

Application No.: A.17-03-xxx

Exhibit No.: SDGE-03

Witnesses: Diana Day

PREPARED DIRECT TESTIMONY

ON BEHALF OF

SAN DIEGO GAS & ELECTRIC COMPANY

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

(AFFILIATE TRANSACTION RULES AND REQUESTED WAIVERS)

March 30, 2017

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1 **I. INTRODUCTION**

2 San Diego Gas & Electric Company (“SDG&E”) is subject to the Commission’s Affiliate
3 Transaction Rules (“ATRs” or “Rules”).¹ The Rules govern the relationship between regulated
4 utilities and unregulated affiliates to protect consumer interests and foster competition.² The
5 NewCo Sub, as described in Exhibit (“Ex.”) SDGE-01 and Ex. SDGE-02, will be a covered
6 affiliate under the Affiliate Transaction Rules.

7 SDG&E has determined that it will need certain waivers of the ATRs to make the NewCo
8 Sub viable. This testimony describes which ATR waivers SDG&E seeks and the reasons for
9 each requested waiver.³ In addition, my testimony states that SDG&E will prevent cross
10 subsidization between SDG&E and the NewCo Sub and explains how the sale or license of
11 Intellectual Property (“IP”) to the NewCo Sub is designed to not hamper market competition.

12 **II. CERTAIN ATR WAIVERS ARE REQUESTED BY SDG&E**

13 SDG&E seeks approval from the Commission to waive certain Affiliate Transaction
14 Rules that would govern the relationship and interactions between SDG&E and the NewCo Sub.
15 Without these waivers, it is unlikely that the NewCo Sub would be able to effectively compete
16 against third parties in the open market.⁴

17 SDG&E has identified three general categories of requested waivers:

¹ See *Affiliate Transaction Rules Applicable to Large California Energy Utilities*, available at: <http://docs.cpuc.ca.gov/PublishedDocs/PUBLISHED/GRAPHICS/63089.PDF>, approved by D.06-12-029 (amending D.97-12-088), at Ordering Paragraph 1. See Rule II.A, p. 3.

² D.97-12-088 at 9.

³ SDG&E has identified those waivers in this testimony that it believes are necessary based on the contemplated structure of the NewCo Sub described in Ex. SDGE-02. Depending on the final structure of the NewCo Sub, as approved by Commission, SDG&E may require fewer, or more, ATR waivers.

⁴ See SDGE-02 at 3.

1 Category I: Sharing of Information: SDG&E requests waivers to the following ATRs to
2 allow sharing of information related to SDG&E-developed IP, according to the proposed process
3 in Ex. SDGE-02.

- 4 • Rule III.B.2. (Non-Discrimination Standards/Affiliate Transactions/Provision of Supply,
5 Capacity, Services or Information),
- 6 • Rule III.E.4 (Non-Discrimination Standards/Affiliate Transactions/Business
7 Development and Customer Relations)
- 8 • Rule IV.B. (Disclosure and Information/Non-Customer Specific Non-Public
9 Information),

10
11 Category II: Transfer Price of IP: SDG&E requests waivers to the following ATRs
12 related to determining the transfer price of SDG&E-developed IP, according to the proposed
13 process in Ex. SDGE-02.

- 14 • Rule III.B. (Non-Discrimination Standards/Affiliate Transactions)
- 15 • Rule V.H.1 (Separation/Transfer of Goods and Services)

16
17 Category III: Shared Officers: SDG&E requests a waiver to the following ATR to allow
18 shared officers or shared members of the board of directors of the NewCo Sub.

- 19 • Rule V.G. 1. (Separation/Employees)

20 Table 1 below provides the Affiliate Transaction Rules to which SDG&E is subject. As
21 demonstrated in the Table, SDG&E is requesting a limited number of waivers for the Proposal.

