Decision 14-01-002 January 16, 2014

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

| Application of San Diego Gas & Electric Company (U902E) For Authority To Update Marginal Costs, Cost Allocation, and Electric Rate Design. | Application 11-10-002<br>(Filed October 3, 2011) |
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# DECISION ADDRESSING THE APPLICATION AND THE MOTIONS TO ADOPT PARTIAL SETTLEMENTS

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**DECISION ADDRESSING THE APPLICATION AND THE MOTIONS TO ADOPT PARTIAL SETTLEMENTS**

## 1. Summary

This decision addresses the application of San Diego Gas and Electric Company (SDG&E) to establish marginal costs, allocate revenues, and design rates for service provided to its customers.

- The October 5, 2012 Revenue Allocation and Rate Design Settlement is approved.
- The October 19, 2012 Medium and Large Commercial and Industrial Distribution Demand Charge Settlement is rejected.
- SDG&E's proposal for a BSF is denied without prejudice.
- SDG&E's proposal to consolidate Tier 3 and Tier 4 of its residential rates is denied without prejudice.
- SDG&E's proposed removal of the Californians for Renewable Energy (CARE) Tier 3 Rate Cap is denied without prejudice.
- SDG&E's existing CARE Cost Allocation is modified.
- SDG&E's Proposed Prepay Program is denied.
- SDG&E's uncontested proposals are approved.

Unless otherwise provided in this decision, the revised rates will become effective January 1, 2014 and will allow SDG&E to collect the revenue requirement determined in Phase 1 of its 2012 General Rate Case.

This proceeding is closed.

## 2. Procedural History

On October 3, 2011, San Diego Gas and Electric Company (SDG&E) filed Application (A.) 11-10-002 to establish marginal costs, allocate revenues, and design rates for service provided to its customers. This cost allocation and rate

design proceeding is commonly referred to as "Phase 2" of a utility's General Rate Case (GRC).[1]

In its application SDG&E proposed numerous revenue allocation changes, and two new rate elements: (1) a Network Use Charge (NUC) for all customers, which would recover distribution demand costs on the basis of a customer's actual distribution demand; and (2) a monthly Basic Service Fee (BSF), which would apply to all residential customers. SDG&E also proposed several other changes to its residential rate design for its Californians for Renewable Energy (CARE) and non-CARE customers. Finally, SDG&E proposed a "Prepay Program," which would allow customers the option to prepay for service, and to amend its Tariff Rule 20 to facilitate converting overhead facilities to underground for fire safety purposes.

Protests to SDG&E's application were timely filed by The Utility Reform Network (TURN), the Office of Ratepayer Advocates (ORA),[2] the Center for Accessible Technology (CforAT), CARE, The Greenlining Institute, San Diego County Public Agencies (SDCPA),[3] Utility Consumers' Action Network (UCAN), City of San Diego (City of SD), Solar Alliance, San Diego Solar Coalition (SDSC),

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[1] SDG&E's Phase 1 GRC application, primarily addressing revenue requirements, was filed as A.10-12-005 and was addressed by Decision (D.) 13-05-010.

[2] ORA was previously known as the Division of Ratepayer Advocates (DRA). On September 26, 2013, DRA was renamed ORA pursuant to Senate Bill (SB) 96 (Stats. 2013, ch. 356).

[3] Carlsbad Municipal Water District, Fallbrook Public Utility District, Helix Water District, Lemon Grove School District, Padre Dam Municipal Water District, Poway Unified School District, San Diego County Office of Education, San Diego County Water Authority, Vallecitos Water District, and Valley Center Municipal Water District. Santee School District and Lakeside Union School District were later granted party status, and joined this group.

and Vote Solar Initiative (Vote Solar). Southern California Edison Company (SCE) filed a response to the application. SDG&E filed a timely reply to the protests.

On October 27, 2011, UCAN filed a motion for a preliminary ruling determining that SDG&E's rate design application did not comply with the Public Utilities Code and directing SDG&E to resubmit its application without the NUC and BSF. UCAN also requested that the proposed Prepay Program be removed from the application. Timely replies supporting the motion were filed by Vote Solar, ORA, jointly by TURN and CforAT, SDCPA, Solar Alliance, Sierra Club, and SDSC. Replies opposing the motion were filed by SDG&E and jointly by Pacific Gas and Electric Company (PG&E) and SCE. UCAN was granted leave to respond to these replies.

On December 9, 2011, the Commission held a duly noticed Prehearing Conference (PHC) to determine parties, create the service list, identify issues, consider the schedule, and address UCAN's motion. At the PHC, the assigned Administrative Law Judges (ALJs) also granted a motion filed by County of San Diego for party status.

An Assigned Commissioner and Administrative Law Judge's Scoping Memo and Ruling (Scoping Memo) was issued on January 18, 2012. The Scoping Memo confirmed the categorization of the proceeding and need for evidentiary hearings, defined the issues, established a schedule, and included time for parties to attempt to settle disputed issues.

The Scoping Memo addressed the protests and UCAN's motion, and determined that the NUC is outside of the scope of this proceeding. SDG&E was directed to submit a revised rate design proposal and updated testimony that did

not include the NUC by February 17, 2012 for SDG&E's revised proposal. The Scoping Memo listed the following issues to be addressed in this proceeding:

- Should SDG&E's sales forecast and marginal cost proposals be adopted?
- Should SDG&E's electric revenue allocation and rate design proposals, including replacing the minimum bill charge for residential ratepayers with a BSF, be adopted?
- Should SDG&E's proposed tariff and bill changes be adopted?
- Should SDG&E's proposed allocation and rate design proposals for street lighting be adopted?
- Should SDG&E's Electric Tariff Rule 20 be amended to facilitate undergrounding distribution lines for fire safety purposes?
- Should SDG&E's proposed Prepay Program be adopted?

SDG&E filed its revised proposal on February 17, 2012, but subsequently served errata testimony on March 30, 2012 to correct calculation errors that it identified in its February testimony. ORA served its testimony on May 18, 2012 and all other intervenors served their testimony on June 12, 2012.

On July 6, 2012, SDG&E sent an e-mail motion requesting that the schedule for serving rebuttal be extended. SDG&E stated that most parties supported its request. SDG&E's request was granted by electronic ruling on July 6, 2012 and the schedule was revised as follows:

- Concurrent Rebuttal Testimony July 17, 2012.
- Mandatory Settlement Conference July 25, 2012.
- Meet and Confer September 27, 2012.
- Evidentiary Hearings October 9-19, 2012, as needed.
- Opening Briefs November 16, 2012.
- Reply Briefs December 14, 2012.

The Scoping Memo also reserved time for public participation hearings (PPHs) in locations to be determined. Three PPHs were held in Chula Vista, San Diego, and Escondido on June 26-28, 2012. Additionally, letters and electronic mail messages representing the views of SDG&E's ratepayers were received by the Commission.

Between February, 2012 and October, 2012 SDG&E and other active parties engaged in a series of settlement discussions. In light of these discussions, parties requested, and were granted, further changes to the procedural schedule.

On October 5, 2012, SDG&E, joined by ORA; San Diego Consumers Action Network (SDCAN); City of SD; California Farm Bureau Federation (CFBF); Federal Executive Agencies (FEA); California City-County Street Light Association; and Solar Energy Industries Association (SEIA), filed a motion to adopt a partial settlement agreement covering revenue allocation for all customer classes and rate design for small commercial and agricultural customers, as well as certain rate design items for Medium and Large Commercial and Industrial (M/L C&I) customers.

On October 19, 2012, SDG&E, joined by City of SD, SEIA, City of Chula Vista and SDSC, filed a motion to adopt a partial settlement agreement resolving the issues that had been raised with respect to distribution demand charges to M/L C&I customers. Both proposed settlement agreements are considered "partial" in that they are not signed by all affected parties, and they did not address all of the disputed issues in this proceeding.[4] Evidentiary hearings were

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[4] The settlements may be viewed on SDG&E's website (http://www.sdge.com/proceedings) or on the Commission's website (www.cpuc.ca.gov) by going to the Docket Card for this proceeding.

held on October 9-10 and October 22-23, 2012 to review the reasonableness of the proposed settlement agreements and to conduct cross-examination of witnesses regarding the non-settled issues. Opening Briefs were filed on November 16, 2012, and Reply Briefs were filed on December 14, 2012. At that time A.11-10-002 was deemed submitted for decision by the Commission.

On May 14, 2013, the Commission issued D.13-05-010 in A.10-12-005, which adopted SDG&E's combined gas and electric revenue requirements for Test Year 2012 and post-test years 2013-2015. On June 14, 2013 an ALJ ruling was issued amending the scope and schedule of this proceeding, and directing SDG&E to update the rate and revenue tables in the proposed partial settlement agreements and its testimony to reflect the revenue requirements adopted in D.13-05-010. SDG&E filed this updated information on June 20, 2013. SDG&E filed a supplemental response on June 28, 2013 in order to complete the set of information requested in the ALJ ruling. In the supplemental response, SDG&E states that the settling parties have stated their support for the requested update subject to SDG&E making the June 28 filing.

Although they occurred outside this proceeding, further procedural developments bear mention at the outset of this decision because they influence our determinations on SDG&E's application.

First, on June 21, 2012, the Commission issued Rulemaking (R.) 12-06-013, "Order Instituting Rulemaking on the Commission's Own Motion to Conduct a Comprehensive Examination of Investor Owned Electric Utilities' Residential Rate Structures, the Transition to Time Varying and Dynamic Rates, and Other Statutory Obligations." The Commission stated that the purpose of the Rulemaking was to examine current residential electric rate design, including the tier structure in effect for residential customers, the state of time variant and

dynamic pricing, potential pathways from tiers to time variant and dynamic pricing, and preferable residential rate design to be implemented when statutory restrictions are lifted.[5]

Second, on October 7, 2013, the Governor signed into law Assembly Bill (AB) 327 (Stats. 2013, ch. 611). Among other things, AB 327 makes significant changes to the types of residential rate structures that are permitted under state law. AB 327 also contains limits designed to protect certain classes of vulnerable customers. In response to the enactment of AB 327, on October 25, 2013, the assigned Commissioner in R.12-06-013 issued a ruling inviting PG&E, SCE and SDG&E to submit interim rate change applications no later than November 22, 2013, and opened a separate Phase 2 of the Rulemaking to review those applications, while Phase 1 continues to evaluate optimal residential rate designs. The October 25 Ruling noted that beginning January 1, 2014 residential rate structures are only required to have two tiers and CARE rates can be restructured but should have an average effective discount of 30–35%.[6] The rate change proposals to be filed in Phase 2 of R.12-06-013 will now address similar proposals that were made by SDG&E in this proceeding regarding elimination of the Tier 3 and Tier 4 residential rates and the Tier 3 rate cap for CARE customers. As such, this decision reflects our anticipation that SDG&E will file updated versions of its residential rate change proposals, in response to the guidance provided by the October 25, 2013, Assigned Commissioner Ruling (ACR) in R.12-06-013.

