SDG&E Opening Brief, November 30, 2023, at 8-13.

<sup>5</sup> SDG&E Opening Brief, at 6-8.

<sup>6</sup> SDG&E Opening Brief, at 36-36.

<sup>7</sup> SDG&E Opening Brief, at 13-29.

that reflects the incrementality of its requested costs, and merely provides one self-serving conclusion after another without any supporting evidence. Likewise, SDG&E's showing is void of the necessary information to show that its requested costs are incremental to its GRC. SDG&E dedicates a good deal of its brief to the cross examination of Ms. Chia, as it attempts to show that Cal Advocates has provided no factual showing or facts to contradict SDG&E's showing.<sup>8</sup> SDG&E's attempts to shift the burden on Cal Advocates are unpersuasive and do not change the fact that the record is void of the proof necessary to grant the relief requested here.

As stated in California Evidence Code §412: "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust." SDG&E is undoubtably the party that has the power and ability to produce satisfactory evidence that would show that the subject costs are incremental and has failed. Importantly, SDG&E ignores the central issue here, i.e., that SDG&E failed to provide any documents proving that (1) it paid incremental payroll taxes associated with the CEMA capital overtime labor; (2) provided a comparison of what was collected in rates for normal operations and what was paid; and (3) distinguished what was collected in authorized GRC rates for overheads and what was expended in routine operations for overheads. SDG&E fails to reasonably addresses these crucial elements and as such has failed to make a *prima facie* showing of the incrementality of the subject costs.

Resolution E-3238 makes clear that the fact that costs are booked in a CEMA account does not mean that those costs are necessarily recoverable from ratepayers.<sup>9</sup> Among other things, Resolution E-3238 provides that the Commission "will examine closely all costs" before allowing recovery.<sup>10</sup> Such directions are intended to protect

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<sup>8</sup> SDG&E Opening Brief, at 37.

<sup>9</sup> Resolution E-3238, at 2.

<sup>10</sup> Resolution E-3238, at 2.

ratepayers and prevent the occurrence of retroactive ratemaking or double recovery.<sup>11</sup> In order to achieve this purpose, the Commission should consider the fact that SDG&E has already collected funds from its previous GRC that are more than sufficient to cover these costs. As explained in detail in Cal Advocates' opening brief, the subject CEMA costs were already covered through previously approved funds and are not incremental.<sup>12</sup>

**B. SDG&E fails to meet its burden of proof.**

As the Applicant, SDG&E bears the burden of proof by a preponderance of the evidence - defined "in terms of probability of truth, e.g., 'such evidence, when weighed with that opposed to it, has more convincing force and the greater probability of truth,'"<sup>13</sup> In short, SDG&E must present more evidence that supports the requested result than would support an alternative outcome. As the party with the ultimate burden in this proceeding, SDG&E cannot shift that burden to Cal Advocates.<sup>14</sup> Accordingly, SDG&E's attempt to burden-shift are futile and its inability to provide factual evidence to counter Cal Advocates' recommendations reflect the weakness of its Application.

As part of its burden shifting argument, SDG&E cites D.21-08-036 which states: "[a]lthough the utility bears the ultimate burden to prove the reasonableness of the relief they seek and the costs they seek to recover, the Commission has held that when other parties propose a different result, they too have a 'burden of going forward' to produce evidence to support their position and raise a reasonable doubt as to the utility's request."<sup>15</sup> SDG&E argues that after it made its showing, the burden of proof going

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<sup>11</sup> See Decision (D.) 07-07-041 (discussing the background of Resolution E-3238 and the prohibition against retroactive ratemaking).

<sup>12</sup> Cal Advocates Opening Brief at 5-6.

<sup>13</sup> Decision (D.) 21-05-006, *Decision Denying Bear Valley Application to Recover 2019 Winter Storm Costs Booked in the Catastrophic Event Memorandum Account*, at 6.

<sup>14</sup> See, e.g., Decision (D.) 00-02-046, 2000 Cal. PUC LEXIS 239, \*55 (February 17, 2000) ("The inescapable fact is that the ultimate burden of proof of reasonableness... never shifts from the utility which is seeking to pass its costs of operations onto ratepayers on the basis of the reasonableness of those costs"); *In re Energy Cost Adjustment Clauses* (1980) 4 CPUC 2d 693, 701, 1980 Cal. PUC LEXIS 1023, \*18.

<sup>15</sup> SDG&E Opening Brief, at 36 citing D.21-08-036 at 10.

forward shifts to Cal Advocates.<sup>16</sup> SDG&E's reliance on D.21-08-036 is self-defeating. D.21-08-036 only requires the opposing party to produce evidence to support its position to raise a reasonable doubt. This is exactly that Cal Advocates has done here. Specifically, after examining SDG&E's testimony and responses to data requests, Cal Advocates' analysis has raised significant doubt about the reasonableness of SDG&E's request.<sup>17</sup> By failing to address those doubts, SDG&E has not met its burden to show that the subject costs are incremental. Here, based on its analysis and Commission precedent, Cal Advocates is recommending a finding that SDG&E has *failed* to carry the ultimate burden and prove its case as to the incrementality of the subject costs.

### III. CONCLUSION

For the foregoing reasons, the Commission should find that \$2.071 million from SDG&E's requested capital cost amount are non-incremental because SDG&E has already recovered these costs as part of SDG&E's General Rate Case's (GRC) previously authorized funding levels. Accordingly, the Commission should reject SDG&E's request for recovery of these costs.

Respectfully submitted,

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<sup>16</sup> SDG&E Opening Brief, at 36-37.

<sup>17</sup> Cal Advocates' Report, at 17-18.