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Table 1

<u>CPUC Affiliate Transaction Rules</u>	
Rule	Waiver Requested
I. DEFINITIONS	
II. APPLICABILITY OF RULES	
III. NONDISCRIMINATION STANDARDS	
III.A. No Preferential Treatment Regarding Services Provided By The Utility	
III.B. Affiliate Transactions	Yes
III.B.1. Resource Procurement	
III.B.2. Provision of Supply, Capacity, Services or Information	Yes
III.B.3. Offering of Discounts	
III.B.4. Tariff Discretion	
III.B.5. No Tariff Discretion	
III.B.6. Processing Requests for Services Provided by the Utility	
III.C. Tying of Services Provided by a Utility Prohibited	
III.D. No Assignments Of Customers	
III.E. Business Development and Customer Relations	Yes
III.F. Affiliate Discount Reports	
IV. DISCLOSURE AND INFORMATION	
IV.A. Customer Information	
IV.B. Non-Customer Specific Non-Public Information	Yes
IV.C. Service Provider Information	
IV.D. Supplier Information	
IV.E. Affiliate-Related Advice Or Assistance	
IV.F. Record Keeping	
IV.G. Maintenance of Affiliate Contracts and Related Bids	
IV.H. FERC Reporting Requirements	
V. SEPARATION	
V.A. Corporate Entities	
V.B. Books and Records	
V.C. Sharing of Plant, Facilities, Equipment or Costs	
V.D. Joint Purchases	
V.E. Corporate Support	
V.F. Corporate Identification and Advertising	
V.G.1. Employees	Yes
V.H.1. Transfer of Goods and Services	Yes

<u>CPUC Affiliate Transaction Rules</u>	
VI. REGULATORY OVERSIGHT	
VI.A. Compliance Plans	
VI.B. New Affiliate Compliance Plans	
VI.C. Affiliate Audit	
VI.D. Witness Availability	
VI.E. Officer Certification	
VII. UTILITY PRODUCTS AND SERVICES	
VII.A. General Rule	
VII.B. Definitions	
VII.C. Utility Products and Services	
VII.D. Conditions Precedent to Offering New Products and Services	
VII.E. Requirement to File an Advice Letter	
VII.F. Existing Offerings	
VII.G. Section 851 Application	
VII.H. Periodic Reporting of Nontariffed Products and Services	
VII.I. Offering of Nontariffed Products and Services to Affiliates	
VIII. COMPLAINT PROCEDURES AND REMEDIES	
VIII.A. The Commission Shall Strictly Enforce These Rules	
VIII.B. Standing	
VIII.C. Procedure	
VIII.D. Remedies	
IX. PROTECTING THE UTILITY'S FINANCIAL HEALTH	
IX.A. Information from Utility on Necessary Capital.	
IX.B. Restrictions on Deviations from Authorized Capital Structure.	
IX.C. Ring-Fencing.	
IX.D. Changes to Ring-Fencing Provisions.	

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SDG&E's request for these specific waivers is based on the idea that reducing the restrictions on the relationship between the NewCo Sub and SDG&E will benefit SDG&E ratepayers. SDG&E's request for waivers is designed to not hamper market competition. If

1 approved, the waivers requested are designed to help benefit SDG&E ratepayers, as described in
2 Ex. SDGE-02.

3 **A. Waiver Category I: Sharing of Information**

4 Rule III.B.2 (Non-Discrimination Standards/Affiliate Transactions/Provision of Supply,
5 Capacity, Services or Information) states:

6 Except as provided for in Rules V.D., V.E., and V.H., a utility shall
7 provide access to utility information, services, and unused capacity or
8 supply on the same terms for all similarly situated market participants. If
9 a utility provides supply, capacity, services, or information to its
10 affiliate(s), it shall contemporaneously make the offering available to all
11 similarly situated market participants, which include all competitors
12 serving the same market as the utility's affiliates.

13 Rule III.E.4 (Non-Discrimination Standards/ /Business Development and Customer
14 Relations) states:

15 [A utility shall not] share market analysis reports or any other types of
16 proprietary or non-publicly available reports, including but not limited to
17 market, forecast, planning or strategic reports, with its affiliates.

18 Rule IV.B. (Disclosure and Information/Non-Customer Specific Non-Public Information)
19 states, in part:

20 A utility shall make non-customer specific non-public information,
21 including but not limited to information about a utility's natural gas or
22 electricity purchases, sales, or operations or about the utility's gas-related
23 goods or services and electricity-related goods or services, available to the
24 utility's affiliates only if the utility makes that information
25 contemporaneously available to all other service providers on the same
26 terms and conditions, and keeps the information open to public inspection.