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[5] R.12-06-013 at 1.

[6] R.12-06-013, October 25 Ruling at 4.

## 3. SDG&E's Application

### 3.1. Introduction

SDG&E's Application presents the traditional elements of a GRC Phase 2 proceeding: electric marginal costs, marginal cost revenue responsibility, revenue allocation and rate design.

In addition to SDG&E's proposals related to the traditional revenue allocation and rate design components of the GRC Phase 2, SDG&E proposes: (1) replacing its 17 cent/day minimum bill (approximately $5.00/month) with a $3.00 monthly BSF for residential customers; (2) implementing a new Tariff Rule 20D to facilitate underground conversion of overhead distribution lines for fire safety reasons; and (3) offering a new optional program for residential customers to pre-pay for energy usage. SDG&E's testimony discusses the policy framework that guides SDG&E's proposals for revenue allocation and rate design.

### 3.2. Revenue Allocation Principles

Revenue allocation is the process whereby the proposed or authorized revenue requirement is allocated among the different rate classes using the marginal costs of those classes. The various marginal costs by customer classes are multiplied by the applicable determinant to calculate the revenue that would be collected were unit marginal costs used as rates. In this proceeding, the revenue allocation is calculated for the distribution function and for the commodity function. The marginal cost revenues by customer class are then reconciled to the authorized revenue requirement to derive the proposed customer class revenue requirements.

The distribution function and the commodity function are two of the nine components which comprise SDG&E's total electric revenue requirements. The allocations for the other eight revenue requirement components are

determined in other regulatory proceedings. The distribution function covers the costs of delivering electricity to customers such as poles, lines, substations, customer billing, and accounting. The commodity function covers the costs of the Department of Water Resources (DWR) electricity purchases that are assigned to SDG&E, and the costs of utility-retained generation.

SDG&E's application proposes revisions to the distribution and commodity functions. The allocation proposals are based on an Equal Percent of Marginal Cost (EPMC) methodology. The proposed EPMC revenue allocations reflect the use of updated marginal cost of service studies for distribution and generation/commodity, and test-year 2012 sales.

### 3.3. Rate Design Principles

SDG&E's testimony discusses cost-based rate design principles that create the need (1) to move customer specific costs such as distribution towards non-coincident demand (NCD) charges and (2) to allocate system-level costs such as capacity and transmission to on-peak demand charges. SDG&E's testimony also addresses the use of marginal costs for cost allocation, customer usage and average costs for rate design, and the potential for incorporation of more marginal price signals in future rates. SDG&E asserts that its proposals fit into a transition towards the long-term objective of designing rates to send clear and accurate price signals based on proper assignment of customer cost responsibility.

## 4. Issues before the Commission

### 4.1. Settlement Agreements

#### 4.1.1. Standard of Review

The Commission has long favored the settlement of disputes. However, pursuant to Rule 12.1(d) of the Commission's Rules of Practice and Procedure,

the Commission will not approve a settlement, whether contested or uncontested, unless it is found to be reasonable in light of the whole record, consistent with law, and in the public interest. Further, where a settlement agreement is contested, it will be subject to more scrutiny than an all-party settlement agreement. In this proceeding, one of the two proposed settlement agreements was contested.

#### 4.1.2. October 5, 2012 Revenue Allocation and Rate Design Settlement

On October 5, 2012, SDG&E and a number of parties filed a "Motion to Adopt Partial Settlement Agreement."[7] The October 5 settlement agreement[8] addresses and settles revenue allocation and rate design issues including:

1. revenue allocation;
2. treatment of Rate Schedule PA-T-1;
3. rate design for small commercial customers;
4. rate design for agricultural customers; and
5. certain rate design issues for M/L C&I customers, specifically BSF and rate design related to Schedule A6-TOU and Secondary Substation, Primary Substation, and Transmission service voltage levels.

The Revenue Allocation and Rate Design Settlement Agreement is "partial" in that it does not address residential rate design, allocation of CARE

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[7] The Settling Parties are SDG&E; ORA; SDCAN; City of SD; CFBF; FEA; California City-County Street Light Association; and SEIA. In the Motion, SDG&E states that pursuant to Rule 1.8(d), SDG&E has been authorized to file this motion on behalf of the Settling Parties. SDG&E has also been authorized by counsel to state that Wal-Mart Stores, Inc. & Sam's West, Inc., (Wal-Mart) and City of Chula Vista are not signatories to, but do not oppose, either the Settlement Agreement or this motion.

[8] This settlement agreement is referred to as the "Revenue Allocation and Rate Design Settlement Agreement" in this decision.

rate subsidies associated with CARE tiered rates, SDG&E's proposed prepayment program, distribution NCD charges for M/L C&I customers, and Schedule DG-R rate design. The proposed settlement agreement was not contested.

The Revenue Allocation and Rate Design Settlement Agreement is provided as Attachment A to the October 5 Motion, and is summarized in the Motion and in a comparison exhibit, Appendix B to the Revenue Allocation and Rate Design Settlement Agreement, which compares Settling Parties' positions on issues addressed by the partial settlement and the manner in which the Revenue Allocation and Rate Design Settlement Agreement would resolve these issues.

According to the October 5 Motion, the Settling Parties represent a broad spectrum of customer interests. Each represents customers or groups of customers who are directly affected and have an interest in the outcome of the matters in this proceeding addressed by the Settlement Agreement, as shown by the substantial prepared testimony submitted by SDG&E and the Settling Parties on the settlement subject matters, as follows:

- SDG&E submitted prepared direct testimony on all of the issues that are covered under the Revenue Allocation and Rate Design Settlement Agreement.
- Settling Parties submitted responsive prepared testimony on the settled issues as follows:
    - All Settling Parties, plus Wal-Mart, submitted testimony on marginal cost and revenue allocation;
    - City submitted prepared testimony on the application of Rate Schedule PA-T-1;
    - ORA, City, and FEA submitted prepared testimony on rate design for small commercial and M/L C&I customers.

- Prepared rebuttal testimony pertinent to the settled issues was submitted by SDG&E, CFBF, and FEA on revenue allocation, and by CFBF on Rate Schedule PA-T-1.

The following sections explain how the Revenue Allocation and Rate Design Settlement Agreement resolves certain issues raised in this proceeding; the proposed settlement also provides the means of establishing rates when this Agreement is first implemented and for the term of the proposed settlement.

#### 4.1.2.1. Marginal Cost and Revenue Allocation

##### 4.1.2.1.1. Marginal Cost

A number of issues were raised in testimony regarding the calculation and methodologies used to derive marginal customer costs, marginal generation capacity costs, marginal energy costs, and marginal distribution demand costs. The Settling Parties were able to agree on the allocation of SDG&E's revenue requirements among the customer classes, thereby making it unnecessary to resolve the parties' differences regarding marginal cost methodologies and forecasts. Therefore, the Revenue Allocation and Rate Design Settlement Agreement does not reflect the approval or acceptance of any one of the parties' various marginal cost proposals.[9]

##### 4.1.2.1.2. Revenue Allocation

According to the October 5 Motion, a number of issues were raised in prepared testimony regarding the allocation of Commission-authorized distribution, commodity, and ongoing competition transition charges (CTC) revenue requirements. Parties disagreed on whether the Commission should cap

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[9] The validity of this approach was best explained, and defended, by the panel of witnesses that testified in support of the Revenue Allocation and Rate Design Settlement Agreement. See RT at 346-353.

or limit the amount of SDG&E's revenue requirement that is allocated to any customer class, and if so, the level of the cap. Parties also disagreed on whether separate caps should apply to distribution and generation revenue requirements. Other issues were raised with respect to how particular revenue requirements should be allocated among the customer classes, such as the revenue deficiency resulting from the discount provided to CARE customers through their tiered electric rates (CARE Rate Subsidy), revenues associated with demand response and other public purpose programs, and SDG&E Advanced Metering Infrastructure program costs.

The Settling Parties evaluated the allocation of SDG&E's revenues in the context of impacts on total revenue requirements on an overall revenue-neutral basis based on a number of assumptions agreed to by the Settling Parties and reflected in SDG&E's allocation model. The Settling Parties agreed to establish a method to allocate revenues to each customer class through the consideration of various elements contained in the different testimonies from the parties.[10] In this way, the settlement does not adopt the proposal of a single party, but rather represents a consolidation of the positions of all parties.

#### 4.1.2.1.3. Schedule PA-T-1

Schedule PA-T-1 ("Experimental Power - Agricultural - Optional Time-Of-Use") is an optional schedule that is currently provided on an experimental basis, for the purpose of evaluating time varying rates. It is available to agricultural and water pumping customers whose maximum monthly demand is expected to be above 500 kilowatts (kW) and who are

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[10] October 5 Motion at 6.

classified with certain North American Industry Classification Codes, which are listed on the PA-T-1 tariff sheet.

The Revenue Allocation and Rate Design Settlement Agreement provides that Schedule PA-T-1 will be moved from the M/L C&I class to the Agricultural class.[11] Implementation of SDG&E's GRC Phase 2 will reflect this change in the distribution, commodity, and CTC revenue allocations. In addition, SDG&E will in the future file an application with the Federal Energy Regulatory Commission (FERC) to propose this change in revenue allocations for FERC-jurisdictional rates. In its upcoming Public Purpose Program (PPP)-related filings for the next program period, SDG&E will propose to reflect this change in the revenue allocations for PPP rates. The settlement adopts SDG&E's proposed rate design changes for Schedule PA-T-1 updated to reflect the change in customer class designation.

The merits of this proposal are addressed in direct testimony filed by the City of SD.[12] The City asserts that evidence indicates that PA-T-1 load shapes and marginal costs are likely to be much closer to Agricultural load shapes and marginal costs than to M/L C&I load shapes and marginal costs, and that assigning Agricultural marginal costs to PA-T-1 customers would reduce their distribution revenue requirement by 62% and their commodity revenue requirement by 11%, reducing their total revenue requirement by 35%.

As part of the settlement, to examine the effect to the Agricultural class from the migration of Schedule PA-T-1, prior to its next GRC Phase 2 filing SDG&E agrees to examine the split of the newly defined Agricultural class. The

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[11] Revenue Allocation and Rate Design Settlement Agreement, Section 3.C.

[12] See Exhibit City-1 at 28-41.

examination will assess the effect on rates that result from the migration of PA-T-1 in light of the split into three groups. The results of the examination shall be provided to interested parties six months prior to SDG&E's next GRC Phase 2 filing.

#### 4.1.2.1.4. Small Commercial Rate Design

SDG&E has three rate schedules for its Small Commercial customer class, identified as non-residential customers with demand less than 20 kW: Schedule A, General Service; Schedule A-TC, Traffic Control Service; and Schedule A-TOU (Time of Use), General Service – Time Metered Optional (Closed Schedule).

