FILED
01/20/22
04:59 PM

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U 902 M) for Establishment of an Interim Rate Relief Mechanism for its Wildfire Mitigation Plan Costs.	Application 21-07-017 (Filed July 30, 2021)

REPLY BRIEF OF THE UTILITY REFORM NETWORK

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January 20, 2022,

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Pursuant to the schedule set forth in the *Assigned Commissioner's Scoping Memo and Ruling* ("Scoping Memo") issued October 28, 2021, The Utility Reform Network ("TURN") submits this reply brief on issues associated with the application of San Diego Gas & Electric Company ("SDG&E") seeking interim rate recovery of costs recorded in the utility's Wildfire Mitigation Plan Memorandum Accounts.

I. In Order for Interim Rate Recovery to Remain "Not Common" and "Infrequent" Consistent with Recent Decisions, SDG&E Must Demonstrate At Least One of The Underlying Circumstances Presents "Extremely Rare and Unique Facts" that Merit Such Extraordinary Treatment.

The Commission faces a key choice in this proceeding. SDG&E would have the Commission take more of a check-list approach to the factors it has cited in its past decisions; so long as each is merely present, then interim rate recovery can be authorized, in the utility's view.[1] But such an approach would make interim rate recovery a far more common occurrence, since most of the factors are present to at least some extent whenever a memorandum account records a material amount of costs for potential future rate recovery. If the Commission is to act in a manner consistent with treating interim rate recovery as a form of extraordinary rate relief that is "not common" and should be expected to be "infrequent" going forward,[2] it must require that a utility demonstrate extraordinary circumstances to establish the appropriateness of such relief. Thus, when the Commission has listed four factors for consideration in determining whether interim rate recovery should be granted,[3] the determination must not turn merely on the

[1] SDG&E Opening Brief, p. 9.

[2] D.20-10-026, pp. 25 and 34, fn. 63.

[3] "While it is not common, the Commission has granted interim rate increases to (1) promote fairness to both the utility and the public, (2) reduce the potential for rate shock, (3) preserve the financial integrity

presence of the four factors – at least one of those factors must be exceptional if such extraordinary relief is warranted. SDG&E's request here should be rejected because the utility has failed to demonstrate that any of the factors is so extraordinary at this time to warrant such relief.

SDG&E argues against the need to demonstrate the presence of any "extraordinary circumstances," and particularly that "a utility need not establish a financial emergency to merit interim relief."[4] TURN submits the utility has it half right –extraordinary financial circumstances may not be the only condition the Commission can rely upon to authorize interim rate recovery. However, there needs to be a showing of extraordinary circumstances for at least one of the identified factors. To be clear, "extraordinary" has its general meaning here – "going beyond what is usual, regular, or customary" or "exceptional to a very marked extent."[5] And the term is consistent with the Commission's recent characterizations of interim rate recovery as "infrequent" and "not common,"[6] that warranted authorization only after considering "extremely rare and unique facts."[7]

SDG&E's preferred approach would likely result in interim rate recovery becoming a much more common and frequent occurrence. The Commission has in recent years overseen a period of increased electric utility spending in a number of areas, with wildfire mitigation activities the primary example. And the trend is likely to persist for some period going forward,

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of a utility, minimize costs incurred by ratepayers and ensure rate stability, and (4) smooth rate impacts on customers." D.20-10-026, pp. 25-26 (citations omitted).

[4] SDG&E Opening Brief, p. 9. SDG&E seems to fault TURN and UCAN for not defining "extraordinary circumstances."

[5] *Merriam-Webster Dictionary*, https://www.merriam-webster.com/dictionary/extraordinary.

[6] D.20-10-026, pp. 25 and 34, fn. 63.

[7] D.19-04-039, p. 5.

as the utilities continue to undertake ambitious wildfire risk mitigation programs, layered with other programs such as those for vehicle and building electrification. The regular practice of relying on memorandum account ratemaking for such efforts means the Commission can reasonably anticipate SDG&E and the other major electric utilities continuing to report large balances of costs incurred for such programs but not yet determined to be reasonable or otherwise authorized for rate recovery. The Commission-identified factors for interim rate recovery would at least be present any time a memorandum account's balance became substantial, even if that balance would relatively soon start to decline under regular ratemaking practices and schedules. And if the Commission adopts SDG&E's analysis here, that mere presence would become a basis for authorizing interim rate recovery each time a memorandum account's balance reaches a substantial balance.