27 Rules III.B.2 requires sharing information to all competitors of the utility affiliates and
28 IV.B requires making information available to all other service providers if such information is
29 shared with the affiliate. Rule III.E.4 prohibits sharing market analysis or any non-publicly
30 available reports with affiliates.

1 As explained in Ex. SDGE-02, SDG&E usually shares confidential and proprietary
2 information about its IP with third parties during the initial evaluations and negotiations. The
3 granting of SDG&E's waiver requests would allow SDG&E to deal with the NewCo Sub the
4 same way it deals with other third parties during IP licensing or sales solicitations and
5 negotiations under non-disclosure of confidential information agreement ("NDA").

6 During those same negotiations, SDG&E only shares the confidential and propriety
7 information with a limited number of third parties that have signed an NDA. SDG&E does not
8 usually publicly post or release the information to all market participants. SDG&E requests
9 waiver of these three above Rules to allow SDG&E to share confidential and proprietary
10 information about SDG&E-owned IP with the NewCo Sub without having to share the same
11 information with all market participants.

12 SDG&E's proposal is designed so that ratepayers will not be harmed if the Commission
13 grants waivers to these Rules. The requested waivers will simply provide the NewCo Sub with
14 the same type of information that SDG&E shares with third parties interested in the IP during
15 solicitations and negotiations. In addition, the waivers would allow SDG&E to provide the
16 same confidential information to the NewCo Sub that it provides interested parties (provided that
17 all of them have signed an NDA) without having to make the information public to all market
18 participants.

19 Without this waiver, the NewCo Sub would likely be given less information from
20 SDG&E than another potential third party licensee or purchaser. This could result in the NewCo
21 Sub not making an offer, or making an offer based on incomplete information. Either scenario
22 could disadvantage ratepayers by suppressing market competition.

23 **B. Waiver Category II: Transfer Price of IP**

24 Rule III.B (Non-Discrimination Standards/Affiliate Transactions) states:

1 Transactions between a utility and its affiliates shall be limited to tariffed
2 products and services, to the sale of goods, property, products or services
3 made generally available by the utility or affiliate to all market
4 participants through an open, competitive bidding process, to the provision
5 of information made generally available by the utility to all market
6 participants, to Commission-approved resource procurement by the utility,
7 or as provided for in Rules V D (joint purchases), V E (corporate support)
8 and Rule VII (new products and services) below.

9 Rule V.H.1 (Fair Market Value and Separation/Transfer of Goods and Services) states:

10 Transfers from the utility to its affiliates of goods and services produced,
11 purchased or developed for sale on the open market by the utility will be
12 priced at fair market value.

13 These Rules require an open competitive bidding process available to all market
14 participants to determine the fair market value of a utility asset. SDG&E requests waivers of
15 these Rules to allow it to proceed with the process described in Ex. SDGE-02. That process is
16 designed to garner an optimal structure for the commercialization of IP.

17 The proposal is designed not to harm, and to potentially benefit ratepayers by optimizing
18 the value of SDG&E's IP, and thus optimizing the value received by ratepayers.

19 **C. Waiver Category III: Shared Officers or Directors**

20 Rule V.G.1. (Separation/Employees) states, in part:

21 Except as permitted in Section V.E. (corporate support), a utility and its
22 affiliates shall not jointly employ the same employees. This Rule
23 prohibiting joint employees also applies to Board Directors and corporate
24 officers.

25 This Rule restricts a utility employee from serving as an officer or on the board of
26 directors of an affiliate.

27 SDG&E requests waiver of this Rule to allow employees of SDG&E to serve as officers
28 or on the board of directors of the NewCo Sub. As described in Ex. SDG&E 02, the NewCo Sub
29 will be a subsidiary of SDG&E and funded by SDG&E shareholders. Therefore, SDG&E and its
30 shareholders have an interest in some level of governance of the NewCo Sub.