##### 4.1.2.1.4.1. Schedule A

Schedule A ("General Service") is SDG&E's standard tariff for commercial customers with a demand less than 20 kW. The Revenue Allocation and Rate Design Settlement Agreement provides that Schedule A will be adopted as proposed by SDG&E, modified as agreed upon by parties to introduce a demand-differentiated BSF.[13] In addition, SDG&E will modify the applicability for Schedule A to address its current availability to large customers.[14]

##### 4.1.2.1.4.2. Schedule A-TOU

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[13] Distribution customer costs for providing service to small commercial customers are currently recovered through a monthly Basic Service Fee of $9.56 per month. According to SDG&E, the average distribution customer costs of providing service to small commercial customers are considerably higher, so SDG&E proposed to recover a higher portion of distribution customer costs for small commercial customers in the BSF and the remaining through an energy charge.

[14] Revenue Allocation and Rate Design Settlement Agreement, Section 3.D.i.

Schedule A-TOU (General Service - Small - Time Metered) is applicable to general service including lighting, appliances, heating, and power, or any combination thereof, including common use. This schedule has been closed to new customers since October 1, 2002. The Revenue Allocation and Rate Design Settlement Agreement provides that Schedule A-TOU shall be adopted as proposed by SDG&E.[15]

#### 4.1.2.1.5. Schedule A-TC

Schedule A-TC ("Traffic Control Service") is applicable to local, state or other governmental agencies for service to traffic signal systems utilized 24 hours per day, located on streets, highways or other public thoroughfares. The Revenue Allocation and Rate Design Settlement Agreement adopts Schedule A-TC as proposed by SDG&E with the following changes:[16]

a. Demand Differentiated BSF set at $7 per month for customers with maximum annual demand of 0-5 kW, and $12 per month for customers with maximum annual demand between more than 5 kW and 20 kW;

b. Commodity: annual average rate (no seasonal differentiation) set at 70%;

c. Distribution energy rate: adjusted to reflect the recovery of marginal distribution demand costs only; and

d. In its next GRC Phase 2 SDG&E will consider Schedule A-TC as a separate customer class for revenue allocation purposes.

#### 4.1.2.1.6. M/L C&I Rate Design

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[15] Revenue Allocation and Rate Design Settlement Agreement, Section 3.D.ii.

[16] Revenue Allocation and Rate Design Settlement Agreement, Section 3.E.

The Revenue Allocation and Rate Design Settlement Agreement provides for M/L C&I rate design as follows:[17]

a. BSF adopted as proposed by SDG&E in its direct and rebuttal testimony:[18] specifically, no change from the current BSF for Secondary Substation and Primary Substation voltage level customers under 500 kW and between 500 kW and 12 MW;

b. Schedule A6-TOU (General Service - Time Metered Optional): adopted as proposed by SDG&E: specifically, the rate design for the recovery of CTC and revenues associated with Miscellaneous Distribution programs will be collected in non-coincident demand charge instead of energy charges;

c. Schedule AL-TOU (General Service - Time Metered; this schedule is the SDG&E's standard tariff for commercial and industrial customers with a Monthly Maximum Demand equaling or exceeding 20 kW): service voltage levels Secondary Substation, Primary Substation, Transmission adopted as proposed by SDG&E with the following change: Rate design for the recovery of CTC and revenues associated with Miscellaneous Distribution programs will be consistent with Schedule A6-TOU.

#### 4.1.2.1.7. Streetlighting Rate Design

The Revenue Allocation and Rate Design Settlement Agreement adopt SDG&E's streetlighting proposals, as enumerated in Appendix B to the Settlement Agreement.[19]

#### 4.1.2.1.8. Agricultural Rate Design

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[17] Revenue Allocation and Rate Design Settlement Agreement, Section 3.F.

[18] Distribution customer costs for M/L C&I customers are recovered partly through a monthly BSF that varies by the voltage level and size of the customer, and partly through energy charges.

[19] Revenue Allocation and Rate Design Settlement Agreement, Section 3.G.

The Settlement Agreement, in addition to the change in class definition for Schedule PA-T-1 as discussed above, provides for Agricultural rates, specifically Schedule PA, as proposed by SDG&E with the following changes:[20]

a. 20 kW Split as proposed by SDG&E.

b. BSF:

   i. For less than 20 kW: 25% increase from current.

   ii. For greater than or equal to 20 kW: 50% increase from current.

c. Commodity Peak Demand Charge for greater than or equal to 20 kW: set at 20% recovery of capacity costs with the corresponding change to Schedule CPP-D for this customer group.

#### 4.1.2.1.9. Dynamic Pricing Rates Design

The Revenue Allocation and Rate Design Settlement Agreement provides for Dynamic Pricing as proposed by SDG&E with the following changes:[21]

a. Residential: optional PeakShift at Home and optional time of day (TOD) as presented in Section Section I.i. of the Settlement Agreement.

b. Small Commercial: optional PeakShift at Work (PSW) and optional TOD updated to have a 3-period TOU structure consistent with other customer classes as presented in Section I.ii. of the Settlement Agreement.

c. In the event the Commission makes a determination for mandatory TOD for Small Commercial customers, adopt rates as presented in Section I.iii. of the Settlement Agreement.

d. M/L C&I: as proposed by SDG&E.

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[20] Revenue Allocation and Rate Design Settlement Agreement, Section 3.H.

[21] Revenue Allocation and Rate Design Settlement Agreement, Section 3.I.

e. Agricultural: as proposed by SDG&E, updated to reflect updated revenue allocations from the move of Schedule PA-T-1 and the following further changes:

   i. For customers with demand less than 20 kW, for PSW and TOD associated with Schedule PA Update to have a 3-period TOU structure consistent with other customer classes.

   ii. For customers with demand greater than or equal to 20 kW, Schedule CPP-D associated with Schedule PA updated to reflect 20% recovery of capacity costs for the commodity peak demand charge.

   iii. In the event the Commission makes a determination for mandatory TOD for PA customers under 20 kW, it is agreed the mandatory TOD rates will track the framework for small commercial customers.

The Settling Parties agree that SDG&E's authorized distribution, generation, and CTC revenue requirements shall be allocated to customer classes as specified in the Settlement Agreement.

#### 4.1.2.2. Request for Adoption of the Settlement Agreement

The Settling Parties state in their October 5 Motion that the Revenue Allocation and Rate Design Settlement Agreement complies with Commission guidelines and relevant precedent for settlements. The Settling Parties also state that the Revenue Allocation and Rate Design Settlement Agreement meets the criteria for a settlement pursuant to Rule l2.1(d), as discussed below.

First, the Settling Parties assert that the Revenue Allocation and Rate Design Settlement Agreement is reasonable in light of the record because the Settlement Agreement represents a reasonable compromise of the Settling Parties' positions, and that the prepared testimony of the Settling Parties contains sufficient information for the Commission to judge the reasonableness of the Settlement Agreement. In addition, any parties opposing the Revenue Allocation

and Rate Design Settlement Agreement had an opportunity during evidentiary hearings to cross-examine witnesses sponsoring the Settlement Agreement.

Second, the Settling Parties assert that the Revenue Allocation and Rate Design Settlement Agreement is consistent with law, based on their belief that the terms of the Revenue Allocation and Rate Design Settlement Agreement comply with all applicable statutes and prior Commission decisions, and reasonable interpretations thereof. The Settling Parties state that in agreeing to the terms of the Settlement Agreement, they have explicitly considered the relevant statutes and Commission decisions and believe that the Commission can approve the Revenue Allocation and Rate Design Settlement Agreement without violating applicable statutes or prior Commission decisions.

Third, the Settling Parties assert that the Revenue Allocation and Rate Design Settlement Agreement is in the public interest because the Settlement Agreement is a broad-based compromise supported by the testimony that will further administrative efficiency, and the Settlement Agreement is a balance of interests based on agreed compromise and should be construed as a whole.

#### 4.1.2.3. Discussion

We find that the Revenue Allocation and Rate Design Settlement Agreement should be approved. Based on the evidentiary record of this proceeding, including prepared testimonies and cross-examination of witnesses at hearings, and the uncontested nature of the proposed settlement, we find that the proposed settlement agreement fairly resolves identified issues and is in the public interest.

We also find the Revenue Allocation and Rate Design Settlement Agreement is consistent with law. The process for conducting settlement discussions was in accordance with Article 12 of the Commission's Rules of

Practice and Procedure. Further, the settlement agreement is not inconsistent in any way with the Public Utilities Code, Commission decisions, or the law in general.

Finally, based on our review of the Comparison Exhibit provided in Appendix B of the proposed agreement, we find that the Revenue Allocation and Rate Design Settlement Agreement is a reasonable compromise of Settling Parties' respective litigation positions.[22] The settlement is also in the public interest because it avoids the cost of further litigation, and conserves scarce resources of parties and the Commission.

As noted above, during the pendency of this proceeding, the Commission issued D.12-12-004 in A.10-07-009, SDG&E's application for approval of its proposals for Dynamic Pricing. That decision adopted a limited set of time-varying electric rates to be offered to SDG&E's residential and small commercial customers. The decision discussed implementation of the new dynamic pricing tariffs, noting that while it adopted a structure and many terms and conditions for SDG&E's future dynamic pricing tariffs, it did not adopt the specific levels of dynamic rates for residential and small commercial customers under those tariffs. Instead, the decision deferred the development of specific

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[22] We note that without this Comparison Exhibit, neither the October 5, 2012 Motion, the Settlement Agreement itself, nor parties initial and rebuttal testimony, in and of themselves, **demonstrate** that the Revenue Allocation and Rate Design Settlement Agreement is "reasonable in light of the whole record, consistent with law, and in the public interest." Mere assertions that this is the case are not convincing. We expect future GRC Phase 2 settlement proposals to include such Comparison Exhibits as a matter of course, and we encourage parties to take the opportunity afforded by such a document to thoroughly make their case for adoption of any particular settlement, whether contested or uncontested.

rate levels to the instant Phase 2 GRC proceeding, noting "the dynamic rates adopted in concept in this decision will not be finalized until a decision is issued in that proceeding." D.12-12-004 ordered that "unless otherwise required in the decision in A.11-10-002 setting rate levels for the tariffs adopted here, SDG&E shall file a Tier 2 advice letter implementing the dynamic rate schedules adopted in principle here and finalized in that proceeding within 15 days of the issuance of a decision in that proceeding." [23] We note that in our decision today, we provide that SDG&E shall file its Advice Letter to implement the revenue allocations and rate designs adopted in this order no later than 30 days from today's decision, rather than the 15 days specified in D.12-12-004.

#### 4.1.3. October 19, 2012 Medium and Large Commercial and Industrial Customer Distribution Demand Charge Settlement

On October 19, 2012, SDG&E and a number of parties filed a "Motion to Adopt Partial Settlement Agreement on Distribution Demand Charges for M/L C&I Customers."[24] The October 19 settlement agreement[25] proposes a resolution of the issues that have been raised in this proceeding regarding

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[23] D.12-12-004 at 56-57.