In sum, the Commission should deny authorizing the extraordinary relief of interim rate recovery unless the requesting utility has demonstrated that at least one of the factors is itself so extraordinary or unusual, so "extremely rare and unique" that such relief is warranted. SDG&E's opening brief merely confirms that the utility has failed to present any such demonstration here.

A. SDG&E Fails to Demonstrate That Permitting the Cost Incurrence and Rate Recovery Process Anticipated in AB 1054 To Run Its Course Will Threaten the Utility's Financial Integrity and Stability or Otherwise Would Represent an Extraordinary Circumstance.

SDG&E's opening brief summarizes its testimony regarding the recovery lag built into the cost incurrence and recovery provisions of AB 1054, and the lag's potential impact on its debt leverage should the utility choose to finance the resulting undercollection with long-term

debt.[8] SDG&E recognizes that the lag was part of the statutory framework that established the conditions of its cost recovery opportunity. It acknowledges that SB 901 and AB 1054 each "clearly anticipated an incremental increase in wildfire mitigation expenditures," but deferred review and rate recovery of any incremental costs associated with Wildfire Mitigation Plans, first until they had been reviewed for reasonableness in a GRC (under SB 901), and then through either a GRC or a separate reasonableness review application (under AB 1054).[9] Under the circumstances SDG&E describes, the Commission can reasonably infer that the Legislature understood that the utilities were likely to record a substantial balance in the WMPMA before rate recovery would occur through a GRC or separate application.

SDG&E fails in its attempt to demonstrate that the delay in rate recovery poses a potential risk to its financial integrity and stability.[10] As TURN addressed in more detail in its opening brief,[11] the worst case scenario the utility included in its testimony leads to the conclusion that SDG&E's recently obtained A3 credit rating from Moody's Investor Services would remain at the A3 level.[12] There is no basis in the record for even suggesting SDG&E might "sustain a hit in its credit ratings" if it is denied interim recovery here.[13] Instead, SDG&E's showing of "potential agency downgrades and more expensive long-term financing options should [its] cash-flow situation continue to deteriorate" has more in common with SCE's

[8] SDG&E Opening Brief, p. 10.

[9] SDG&E Opening Brief, pp. 4-6 and 10.

[10] *Id.*, p. 10.

[11] TURN Opening Brief, pp. 17-20.

[12] SDG&E Opening Brief, p. 10 [SDG&E has merely demonstrated that, mathematically, its FFO/Debt ratio might "nearly reach[] Moody's minimum threshold for SDG&E to maintain its current A3 rating."]

[13] *Id.*

showing in support of that utility's interim rate recovery request in its test year 2021 GRC. There, the request was denied in part because of a lack of a convincing showing that interim rate recovery was needed to preserve SCE's financial integrity.[14] Here, SDG&E has demonstrated only that any decline in the FFO/debt metric due to its inability to begin recovery of its WMPMA balance in 2022 should be expected to leave its current credit rating intact, even if Moody's views the difference between starting recovery in 2022 rather than 2024 as a "sustained" impact.[15]

Finally, SDG&E's opening brief quietly discloses that the utility is considering alternatives to interim rate recovery that would mitigate any potential for an adverse impact on its credit ratings or financial integrity. The utility anticipates a "tracked" approach in its upcoming GRC that would permit a reasonableness review of all costs through 2023, as well as the possibility of a separate reasonableness review application for costs incurred through the end of 2022.[16] Neither of those approaches would require interim rate recovery to be effective.

In sum, SDG&E has failed to meet its burden of demonstrating that retaining the current ratemaking treatment of costs recorded in the WMPMA, with reasonableness reviews occurring in the manner and on the schedule anticipated in AB 1054, presents any meaningful threat to its credit rating or its financial integrity. The financial impacts certainly do not represent an extraordinary circumstance that might warrant authorizing interim rate recovery.