1 SDG&E intends to select employees who will serve as officers or on the board of
2 directors for the NewCo Sub. Oversight by utility employees as NewCo Sub officers or
3 members of the NewCo Sub Board of Directors will help align the executive management of the
4 NewCo Sub with the interests of SDG&E’s shareholders. In compliance with the Rules,
5 SDG&E will put in place procedures to ensure that it is not utilizing any of the shared officers or
6 directors as a conduit to circumvent the affiliate transaction rules.⁵

7 **III. THE PROPOSAL IS DESIGNED TO PREVENT CROSS SUBSIDIZATION**

8 Rule V.E. states, in part:

9 Any shared support shall be priced, reported and conducted in accordance
10 with the Separation and Information Standards set forth herein, as well as
11 other applicable Commission pricing and reporting requirements. As a
12 general principle, such joint utilization shall not allow or provide a means
13 for the transfer of confidential information from the utility to the affiliate,
14 create the opportunity for preferential treatment or unfair competitive
15 advantage, lead to customer confusion, or create significant opportunities
16 for cross-subsidization of affiliates.

17 SDG&E will prevent cross subsidization of the NewCo Sub by sharing no costs with the
18 NewCo Sub except as allowed by the ATRs.

19 For example, SDG&E may loan labor to the NewCo Sub as allowed by the Rules. The
20 loaned employees’ time will be tracked to ensure compliance with the 30% limitation and to
21 properly allocate their costs between SDG&E and the NewCo Sub.⁶ As described in Ex.

22 SDG&E- 02, SDG&E will establish cost accounting and controls to assure proper tracking of

⁵ ATR V.G.1 (“In the case of shared directors and officers, a corporate officer from the utility and holding company shall describe and verify in the utility’s compliance plan required by Rule VI the adequacy of the specific mechanisms and procedures in place to ensure that the utility is not utilizing shared officers and directors as a conduit to circumvent any of these Rules.”).

⁶ ATR V.G.2.e, including sub-rules V.G.2.e.i through V.G.2.e.v.

1 | loaned labor time and related cost, and the billing of those costs to the NewCo Sub, so that
2 | SDG&E ratepayers are indifferent to the loaned labor.

3 | **IV. PROPOSAL IS DESIGNED TO NOT HAMPER MARKET COMPETITION**

4 | By following the process for negotiations outlined in Ex. SDGE-02, adhering to the
5 | Affiliate Transaction Rules (subject to any granted waivers), and providing an Independent
6 | Evaluator's Report in future Section 851⁷ filings for transactions involving the NewCo Sub,
7 | SDG&E will ensure that any agreements to license or sell IP between SDG&E and the NewCo
8 | Sub will be transparent and designed not to hamper market competition.

9 | **V. CONCLUSION**

10 | Requests for the waivers of Affiliate Transaction Rules are necessary to promote fairness,
11 | market competition and transparency between the NewCo Sub and third parties in the market.
12 | The requests are designed so that ratepayers are not harmed by the waivers. Without these
13 | waivers, the NewCo Sub will likely not be able to compete effectively in the open market to the
14 | benefit of SDG&E ratepayers.

⁷ California Public Utilities Code Section 851.

1 **WITNESS QUALIFICATIONS**

2 My name is Diana L. Day, and my business address is 8330 Century Park Court, San
3 Diego, California 92123.

4 In June 2014, I was appointed Vice President, Enterprise Risk Management and
5 Compliance for SDG&E and the Southern California Gas Company. In that role, I am
6 responsible for setting the policy, governance, structures, process, and guidelines for Southern
7 California Gas Company's and SDG&E's management practices and for supporting the
8 companies' compliance programs.

9 I have held various positions with the Sempra companies since 1997, including Assistant
10 General Counsel – Commercial of SDG&E (until June 2014), General Counsel of Sempra
11 Energy Global Enterprises and Vice President and Associate General Counsel of Sempra Energy.

12 I received a bachelor's degree in economics (summa cum laude) from Washington State
13 University. I received a juris doctorate degree from the University of Virginia School of Law.

14 Prior to joining Sempra Energy, I was an attorney with the San Diego office of Latham &
15 Watkins, LLP, where I served on that firm's Equal Employment Opportunity Committee. I also
16 have prior service as a director of the San Diego American Corporate Counsel Association, the
17 San Diego Volunteer Lawyer Program, and San Diego Imperial County Girl Scouts.

18 I have testified previously before the Commission.
19