[24] The Settling Parties are SDG&E; City of SD; SEIA; City of Chula Vista; and SDSC; (referred to hereinafter collectively as "Settling Parties" or individually as "Party"). Counsel for San Diego County Public Agencies (SDCPA) authorized counsel for SDG&E to make the following statement in the Motion: "…SDCPA actively participated in discussions leading to this settlement, but, because of the required approval process, their clients cannot authorize execution of the Settlement Agreement in time for the scheduled hearings. SDCPA may state whether they support the settlement in comments to be submitted later in this proceeding." October 19 Motion, footnote 1.

[25] This settlement agreement is referred to as the "Distribution Demand Charge Settlement Agreement" in this decision.

distribution demand charges to M/L C&I customers. The settlement agreement is "partial" in that it was not joined by certain affected parties.

#### 4.1.3.1. Summary of Positions and Settlement

As explained in the October 19 Motion, the Distribution Demand Charge Settlement Agreement purports to resolve issues that have been raised in this proceeding with respect to demand charges for M/L C&I customers.

The Settling Parties assert that they represent a broad spectrum of customer interests, in that each represents customers or groups of customers who are directly affected and have an interest in the outcome of the issues addressed by the Distribution Demand Charge Settlement Agreement. Settling Parties note that SDG&E submitted prepared direct testimony on all of the issues that are covered under the Distribution Demand Charge Settlement Agreement. Additionally, rebuttal testimony pertinent to the settled issues was submitted by SDG&E, SDSC, City of Chula Vista, and SDCPA.[26]

The following sections describe how the Distribution Demand Charge Settlement Agreement proposes to resolve certain issues raised in this proceeding. A comparison exhibit comparing the Settling Parties' positions is included as Attachment B to the October 19 motion. Finally, the Distribution Demand Charge Settlement Agreement provides the means of establishing rates when it is first implemented and for the term of the agreement.

##### 4.1.3.1.1. Distribution Demand for M/L C&I

[26] Several parties filed testimony opposing SDG&E's proposed change to its non-coincident distribution demand charges for its M/L C&I Customers.

For M/L C&I rate schedules,[27] the current Peak/Non-coincident rate design structure for the recovery of distribution demand costs would remain in effect until the implementation of a shift of transmission rate design towards more recovery though peak demand charges than is currently the case.

Coincident with the implementation of the transmission rate design change to greater recovery through peak demand charges, SDG&E would implement the change to Distribution Demand recovery to 100% recovery through a NCD Charge.

i. Implementation of the Transmission rate design change would only occur with a final decision from the FERC.

ii. SDG&E's proposal for a Transmission rate design change would be for 100% recovery through peak demand. The shift to 100% NCD charge for Distribution Demand recovery is dependent on movement of Transmission recovery towards peak demand but does not require approval of SDG&E's proposal to move fully to 100% peak demand recovery.

iii. Parties to the agreement retain their rights to intervene in future SDG&E transmission rate proceedings before the FERC and to take positions on the appropriate recovery of transmission costs.

#### 4.1.3.1.2. Schedule DG-R

For Schedule DG-R,[28] the distribution NCD charge will be set at 50% of the otherwise applicable rate (Schedule AL-TOU) distribution NCD charge with residual distribution recovered through a flat energy rate. The 50% distribution NCD reference for the DG-R distribution demand rate design structure will

[27] October 19, 2012 Motion for Adoption of Partial Settlement Agreement, at 6.

[28] Distribution Demand Charge Settlement Agreement, Section 3.b.

remain in effect until SDG&E's next GRC Phase 2 proceeding where, presumably, this issue would be raised again by SDG&E.

#### 4.1.3.1.3. Existing DG-R customers

Existing customers receiving service on Schedule DG-R on or before October 19, 2012, and new solar customers with confirmed California Solar Initiative (CSI) reservations as of January 1, 2013 that receive service on Schedule DG-R upon project completion with an in-service date no later than December 31, 2013 will be eligible for a one-time bill credit as defined below. Public School customers with new solar systems and conditional CSI reservations as of January 1, 2013 and confirmed reservations as of March 1, 2013 that receive service on Schedule DG-R upon project completion with an in-service date no later than December 31, 2013 will also be eligible for the one-time bill credit as defined below.

i. Provides a one-time bill credit defined as $0.165 per $\text{Watt}_{ac}$ (Watt as defined in the California Solar Initiative).

ii. The incentive will offset all components of a participant's bill. Any unused portion of the credit will roll over to the next bill until the credit is exhausted.

iii. Existing DG-R customers who elect to receive the incentive will receive a prorated portion of the incentive based on the systems activation date and an assumed system life of 25 years.

iv. Solar customers receiving service on a standard M/L C&I rate schedule at the time that the agreement becomes binding in accordance with its terms and who switch to Schedule DG-R are not eligible for this incentive.

#### 4.1.3.1.4. Treatment of incentive payments

Consistent with the current treatment of distribution and commodity cost shifts associated with Schedule DG-R adopted in D.08-02-034,[29] the existing incentives will be retained within the C&I class.[30]

#### 4.1.3.1.5. No acceptance of Parties' cost positions

The Distribution Demand Charge Settlement Agreement does not reflect approval or acceptance of any of the Settling Parties' positions related to the cost basis for the rate design of distribution demand recovery.[31]

#### 4.1.3.2. Request for Adoption of the Settlement Agreement

The Settling Parties assert in their October 19 Motion that the Distribution Demand Charge Settlement Agreement meets the criteria for a settlement pursuant to Rule l2.1(d), as discussed below.

First, the Settling Parties assert that the Distribution Demand Charge Settlement Agreement is reasonable in light of the record and that the prepared testimony, the agreement itself, and the October 19 Motion contain the information necessary for the Commission to find the Distribution Demand Charge Settlement Agreement reasonable in light of the record. The Settling Parties state that prior to the settlement, parties conducted substantial discovery, and served testimony on the issues related to marginal costs and revenue allocation, that the Distribution Demand Charge Settlement Agreement

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[29] This decision was issued in A.07-01-047, SDG&E's 2007 GRC Phase 2 Application.

[30] Distribution Demand Charge Settlement Agreement, Section 3.d.

[31] Distribution Demand Charge Settlement Agreement, Section 3.e.

represents a reasonable compromise of the Settling Parties' positions, and that the prepared testimony of the Settling Parties contains sufficient information for the Commission to judge the reasonableness of the agreement. Finally, the Settling Parties note that any parties opposing the Distribution Demand Charge Settlement Agreement would have an opportunity to cross-examine witnesses sponsoring the Settlement Agreement in evidentiary hearings.

Second, the Settling Parties assert that the Distribution Demand Charge Settlement Agreement is consistent with law: "the Settling Parties believe that the terms of the Settlement Agreement comply with all applicable statutes and prior Commission decisions, and reasonable interpretations thereof. In agreeing to the terms of the [Distribution Demand Charge] Settlement Agreement, the Settling Parties have explicitly considered the relevant statutes and Commission decisions and believe that the Commission can approve the Settlement Agreement without violating applicable statutes or prior Commission decisions."[32]

Third, the Settling Parties assert that the Distribution Demand Charge Settlement Agreement is in the public interest and in the interest of SDG&E's customers, because "resolution of the issues and their outcome was achieved through participation and consideration of various rate design options by representatives of all customer groups on SDG&E's system, resulting in a balanced settlement for all ratepayers."[33] Furthermore, the Settling Parties assert that the Settlement agreement "fairly resolves issues and provides more certainty to customers regarding their present and future costs, which is in the public

[32] October 19, 2012 Motion for Adoption of Partial Settlement Agreement at 9-10.

[33] *Ibid.* at 10.

interest."[34] According to the Settling Parties, the prepared testimony submitted in this proceeding contains sufficient information for the Commission to judge the reasonableness of the Distribution Demand Charge Settlement Agreement and for it to discharge any future regulatory obligations with respect to this matter.

#### 4.1.3.3. Opposition to the October 19 Settlement

The Distribution Demand Charge Settlement Agreement was filed on October 19, just four days before evidentiary hearings began. Consequently, opposition to the Distribution Demand Charge Settlement Agreement emerged most clearly in Opening Briefs filed November 16, 2012, with further illuminating discussion provided in Reply Briefs on December 14, 2012.

The settlement was opposed by SDCAN and SDCPA.

##### 4.1.3.3.1. SDCAN

SDCAN states that "while the settlement appears to have been negotiated in good faith by the parties, SDCAN submits that it may not serve the public interest and thus recommends rejection and/or modification" of the settlement.[35] First, according to SDCAN, the condition in the settlement that allows for 100% NCD charge for AL-TOU customers if FERC approves a small portion of the SDG&E FERC application transfers all risk of the FERC application outcome onto solar customers (i.e., if FERC modifies the transfer in any fashion then solar customers may see their rates go up substantially with no cost offset). SDCAN suggests a prorated scheme, whereby the distribution demand charge would be

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[34] *Id.*

[35] SDCAN Opening Brief at 3-4.

changed to mirror the extent to which FERC adopts the SDG&E application, in order to eliminate the uncertainty that was not addressed in the settlement.[36]

Second, SDCAN states that the modification to the DG-R rate has been shown to protect some, but not all, current customers.[37] SDCAN contends that SDG&E provided no data to show the impacts upon prospective customers. Moreover, SDCAN argues that there is a dearth of data upon which the DG-R rate has been designed and the proposed compromise creates regulatory uncertainty that may undermine current state policy. For these reasons, SDCAN recommends that the Commission reject the changes to Schedule DG-R and preserve the rate currently in effect for those customers until SDG&E's next GRC Phase 2 filing. SDCAN believes that this would give the Commission an opportunity to develop and evaluate the data relating to net metering and solar generation costs.[38]

#### 4.1.3.3.2. SDCPA

As explained in its opening brief, the SDCPA are a coalition of special districts created under the laws of the State of California to provide services within their respective jurisdictional boundaries. As water districts and school districts, they provide important public services. Over the past few years, the SDCPA has invested in solar energy, supporting the State's declared clean energy goals and supplementing their general funds with the cost savings generated by solar.

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[36] *Ibid*. at 6.

[37] *Ibid*. at 4 and 6-8.

[38] *Ibid*. at 8.

SDCPA states that in making their solar investments, it relied on the economics of SDG&E's Distributed Generation Renewable (DG-R) Tariff. SDCPA state that SDG&E's proposed new rate design "decimates" the economic assumptions made by San Diego Public Agencies in installing solar generation, and therefore asks the Commission leave the DG-R Tariff undisturbed because it is fundamentally unfair to change the DG-R Tariff for existing customers.