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[14] *Administrative Law Judges' Ruling Denying Southern California Edison Company's Motion for Interim Rate Recovery* (May 22, 2020), pp. 7 and 11. The ruling is available on the Commission's web site at https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M338/K276/338276824.PDF.

[15] If the Commission adopts a "track" approach to SDG&E's upcoming GRC, it can reasonably anticipate a reasonableness review decision in 2024, covering wildfire mitigation-related recorded costs from 2019-2022. TURN Opening Brief, p. 10.

[16] SDG&E Opening Brief, p. 10, fn. 25.

B. The Factors of Fairness, Cost Minimization, Rate Stability and Avoiding Rate Shock Do Not Present Extraordinary Circumstances Such That Interim Recovery Might Be Warranted.

SDG&E contends that its proposal promotes fairness, minimizes costs, provides better rate stability, and minimizes the possibility of rate shock and, therefore, justifies interim rate recovery.[17] Missing from the utility's analysis is a demonstration that these purported benefits are anything more than generic factors present for any existing memorandum account balance that might become the subject of interim rate recovery. That is, SDG&E has not provided the Commission with a showing that would lead to the conclusion that the circumstances surrounding any of these factors are "infrequent," "not common," or present "extremely rare and unique facts."[18]

For example, there is arguably a cost minimization argument that would apply to beginning rate recovery of any memorandum account balance sooner rather than later, no matter the amount. Memorandum account balances accrue interest at the commercial paper rate; earlier rate recovery of costs recorded in the account would reduce the amount of accrued interest. For the cost minimization aspects to support the Commission granting interim rate relief, SDG&E must demonstrate those aspects are "extremely rare and unique" here. The utility has attempted to do so by including forecasted rather than recorded costs for 2021-2023, and by asserting that it "anticipates" that it may need to issue long-term debt to offset the higher balances that it may face in those years.[19] But even with such inappropriate assumptions included in its showing,[20]

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[17] SDG&E Opening Brief, pp. 11-14.

[18] D.20-10-026, pp. 25 and 34, fn. 63, and D.19-04-039, p. 5.

[19] SDG&E Opening Brief, pp. 8 and 10.

[20] The inclusion of 2021-2023 forecasts is inappropriate in light of D.20-10-026, which explicitly rejected interim rate recovery for upcoming but as-yet unrecorded costs. TURN Opening Brief, pp. 12-14.

SDG&E has demonstrated nothing more than the unremarkable point that avoiding or reducing interest payments may help minimize costs in an amount the utility did not calculate. There is nothing uncommon or extraordinary about cost minimization here.

Similarly, the Commission should recognize that any time rate recovery of a memorandum account balance is spread over a period of longer than one year, it arguably advances the interests of rate stability and avoiding rate shock, at least when the account is viewed in isolation. That is, spreading the rate recovery over three years rather than one would reduce by two-thirds the rate impact in any given year. But that is a mathematical fact that is present for any memorandum account balance in any amount. If interim rate recovery is to remain "extremely rare and unique," the Commission must require demonstration of very substantial rate stability and rate shock benefits. Here, SDG&E has presented little more than mere allegations of benefits, unsupported by calculations or any real analysis. Furthermore, as TURN's opening brief explained, the Commission has recently adopted extended amortization periods as a means of achieving rate stability and avoiding rate shock.[21] In sum, the Commission should find SDG&E has failed to establish that the impacts related to rate stability and rate shock would be extraordinary or unique such that interim rate recovery is warranted.

II. SDG&E's Proposal to Recover 50% of the Annual Memorandum Account Balance, Rather Than 50% of the Recorded Costs, Is Not Reasonable.

TURN's opening brief explained that SDG&E's approach to calculating the amounts that would be eligible for recovery each year under its proposal contains a clear error. Instead of "getting 50 percent of the wildfire mitigation expenditures it has already spent,"[22] the utility

[21] TURN Opening Brief, pp. 15-17.