SDCPA explains in testimony that under its current rate design, SDG&E apportions distribution demand costs among NCD and peak demand. Non-coincident peak demand is the maximum demand of a customer, irrespective of when the demand occurs. Coincident peak demand is the energy demand during periods of system peak demand. According to SDCPA, it is adversely impacted by SDG&E's proposed demand charge revisions because the energy production derived from its solar facilities coincides with peak demand and, as such, SDCPA is reducing its power purchases during SDG&E's peak system demand: "a non-coincident demand charge will result in spurious results."[39]

#### 4.1.3.4. Discussion

Based on the record before us in this proceeding, we conclude that the Distribution Demand Charge Settlement Agreement should not be adopted. As stated above, pursuant to Rule 12.1(d) of the Commission's Rules of Practice and

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[39] Exhibit SDCPA-1 at 3-4 and 6: "A non-coincident demand charge will result in spurious results. Take the case in which a water agency performs some function, such as backwashing their treatment facility filters or pumping water into storage in the middle of the night that results in the maximum demand at that time. Under SDG&E's proposal, DG-R customers will be penalized for their demand when the rest of the SDG&E customers are experiencing their minimum demand and the circuits are unloaded."

Procedure, the Commission will not approve a settlement, whether contested or uncontested, unless it is found to be reasonable in light of the whole record, consistent with law, and in the public interest. Parties opposing this settlement raise serious doubts as to whether it is reasonable in light of the whole record or in the public interest.

First, regarding the record, the Settling Parties assert in their October 19 motion that the Distribution Demand Charge Settlement Agreement is reasonable in light of the record, stating that "the prepared testimony, the Settlement Agreement itself, and this motion contain the information necessary for the Commission to find the Settlement Agreement reasonable in light of the record." While such an assertion may support adoption of an uncontested settlement, such as the Revenue Allocation and Rate Design Settlement Agreement, it is illogical with regards to a contested settlement, when active parties disagree that the settlement merits approval. Settling Parties' rote recitation of sentences in support of a settlement agreement alone fails to explain why the settlement should be considered reasonable despite the fact that not all affected parties joined in the settlement.

Upon review of SDG&E's testimony itself, we find that SDG&E has not established precisely how the existing DG-R rate is flawed. SDG&E asserts that this is the case, but has not convincingly supported these assertions in testimony. The parties other than SDG&E who support the Distribution Demand Charge Settlement Agreement generally couch their support. For example, although SDSC was a party to the agreement, it has "reservations about the settlement's

rate structure for DG-R customers."[40] While we do not require the signatories of a settlement to support the settlement enthusiastically, the fact that signatories may have reservations about a settlement, combined with strong opposition by non-signatories, lead us to conclude in this instance that the settlement is not reasonable.

Second, regarding whether the settlement is in the public interest, the Settling Parties assert in their October 19 motion that this is the case, but offer nothing further to support their general assertions. For example, there is no citation to the record in this proceeding to support assertions that the Distribution Demand Charge Settlement Agreement is "a broad-based compromise supported by the testimony that will further administrative efficiency," or "a reasonable compromise of the Settling Parties' respective positions," or "in the public interest and in the interest of SDG&E's customers," or that it "fairly resolves issues and provides more certainty to customers regarding their present and future costs, which is in the public interest."[41]

We also believe it is bad public policy to approve a settlement when the customers who are directly affected oppose that outcome. Our concern is heightened when SDG&E waves aside the concerns raised by SDCPA by stating "it is not reasonable to assume that rate design will not change. And therefore, economic decisions that rely on no change to rate design are not reasonable or realistic."[42] While this may be SDG&E's perspective, we cannot ignore the concerns raised by other affected parties. The DG-R rate was established only

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[40] SDSC Opening Brief at 6.

[41] October 19, 2012 Motion for Adoption of Partial Settlement Agreement at 10.

[42] SDG&E Reply Brief at 3.

three years ago and was developed, in part, to advance the State's solar policies. Thus, in this instance, any proposed changes should take into consideration how the adopted rates would affect our energy policy. Accordingly, we do not find it would be in the public interest to disturb the original DG-R settlement on the basis of SDG&E's dismissal of the concerns of SDCPA, especially in the absence of any evidence demonstrating that the existing DG-R rate is flawed. SDG&E's existing DG-R rate should not be changed, and SDG&E's contested proposal to change to its non-coincident distribution demand charges for its M/L C&I customers should not be approved.

### 4.2. Uncontested Issues

#### 4.2.1. SDG&E's Proposed Amendment to Tariff Rule 20D to Allow Underground Conversions for Fire Safety

SDG&E states that its proposed new tariff Section D (Rule 20D) would facilitate the conversion of overhead distribution lines to underground (conversions) specifically intended to mitigate the risks of wildfires and would apply to the more fire-prone areas of SDG&E's service territory.[43]

In testimony, SDG&E explains that it uses a portfolio of engineering options to protect the overhead electric distribution system in high fire threat areas and reduce the possibility that its overhead lines could be involved in an ignition. Such "system hardening" measures include insulated tree wire, steel poles, and increased conductor spacing. SDG&E states that another option that can be very effective in reducing fire risk is to underground existing overhead electric distribution facilities. Therefore, SDG&E seeks Commission approval of

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[43] SDG&E Opening Brief at 9.

its proposed Section D of Rule 20 to help reduce wildfire risk in those cases where undergrounding is preferable to other system hardening measures.[44]

SDG&E states that its proposal builds upon the substantial Commission and SDG&E experience with conversions in cooperation with local governments under its existing Tariff Rule 20A, which governs conversions funded by the utility at ratepayer expense and selected in cooperation with local governments. The new Rule 20D would follow a similar process in that it is modeled substantially after the current Rule 20A framework for public dialog between municipalities planning and prioritizing projects, the local community, and the utility. Because local government demand for conversions exceeds available utility capital, SDG&E's substantial experience under Rule 20A shows that such public processes allow communities to prioritize and coordinate these projects with other civic activities.[45]

In sum, SDG&E states that as an alternative to SDG&E unilaterally developing such projects through its normal capital construction process, undertaking conversions to reduce fire risk under this proposed rule can achieve several benefits not available in its standard capital project planning process:[46]

1. Improved dialog and input from the public, municipalities, and local fire agencies in prioritizing projects;
2. Annual reporting on project status and costs;
3. Commission-authorized equitable apportionment of projects among impacted municipalities;
4. Improved coordination with municipal infrastructure projects;

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[44] *Ibid.* at 10-11.

[45] Exhibit SDG&E-8 at RG-4.

[46] SDG&E Opening Brief at 11-12.

5. Higher priority for project funding due to public schedule visibility and community participation;
6. Understandable criteria for conversions for fire safety that do not require re-litigation in each GRC; and
7. The ability to underground customer services in appropriate circumstances.

No party objected to SDG&E's proposal, though CFBF addressed the proposal in its testimony. SDG&E addressed CFBF's issues in rebuttal testimony and in the October 5 Revenue Allocation and Rate Design Settlement. First, SDG&E agrees to consider CFBF's request to use maps developed in Phase 3 of R.08-11-005 when they are finalized (i.e., maps appropriate to use for fire prevention measures). Second, for all undergrounding projects on private property, SDG&E agrees to have early and direct contact and cooperation with the landowner, consistent with CFBF's testimony. Third, SDG&E also agrees with CFBF that cultivated, actively managed orchards pose less of a fire hazard than other areas in the backcountry of SDG&E's service territory, as stated in D.09-08-029, Finding of Fact 19. SDG&E agrees with CFBF that this finding of fact with respect to vegetation management also should be accounted for when assessing undergrounding parameters for SDG&E's proposed Rule 20. As a result of SDG&E's agreement with CFBF's requests, SDG&E's proposal is now uncontested. We have reviewed SDG&E's proposal and the clarifications proposed by CFBF. We find SDG&E's proposed Rule 20D is reasonable and should be approved.

#### 4.2.2. Remaining Uncontested Issues

SDG&E's supporting testimony to its Application contained many other proposals that were not contested at any stage of this proceeding. SDG&E provides a partial list of these proposals in its Opening Brief:

- Residential Distribution Energy Rates – A proposal to move SDG&E's baseline/non-baseline differential into the TRAC component.
- Capacity Reservation Charge (CRC) no longer seasonally differentiated and capacity recovered through event day adder.
- Presentation of Total Rates on residential Utility Distribution Company rate schedules.
- Separate TRAC and PPP charges on residential customer bills.
- A6-TOU Applicability Language change to clarify how A6-TOU is implemented today.
- DR-TOU Applicability Language change to clarify how DR-TOU is implemented today.
- Master Meter Sub-metering Credit – Sub-metering Credit Cap, Minimum Bill, and Credit Level.
- Medical Baseline – identifying separate medical baseline schedules.
- Schedule PA – removing freeze on winter commodity rate.
- Setting the Summer/Winter total rate differential at 75% of commodity rate differential for residential tiered rate schedules.
- Critical peak pricing (CPP)-D Change: changing from a CPP Event Day rate to a CPP Event Day Adder applied to the otherwise applicable energy rate.
- CPP-D Change: all customers who default to CPP-D would no longer opt-out to a flat energy rate (e.g., Schedule AD) but would opt-out to a TOU energy rate with a peak demand charge.
- CPP-D Change: capacity costs recovered through the Event Day Adder and Capacity Reservation Charge (CRC) will be consistent with the capacity costs recovered through the opt-out seasonal demand charge.
- CPP-D Change: CRC will no longer be differentiated seasonally.
- CPP-D Change: changing annual CPP-D under/over-collection methodology to the difference in annual revenues collected

under CPP-D compared to the customer's otherwise applicable rate.

- Streetlighting Rate Design (contained in the October 5 Settlement).
- Schedule A-TOU Rate Design (BSF) (contained in the October 5 Settlement).
- CTC Revenue Allocation (contained in the October 5 Settlement).

These proposals, as well as any other uncontested proposals in SDG&E's Application and supporting testimony, are reasonable and should be approved.

### 4.3. Contested Issues

#### 4.3.1. Residential Rate Design

##### 4.3.1.1. BSF

SDG&E proposes adopting a $3 per month "BSF" to recover a portion of SDG&E's fixed distribution costs that do not vary with a customer's energy usage or output. This BSF would replace SDG&E's currently applicable minimum rate of $0.17/day (or approximately $5.10/month). SDG&E asserts that the BSF would provide customers with more accurate price signals while avoiding significant bill impacts: "[T]his separate charge will enhance customer awareness by keeping them informed of their allocated responsibility for SDG&E's fixed costs--separate and apart from an individual customer's monthly electricity usage--and by recovering at least a portion of a customer's fixed cost responsibility in the manner those costs are incurred."[47]

SDG&E's proposal was opposed by ORA, SDCAN, TURN, and, jointly, Greenlining and CforAT (CforAT/Greenlining). The legal arguments raised by these parties in opposition to adoption of a BSF concern interpretation of Public

[47] SDG&E Opening Brief at 17.

Utilities Code[48] Section 739.9 and Section 739.1 of the Public Utilities Code.

TURN provides a succinct summary of the arguments against a BSF:[49]

> There are two relevant sections of SB 695 that are violated by the BSF [Basic Service Fee]. Under § 739.9(a), the Commission is authorized to increase residential rates charged "for electricity usage up to 130 percent of the baseline quantities" by 3 to 5 percent per year based upon changes in the Consumer Price Index. Under § 739.1(b)(2), rate increases for CARE customers using up to 130% of the baseline quantity are limited to "the annual percentage increase in benefits under the CalWORKS program." Until the Legislature authorizes any increase in benefits paid under CalWORKS (which has not happened since the enactment of SB 695), this section prohibits any increases to tier 1 and 2 CARE rates. The Commission recently confirmed that these two limitations apply to total rates (including fixed and variable rates) and cannot be circumvented through the application of new or increased customer charges.
>
> The BSF is impermissible because it would effectively increase the bills of some non-CARE and CARE residential customers using less than 130 percent of the baseline quantity.

[48] Unless otherwise stated, all statutory references are to the Public Utilities Code.

[49] TURN Opening Brief at 2-3, footnote omitted.

**Discussion**

As we noted above, AB 327 makes significant changes to the types of residential rate structures that are permitted under state law effective January 1, 2014.[50] With respect to the issue of fixed charges, AB 327 repealed Section 739.9, and added a new Section 739.9, including Section 739.9(e), which states:

> (e) The commission may adopt new, or expand existing, fixed charges for the purpose of collecting a reasonable portion of the fixed costs of providing electric service to residential customers. The commission shall ensure that any approved charges do all of the following:
>
> (1) Reasonably reflect an appropriate portion of the different costs of serving small and large customers.
>
> (2) Not unreasonably impair incentives for conservation and energy efficiency.
>
> (3) Not overburden low-income customers.

Similarly, AB 327 amended Section 739.1 to delete the provision regarding linkage to CalWORKS, which was relied upon by the parties opposing SDG&E's proposed BSF.

In light of the pending amendments to Sections 739.1 and 739.9, it is unknown whether the legal challenges regarding SDG&E's proposed BSF are still applicable. Since potential residential rate design structures are currently under consideration in R.12-06-013, we believe it would be more appropriate to consider SDG&E's BSF as part of that rulemaking. This would also allow us to evaluate whether this type of fee should be adopted for all electric utilities in a

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[50] AB 327 was not an urgency statute. Therefore, all statutory changes are effective January 1, 2014.

more comprehensive manner, rather than on a utility-by-utility basis. Accordingly, we will deny SDG&E's proposal without prejudice.

#### 4.3.1.2. Tier 3 and Tier 4 Consolidation Proposal

Currently, SDG&E's standard residential rates have a 4-tiered rate structure with a 2-cent differential between Tiers 3 and 4. SDG&E proposes consolidating its Tier 3 and Tier 4 rates, asserting that this will "simplify rates in providing customers with price signals related to time of use, which is a step toward greater accuracy in price signals."[51]

SDG&E's proposal is opposed by ORA, SDCAN and CforAT/Greenlining.

ORA recommends that the Commission maintain 4 tiers of residential rates for SDG&E while the Commission considers other changes to residential rate design in R.12-06-013. ORA also notes that in D.11-05-047, addressing PG&E's GRC Phase 2 rate design proposals, the Commission rejected a similar proposal by PG&E to consolidate tiers 3 and 4 of its residential rates.[52]

SDCAN agrees with ORA regarding deferral of this issue to R.12-06-013, and also defends SDG&E's current tiered structure, noting that its testimony states that multi-tiered pricing at the higher usage levels increases conservation incentives for those customers with the opportunity for reducing the greatest amount of load.[53]

CforAT/Greenlining state that SDG&E's proposal is not well supported in its testimony. Regarding SDG&E's testimony that the movement to 3 Tiers will provide customers with price signals related to time-of-use, CforAT recommend

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[51] SDG&E Opening Brief at 21.

[52] ORA Opening Brief at 11-12.

[53] SDCAN Opening Brief at 18.

that SDG&E should not prematurely change its rate structure to prepare for time-of-use price signals that are not even developed.[54] CforAT/Greenlining also note that bill impacts will disproportionately affect customers who use energy moderately.[55]

SDG&E responds that the intervenor arguments ignore the fact that, currently, SDG&E's Tier 3/Tier 4 differential is only two cents. SDG&E also states that "Intervenors' claims that SDG&E's tier consolidation should be relegated to the Commission's Order Implementing Rulemaking (OIR) should be dismissed out of hand. SDG&E's discrete rate design proposal, under the specific facts of this case, has been fully litigated amongst all interested parties and is ripe to be decided here."[56]

**Discussion**

As we noted above, AB 327 makes significant changes to the types of residential rate structures that are permitted under state law. With respect to the issue of tier consolidation, the October 25, 2013 ACR in R.12-06-013 appears to anticipate that the interim rate change applications provided for in that will include proposals to change tiered rate design.[57] For this reason, we conclude that SDG&E's tier consolidation proposal in the instant application should be denied without prejudice so that it may be considered in Phase 2 of R.12-06-013. We disagree with SDG&E that we are somehow "relegating" its proposal to our Rulemaking if we do not take it up now. Rather, we prefer to consider any tier consolidation proposal as part of whatever integrated proposals SDG&E may

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[54] CforAT/Greenlining Reply Brief at 6.

[55] CforAT/Greenlining Opening Brief at 11.

[56] SDG&E Reply Brief at 18.

decide to put forward in the Rulemaking, and to give all interested parties the opportunity to affect the outcome in that proceeding based on an up-to-date record in the context of the new legislative guidance that has emerged since SDG&E made this proposal two years ago.

#### 4.3.1.3. Removal of CARE Tier 3 Rate Cap

In D.09-09-036, the Commission froze the Tier 3 rates for SDG&E's residential CARE customers by adopting the settlement in SDG&E's 2009 Rate Design Window (A.08-11-014). SDG&E now proposes to remove the cap on residential CARE Tier 3 rates on a going forward basis. SDG&E states that this will "eliminate a false price signal and inequitable rate differentials resulting from legacy settlements." SDG&E states that its proposal would lessen the differential between CARE Tier 3 and non-CARE Tier 3, to approximate the current rate differentials for Tier 3 of five cents on average. CARE customers would continue to receive rate benefits in excess of legislated discounts and exemptions. CARE customers would continue to receive their 20% bill discount and exemption from DWR Bond Charge, CSI costs, the CARE surcharge, and statutory Tier 1/Tier 2 differences from non-CARE Tier 1/Tier 2 rates.

SDG&E's proposal is opposed by ORA and CforAT/Greenlining.

ORA recommends that a cap on CARE Tier 3 rates of a maximum of 18 cents per kilowatt-hour (kWh) be adopted in this proceeding, and that this cap

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[57] In the ruling, the Assigned Commissioner proposes, among others, the following guidelines for the Interim Rate Change Applications: "(1) To prevent further disparity in lower and upper tiers, any rate increase resulting from increased revenue requirements should be applied first to the lower tiers; (2) To avoid rate shock, and in compliance with statute, Tier 1 and Tier 2 rates should not be increased by an excessive amount; (3) To prevent future rate shock, Tier 1 and Tier 2 rates changes should begin to increase in 2014." See October 25, 2013 ACR at 5.

remain in place until SDG&E's next GRC application. ORA contends that SDG&E has not provided forecasts of potential increases to CARE Tier 3 rates that could occur before its next GRC. ORA notes that CARE Tier 3 rate increases could occur as a result of revenue requirements increases in other proceedings or because of balancing account amortizations. ORA expresses concern that, because rates are not examined as thoroughly in these other proceedings, low-income customers could be adversely impacted absent a cap on CARE Tier 3 rates. Thus, ORA believes that it makes better sense to set a policy on CARE rates in this proceeding. According to ORA, a cap on CARE Tier 3 rates is a better policy than allowing unlimited non-litigated increases to CARE rates.[58]

CforAT/Greenlining recommends that the Commission retain the rate cap on CARE Tier 3 rates, or, alternatively, recommends adoption of ORA's proposal to establish a new rate cap of 18 cents per kWh.[59] CforAT/Greenlining note that this rate cap would allow for the limited rate increases proposed by SDG&E in this proceeding, while also protecting against future increases that would strain affordability for CARE customers. CforAT/Greenlining assert that SDG&E does not provide any justification for elimination of the recently negotiated and approved 2009 RDW Settlement.[60] Similarly to ORA, CforAT/Greenlining note that while it is true that SDG&E proposes only small initial increases in its CARE

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[58] ORA Opening Brief at 13-14.

[59] CforAT/Greenlining Opening Brief at 13.

[60] See Settlement Agreement attached to D.09-09-036 in A.08-11-014, at 1: "Parties agree to SDG&E's proposed reduction in CARE tier 3 rates in this RDW proceeding. Subsequently, CARE tier 3 rates will be frozen (no upward or downward movement) at this level until the next General Rate Case Phase II or until superseded by any CARE rate design provisions in Assembly Bill ('AB') 1X reform legislation that is passed and becomes law."

Tier 3 rate, lifting the cap would allow the CARE Tier 3 rate to rise rapidly and indeterminately in the future, especially if SDG&E's proposal to consolidate Tiers 3 and 4 were adopted.[61]

**Discussion**

As we noted above, AB 327 makes significant changes to the types of residential CARE rate structures that are permitted under state law. The October 25, 2013 ACR in R.12-06-013 appears to anticipate that the interim rate change applications provided for in that ruling are likely to include proposals to change CARE rate design.[62] For this reason, we conclude that SDG&E's proposal to remove the CARE Tier 3 rate cap should be denied without prejudice so that it may be considered in Phase 2 of R.12-06-013.

#### 4.3.1.4. CARE Cost Allocation

In its May 18, 2012 testimony, ORA recommends that all CARE costs should be calculated and allocated on an equal cents per kWh basis, to all classes.[63] ORA argues that this is required by Section 327(a)(7). ORA notes that SGD&E is not completely following this statutory requirement because SDG&E reflects the CARE shortfall costs in two places in its revenue allocation model, in the CARE surcharge and in the TRAC. According to ORA, SDG&E properly

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[61] CforAT/Greenlining Opening Brief at 12.

[62] The October 25, 2013 ACR proposes five guidelines for the interim applications, including (4) Rates should be adjusted as necessary to prevent CARE rates from increasing beyond the statutory effective CARE discount rate of 35%, and (5) If the effective CARE discount rate is already above 35%, CARE rates should be adjusted on a glidepath towards the 35% effective discount limit without reducing the discount more than a reasonable percentage annually.

[63] Exhibit DRA-1, Chapter 4 at 7-8. "Total CARE costs would include administrative costs, CARE balancing account amortizations, and the CARE shortfall."

allocates the former costs on an equal cents per kWh basis to all classes of customers subject to the CARE surcharge. However, ORA states that that the other CARE costs in TRAC remain within the residential class, meaning that they are allocated within the residential class only.