[22] SDG&E Application, p. 3.

would collect far more than that figure through interim rate recovery.[23] In its opening brief, SDG&E seeks to justify this approach by claiming it is "in accord with the accounting process for other Commission-approved interim relief mechanisms."[24] The Commission has only authorized such an approach once, when it authorized PSEP interim rate recovery in D.16-08-003. As TURN previously noted, it is not clear from that decision whether the Commission was even aware of the distinction between recovering 50% of recorded costs on a one-time basis versus 50% of the memorandum account balance on an annual basis.[25] SDG&E's suggestion that a similar approach was taken in D.20-10-026 for PG&E is incorrect.[26] There, the adopted 55 percent interim recovery was applied once to the recorded balances in the memorandum accounts at issue, resulting in a specific amount that was eligible for such recovery.[27] SDG&E's attempt to cite the PG&E decision as support for the anomalous approach taken in the PSEP decision fails.

Similarly, SDG&E's contention that adopting its proposed calculation would avoid "regulatory confusion" is not a reason to extend the PSEP approach to the utility's current request.[28] The Commission should recognize that any such "regulatory confusion" is embodied by D.16-08-003. TURN's opening brief explained that the earlier decision had failed to identify, much less explain or justify any basis for authorizing interim rate recovery of upcoming costs, as

[23] TURN Opening Brief, pp. 21-22. As explained there, SDG&E's approach would achieve interim recovery of 87.5% of the costs recorded in 2019-2020, 75% of the 2021 costs, and 70% of the overall costs.

[24] SDG&E Opening Brief, p. 14.

[25] TURN Opening Brief, pp. 13-14.

[26] SDG&E Opening Brief, p. 15.

[27] D.20-10-026, p. 32 and Finding of Fact 16 and Conclusion of Law 5.

[28] SDG&E Opening Brief, p. 16.

distinct from costs already recorded.[29] The same criticism applies to the decision's approach to calculating the amounts eligible for interim rate recovery – it neither discussed nor explained that outcome, and provides no basis for the Commission choosing to replicate the approach here.

III. The Commission Should Assign No Analytical Value to The Positions Presented in the Cal Advocates Brief.

The Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submitted an opening brief stating that it does not oppose SDG&E's request to establish an interim rate relief mechanism, subject to minor modifications of the utility's proposal. TURN submits that the Cal Advocates position lacks any support in the way of analysis or critical review of SDG&E's proposal and is of no value to the Commission's resolution of the disputed issues in this proceeding.

In its motion for party status, Cal Advocates identified several issues that warranted further inquiry and review:

> SG&E fails to address why its proposal is more "fair" than simply following the established Commission procedures for rate recovery.
>
> SDG&E fails to fully address whether the interim imposition of rate increases could cause harm to customers, especially low-income customers for whom such an increase could impair their ability to access services during the interim period.[30]

Cal Advocates also stated its intention to "perform an independent analysis of the ratepayer impacts" of SDG&E's proposal.[31]

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[29] TURN Opening Brief, pp. 13-14.

[30] Cal Advocates *Motion for Party Status* (September 3, 2021), p. 3.

[31] *Id.*, p. 4.

In its opening brief, Cal Advocates presents nothing in the way of analysis or critical review of any of SDG&E's claims, nor any apparent consideration of the factors identified and discussed in recent Commission decisions and rulings on other interim rate recovery requests. The staff provides no explanation of how it came to determine that granting interim rate relief here might be appropriate, or what qualifies as the "rare and unique" circumstances warranting such relief. Instead, Cal Advocates merely asserts that it "finds that SDG&E has sufficiently justified the need for interim rate relief, and finds that its proposal, as modified, has the potential to be fair, minimize costs, and provide rate stability for SDG&E customers."[32] The cited support for these staff "findings" is the utility's application.[33] The Cal Advocates brief almost exclusively cites the assertions the utility made in its application, rather than in its prepared testimony.

TURN understands that a party may change positions during the course of a proceeding based on further consideration of the issues and the supporting evidence. However, for the Commission to ascribe any probative value to a party's final position, it must find that the new position is adequately supported in the record. That is not the case for Cal Advocates' position in the staff's opening brief. Therefore, the Commission should not rely on this newly revealed position for purposes of resolving disputed issues in this matter.

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[32] Cal Advocates Opening Brief, p. 3.

[33] *Id.*, p. 3, fn. 5 ("*See generally* Application.")

January 20, 2022

Respectfully submitted,

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