SDG&E disagrees with ORA's position, and states that its CARE cost allocation was approved by the Commission, and is therefore reasonable and should be maintained.[64]

According to SDG&E, Section 327(a)(7) does not require utilities to recover SB 695 residential cost changes through non-residential rates. Rather, it believes that Section 327(a)(7) applies only to programs described in Section 2790, the administration of home weatherization services programs for low-income customers, as described in Section 327(a).[65]

SB 695 amended Section 327(a) to read as follows:

> Section 327(a) The electrical corporations and gas corporations that participate in the California Alternate Rates for Energy (CARE) program, as established pursuant to Section 739.1, shall administer low-income energy efficiency and rate assistance programs described in Sections 382, 739.1, 739.2, and 2790, subject to commission oversight. In administering the programs described in Section 2790, the electrical corporations and gas corporations, to the extent practicable, shall do all of the following:
>
> > (1) Continue to leverage funds collected to fund the program described in subdivision (a) with funds available from state and federal sources.

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64 SDG&E Opening Brief at 25.

65 *Ibid.* at 26.

> (2) Work with state and local agencies, community-based organizations, and other entities to ensure efficient and effective delivery of programs.
>
> (3) Encourage local employment and job skill development.
>
> (4) Maximize the participation of eligible participants.
>
> (5) Work to reduce consumers electric and gas consumption, and bills.
>
> (6) For electrical corporations, target energy efficiency and solar programs to upper-tier and multifamily customers in a manner that will result in long-term permanent reductions in electricity usage at the dwelling units, and develop programs that specifically target nonprofit affordable housing providers, including programs that promote weatherization of existing dwelling units and replacement of inefficient appliances.
>
> (7) For electrical corporations and for public utilities that are both electrical corporations and gas corporations, allocate the costs of the CARE program on an equal cents per kilowatt-hour 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.

SDG&E's existing allocation is supported by FEA. FEA asserts that the legislature did not intend to include the additional rate design subsidies CARE customers receive within the meaning of the words "costs of the CARE program" in Section 327(a)(7), stating "it is unlikely that the legislature would address allocation of the CARE rate design subsidies in a provision devoted to home weatherization services (Pub. Util. Code § 2790).[66]

[66] FEA Opening Brief at 4.

In its reply brief, TURN supports ORA, stating "the intent of the Legislature cannot be in doubt."[67] TURN quotes the Legislative Counsel Digest accompanying SB 695 to support its position that the entire CARE discount must be allocated across customer classes using an equal cents per kWh approach.

TURN reproduces the relevant section of Legislative Counsel Digest accompanying SB 695 in its Reply Brief:

> Existing law requires the commission to establish a program of assistance to low-income electric and gas customers, referred to as the California Alternate Rates for Energy or CARE program, and prohibits the cost to be borne solely by any single class of customer. This bill would require the commission to establish the CARE program to provide assistance to low-income electric and gas customers with annual household incomes that are no greater than 200% of the federal poverty guideline levels, and require that the cost of the program, with respect to electrical corporations, be recovered on an equal cents-per-kilowatt-hour basis from all classes of customers that were subject to the surcharge that funded the CARE program on January 1, 2008. For a public utility that is both an electrical corporation and a gas corporation, the bill would require that the cost of the program be recovered on an equal cents-per-kilowatt-hour or per-therm basis from all classes of customers that were subject to the surcharge that funded the CARE program on January 1, 2008.
>
> [source: SB 695 (Enrolled Version, September 10, 2009), Legislative Counsel Digest, Section (2). (emphasis added by TURN)]

**Discussion**

We agree with ORA that since this is SDG&E's first rate design proceeding since the passage of SB 695, "it is the appropriate venue to examine SDG&E's

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[67] TURN Reply Brief at 5.

CARE cost allocation going forward."[68] We also find that the actual language of Section 327(a)(7) clearly supports the outcome advocated by ORA and TURN. A plain reading of that code section reveals that Section 327(a)(7) applies to "the costs of the CARE program", not the costs of home weatherization services programs for low-income customers. Lest there be any doubt, TURN correctly points out that the Legislative Counsel's Digest for SB 695 refers to the recovery of CARE costs on an equal cents-per-kilowatt-hour or per-therm basis from all classes of customers, not the costs of the weatherization programs addressed in Section 2790. While the placement of Section 327(a)(7) in the code could lend itself to some confusion, the actual text of that provision and the Legislative Counsel's contemporaneous explanation of its effect eliminate any doubt as to the Legislature's intent.

Further, this Commission has historically allocated CARE costs on an equal cents per kWh basis, but this same allocation has *not* generally been applied to the costs of home weatherization programs. If the Legislature had intended to reverse these past practices and direct significant changes in past Commission policy, it would surely have done so in a much clearer and more direct manner.

Based on the above, we reject SDG&E's proposed allocation of CARE costs and direct that, going forward, SDG&E allocate all CARE costs across all non-CARE customer classes on an equal cents-per-kilowatt-hour basis. SDG&E shall revise its rate allocation to reflect this change.

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[68] ORA Opening Brief at 10.

#### 4.3.2. SDG&E's Proposed Prepay Program

SDG&E proposes a new residential prepay program (Prepay Program). The Prepay Program would be an optional program that would allow residential customers to prepay for energy prior to consumption. SDG&E asserts that the benefits of the Prepay Program option for customers would include not needing to pay a two-month deposit in order to establish service, not having to pay off prior bad debt with SDG&E before establishing new service, and potential energy savings. SDG&E proposed to begin offering this service as of January 1, 2014.

Operationally, as proposed by SDG&E, a participating customer would be disconnected if his or her Prepay account balance drops below zero, and if at least one of the following conditions is met: 1) the customer's balance has been below zero for four consecutive days; or 2) the customer's balance is at or below - $20.00. If at least one of the above conditions is met, a remote disconnection would be scheduled for the next business day during normal business hours.[69]

##### 4.3.2.1. Opposition to SDG&E's Proposed Prepay Program

SDG&E's proposed Prepay Program is opposed by ORA, SDCAN, Joint Parties, and, collectively, by TURN, the National Consumer Law Center (NCLC), CforAT, and the Greenlining Institute (Greenlining) (collectively, Consumer Groups).

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[69] SDG&E-9 at DWC-5.

ORA states that customers who sign up with the Prepay Program would forgo the following customer protections instituted by the legislature and the Commission:[70]

- The 15-day notice requirement of Pub. Util. Code § 779.1(a).
- A 24-hour notice of termination by telephone or in person; or, where such contact cannot be accomplished, a 48-hour notice delivered by mail or in person as required by Section 779.1(b).
- The requirement that no disconnection may occur during a pending investigation, or complaint, or request for extended period for payment as required by Section 779.
- Notification to customers facing disconnection of the availability of CARE program and of extended payment plans, before effecting any disconnection of service for nonpayment or inability to pay energy bills in full.
- According to ORA, a customer signing up for the Prepay option may be foregoing disconnection protections without being aware of it. It cannot be shown that a customer has knowingly and voluntarily relinquished these protections if she or he signs up for this program.

ORA recommends that, before adopting a Prepay Program, SDG&E should first provide the account management and notification tools that SDG&E proposes to include in the Prepay Program to all smart meter customers who are interested in budgeting and managing their energy expenditures, without the drastic disconnection policy proposed in the Prepay Program.

Joint Parties recommend that the Commission reject the Prepay Program in the form proposed by SDG&E, stating that SDG&E has not met its burden to

[70] ORA Opening Brief at 20-21.

show that the program provides meaningful benefits and will not harm consumers.[71]

The Consumer Groups recommend that the Commission reject SDG&E's proposed Prepay Program because the utility acknowledges that the proposed program violates existing provisions of the Public Utilities Code, and those provisions cannot be waived as a matter of law:[72]

> If SDG&E's Prepay Program were adopted, customers on prepay would receive much less advance notice of termination. Customers on prepay would also be deprived of other valuable notices, such as notices regarding the CARE program, the availability of payment plans and levelized payment programs, and the right to avoid termination if a public assistance agency has already pledged payment.
>
> The utility asserts that these critical rights can be waived. They cannot, as a matter of law. Court precedents demonstrate that rights created by statute cannot be waived when doing so would adversely affect the public interest or be in violation of public policy. Numerous court cases – including the Supreme Court decision in Memphis Light, Gas & Water Div. v. Craft – as well as Commission decisions show that "utility service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health and safety." Because the provisions which SDG&E seeks to have waived would place vital utility service at greater risk, the public interest is indeed affected, and those provisions cannot be waived. Moreover, any purported waiver must be seen as made under duress, given that the utility's proposal would force payment-troubled consumers to choose between living without utility service or opting into the onerous prepay program. The

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[71] Joint Parties Opening Brief at 10.

[72] Consumer Groups' Opening Brief at 4-5.

Commission should not allow SDG&E to present customers with such a dilemma.

SDCAN states in its opening brief that SDG&E has not yet made a compelling case to support the legality or clear value proposition for this program. It further contends that if the Commission sought to explore prepay utility service through the use of a pilot program, such a program would need to be modified to comport with the state law and would likely have to exclude participation from customers enrolled in the CARE customer participation.[73] By the time of its reply brief, SDCAN had modified its perspective to conclude that "SDG&E's Opening Brief reveals a disturbing truth: its 'prepay program' is not designed for any customer who is not poor or cash-strapped."[74]

#### 4.3.2.2. SDG&E's Response

SDG&E contends that parties opposing the proposed Prepay Program improperly ignore its limited, optional nature and the numerous potential benefits of SDG&E's Prepay Program for customers who choose it.

Regarding the statutorily-required noticing requirements cited by ORA and the Consumer Groups, SDG&E cites D.06-10-051 and concludes "given applicable Commission precedent, and the facts of this case, it is appropriate to conclude that the Commission should allow a fully informed customer to voluntarily forego statutory prior notice requirements in order to obtain the benefits of the proposed Prepay option."[75]

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[73] SDCAN Opening Brief at 22.

[74] SDCAN Reply Brief at 8.

[75] SDG&E Reply Brief at 28. In D.06-10-051, the Commission adopted PG&E's CPP proposal, which would allow PG&E to offer CPP as a voluntary supplemental tariff to

*Footnote continued on next page*

#### 4.3.2.3. Discussion

While a Prepay Program may offer benefits to residential customers in certain circumstances, we do not find SDG&E's proposed Prepay Program, in its current form, to be in the public interest. Testimony shows that SDG&E has not consulted with likely affected customers as it developed its proposal, so its representations that these customers would welcome such a program are unconvincing, especially in light of the detailed testimony to the contrary from intervenors representing these affected customers. SDG&E's reliance upon D.06-10-051 for its legal argument that the Commission should allow a "fully informed" customer to voluntarily forego statutory prior notice requirements in order to obtain the benefits of the proposed Prepay program relies on inappropriate precedent and is unconvincing. That decision concerned a voluntary tariff that retained customer protections against unanticipated rate increases for the first year, not an experimental payment program that could induce customers to forego fundamental protections regarding their BSF.[76] We also take note of Consumer Groups' logical inference that, depending on the communications means chosen (e.g., text message, automated phone message, or e-mail), customers on the proposed Prepay Program might receive no advance notice of termination at all since customers who are behind on their electric bills may also behind on their internet or phone bills. We find that such an outcome is unacceptable.

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its residential and small commercial and industrial customers with electric demands below 200 kW.

[76] See D.06-10-051 at 3-4.

Our decision to reject SDG&E's proposed Prepay Program should not be seen as foreclosing it from seeking to offer such an option in the future. However, any future proposals must take into account the need to ensure that there is an adequate means to provide notice to customers before their electric service is disconnected.

## 5. Comments and Revisions to Proposed Decision

The proposed decision of ALJs Yip-Kikugawa and Roscow in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Pursuant to Rule 14.6(b), active parties have stipulated to shortening the comment period as follows: opening comments shall be filed on December 10, 2013; reply comments shall be filed on December 16, 2013. Comments were filed by SDG&E, SDCAN, SCE, ORA, City of SD, CFBF, FEA, SDSC, SDCPA, TURN, Joint Parties and jointly by CforAT and Greenlining. Additionally, NCLC, TURN, CforAT and Greenlining joined in filing opening comments on the prepay program. Reply comments were filed on December 16, 2013 by SDG&E, SDCAN, ORA, City of SD, SDSC, SDCPA, TURN and Joint Parties.

The ALJs took the comments into account and revised the proposed decision to direct SDG&E to allocate all CARE costs on an equal cents/kWh or equal cents/therm basis to all customer classes. Substantive revisions were made to the body of the decision and Conclusions of Law 15 through 19 were added. The ALJs also made certain non-substantive corrections and clarifications to their proposed decision.

The Commission made the following substantive revisions to the revised proposed decision at the Commission meeting and adopted it as revised:

1. The discussion in Section 4.3.1.4 of the revised proposed decision is revised to conclude that Pub. Util. Code § 327(a)(7) applies to "the costs of the CARE program," not the costs of home weatherization services programs for low-income customers, and thus requires that all CARE costs be allocated on an equal cents/kWh or equal cents/therm basis to all customer classes.
2. Conclusion of Law 15 of the revised proposed decision ("Section 327(a)(7) of the Public Utilities Code applies only to programs described in Public Utilities Code Section 2790, the administration of home weatherization services programs for low-income customers") is changed to state that "Section 327(a)(7) of the Public Utilities Code applies to the costs of the CARE program, not to the costs of home weatherization services programs for low-income customers."
3. Conclusion of Law 16 of the revised proposed decision ("Section 327(a)(7) of the Public Utilities Code requires that costs for the home weatherization services programs for low-income customers should be allocated on an equal cents per kilowatt-hour 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") is changed to state that "Section 327(a)(7) of the Public Utilities Code requires that costs of the CARE program for low-income customers should be allocated on an equal cents per kilowatt-hour 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."
4. Conclusion of Law 18 of the revised proposed decision ("It is necessary to harmonize Public Utilities Code Sections 327(a)(7) and 739.1(b)(1) so that neither is repealed by implication") is deleted.

These substantive revisions do not change the outcome in the ALJ's revised proposed decision; however, they do change the rationale for the outcome.

In comments to the Proposed Decision, CforAT/Greenlining raise concerns that there will be insufficient due process for those issues that have been denied without prejudice. They note that these issues have been recommended for consideration in R.12-06-013, but are concerned that "there will not be adequate opportunity for all of the utilities' proposals to be given full and fair consideration in that forum."[77] As such, they request that this decision require that there be public participation hearings, evidentiary hearings and full legal briefing in that rulemaking. We deny this request. In all proceedings, parties are afforded the appropriate level of procedural safeguards of notice and opportunity to be heard. The actual process, however, will be dictated by the particular situation.[78] To the extent CforAT/Greenlining believe that evidentiary hearings are necessary in that proceeding, they must make a showing there that there are material disputed issues of fact that necessitate hearings.

## 6. Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner, and Amy Yip-Kikugawa and Stephen C. Roscow are the assigned ALJs in this proceeding.

## Findings of Fact

1. The October 5, 2012 Revenue Allocation and Rate Design Settlement Agreement is an uncontested partial settlement.

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[77] CforAT/Greenlining's Opening Comments on PD at 3.

[78] See, Morrissey v. brewer (1972) 408 U.S. 471, 481 [92 S. Ct. 2593, 2600, 33 L. Ed. 2d 484].

2. The October 5, 2012 Revenue Allocation and Rate Design Settlement Agreement was entered into by parties representing all impacted customer groups.

3. The October 5, 2012 Revenue Allocation and Rate Design Settlement Agreement was reached after significant give and take between the parties.

4. The October 19, 2012 Partial Settlement Agreement on Distribution Demand Charges for M/L C&I Customers is opposed by customers who would be affected by its outcome.

5. SDG&E's proposal to modify its non-coincident distribution demand charges for its M/L C&I Customers was opposed by numerous parties.

6. The conversion of overhead distribution lines to underground (conversions) can mitigate the risks of wildfires in the more fire-prone areas of SDG&E's service territory.

7. SDG&E's supporting testimony to its Application contained many proposals that were not contested at any stage of this case.

8. The Interim Rate Change Applications provided for in R.12-06-013 are likely to include proposals to change tiered rate design.

9. The Interim Rate Change Applications provided for in R.12-06-013 are likely to include proposals to change CARE rate design.

10. SDG&E did not consult with likely affected customers as it developed its proposed Prepay Program.

11. A customer signing up for SDG&E's proposed Prepay Program may be foregoing disconnection protections without being aware of it, because it cannot be conclusively shown that a customer has knowingly and voluntarily relinquished these protections if she or he signs up for this program.

12. Active parties have stipulated to a reduction in the comment period for the proposed decision.

**Conclusions of Law**

1. The October 5, 2012 Revenue Allocation and Rate Design Settlement Agreement is reasonable in light of the record, consistent with law, and in the public interest.
2. The October 5, 2012 Revenue Allocation and Rate Design Settlement Agreement should be approved.
3. The October 19, 2012 Partial Settlement Agreement on Distribution Demand Charges for M/L C&I Customers is not reasonable in light of the record.
4. The October 19, 2012 Partial Settlement Agreement on Distribution Demand Charges for M/L C&I Customers is not consistent with law.
5. The October 19, 2012 Partial Settlement Agreement on Distribution Demand Charges for M/L C&I Customers is not in the public interest.
6. The October 19, 2012 Partial Settlement Agreement on Distribution Demand Charges for M/L C&I Customers should not be approved.
7. SDG&E's proposed change to its non-coincident distribution demand charges for its M/L C&I Customers should not be approved.
8. SDG&E's uncontested proposed Tariff Rule 20D is reasonable and should be approved.
9. The uncontested issues in SDG&E's testimony are reasonable and should be approved.
10. SDG&E's proposed basic residential service fee should be denied without prejudice because California law regarding SDG&E's proposed BSF has materially changed since SDG&E made its application.

11. AB 327 repealed Section 739.9 of the Public Utilities Code, and added a new Section 739.9, including Section 739.9(e), which states that the Commission may adopt new, or expand existing, fixed charges for the purpose of collecting a reasonable portion of the fixed costs of providing electric service to residential customers.

12. AB 327 amended Section 739.1 of the Public Utilities Code to delete the provision linking CARE increases to increases in the CalWORKS benefits relied upon by the parties opposing SDG&E's proposed BSF.

13. SDG&E's tier consolidation proposal in the instant application should be denied without prejudice because California law regarding SDG&E's proposed tier consolidation has materially changed since SDG&E made its application.

14. SDG&E's proposal in the instant application to remove the CARE Tier 3 rate cap should be denied without prejudice because California law regarding CARE rate design has materially changed since SDG&E made its application.

15. Section 327(a)(7) of the Public Utilities Code applies to the costs of the CARE program, not to the costs of home weatherization services programs for low-income customers.

16. Section 327(a)(7) of the Public Utilities Code requires that costs of the CARE program for low-income customers should be allocated on an equal cents per kilowatt-hour 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.

17. Section 739.1(b)(1) of the Public Utilities Code establishes the CARE program and provides that costs for the CARE shall not be borne solely by any single class of customer.

18. SDG&E's CARE cost allocation should be changed to allocate all costs for the CARE program on an equal cents per kilowatt-hour basis to all classes of customers on a going forward basis.

19. SDG&E's proposed Prepay Program is inconsistent with the 15-day notice requirement of Public Utilities Code Section 779.1(a).

20. SDG&E's proposed Prepay Program is inconsistent with the requirement in Public Utilities Code Section 779.1 (b) of a 24-hour notice of termination by telephone or in person; or, where such contact cannot be accomplished, a 48-hour notice delivered by mail or in person.

21. Public Utilities Code Section 779 requires that no disconnection of service may occur during a pending investigation, or complaint, or request for extended period for payment.

22. SDG&E's proposed Prepay Program should be rejected.

23. The period for comments on the proposed decision should be shortened.

## O R D E R

**IT IS ORDERED** that:

1. The October 5, 2012 Motion of San Diego Gas & Electric Company and Settling Parties to Adopt Partial Settlement Agreement, which requests adoption of the Revenue Allocation and Rate Design Settlement Agreement is granted. The settlement agreement in Attachment A to that Motion is adopted.

2. The October 19, 2012 Motion of San Diego Gas & Electric Company and Settling Parties to Adopt Partial Settlement Agreement on Distribution Demand Charges for Medium and Large Commercial and Industrial Customers is denied.

3. San Diego Gas & Electric Company's proposed Tariff Rule 20D is adopted.

4. Within 30 days of this decision, San Diego Gas & Electric Company shall submit a Tier 1 advice letter with the Commission's Energy Division, revising its Tariff Rule 20 as approved in this Decision.

5. The uncontested proposals in San Diego Gas & Electric Company's application and supporting testimony are adopted.

6. Within 30 days of this decision, San Diego Gas & Electric Company shall submit a Tier 2 advice letter in compliance with General Order 96-B. The advice letter shall include revised tariff sheets to implement the revenue allocations and rate designs adopted in this order. The tariff sheets shall become effective no earlier than January 1, 2014, subject to the Commission's Energy Division determining that they are in compliance with this order. No additional customer notice need be provided pursuant to General Rule 4.2 of General Order 96-B for this advice letter filing.

7. Application 11-10-002 is closed.

This order is effective today.

Dated January 16, 2014, at San Francisco, California.

MICHAEL R. PEEVEY<br>
President<br>
MICHEL PETER FLORIO<br>
CATHERINE J.K. SANDOVAL<br>
MARK J. FERRON<br>
CARLA J. PETERMAN<br>
Commissioners