

TABLE OF CONTENTS

I. PURPOSE OF TESTIMONY 1

II. REBUTTAL TO UCAN 1

A. The 2009-2010 Insurance Renewal Process was Reasonable 2

B. SDG&E Accepted Terms that were Reasonable Given the Circumstances 5

C. Alternatives to the Traditional Insurance Market were Considered but not Deemed Viable 7

(i) ART mechanisms versus traditional insurance 7

(ii) SDG&E’s analysis of ART options 9

(iv) The analysis of SDG&E’s self-insurance option is flawed 11

(v) The analysis of the “likely” outcome had SDG&E pursued alternative risk financing is flawed 12

D. SDG&E is Disproportionately Affected by the Z-factor Event 12

III. REBUTTAL TO DRA 13

IV. REBUTTAL TO INTERVENOR HENDRICKS (Witness Christensen) 14

A. Separate Premiums for Wildfire and General Liability Insurance 14

B. Availability of Marsh Broker 15

1 **PREPARED REBUTTAL TESTIMONY**
2 **OF MAURY DE BONT**
3 **ON BEHALF OF SAN DIEGO GAS & ELECTRIC COMPANY**
4

5 **I. PURPOSE OF TESTIMONY**

6 The purpose of my rebuttal testimony is to respond to the prepared direct testimony of
7 witnesses Robert Sulpizio (on behalf of UCAN), Kevin Christensen (on behalf of intervener
8 Hendricks) and Scott Logan (on behalf of DRA).
9

10 **II. REBUTTAL TO UCAN**

11 In his direct testimony, Mr. Sulpizio asserts that Sempra Energy (“Sempra”) Risk
12 Management, acting on behalf of SDG&E, failed to employ reasonable strategies to reduce
13 liability insurance costs (for ease of reference, Sempra Risk Management acting on behalf of
14 SDG&E is hereinafter referred to as “SDG&E”).

15 Mr. Sulpizio’s argument rests on the following claims:

- 16 • SDG&E improperly relegated the negotiation process to an intermediary (p. 7);
- 17 • SDG&E did not meet with the company’s primary insurer, AEGIS, and did not
18 raise with underwriters the issues of SDG&E’s 2007 wildfire liability claims or the
19 applicability of the inverse condemnation doctrine (pp. 6, 7);
- 20 • SDG&E did not adequately address the concerns of underwriters during the
21 negotiation process (pp. 4, 6);
- 22 • SDG&E assented to terms demanded by AEGIS that were unreasonable (p. 10);
- 23 • SDG&E could have prevented “payback” as a factor in the premium increase (pp.
24 8-9);
- 25 • SDG&E did not consider alternatives to the traditional insurance market (pp. 11-
26 18); and
- 27 • SDG&E is not disproportionately affected by the precipitous increase in liability
28 insurance costs (p. 20).

29
30 These claims are rebutted below.
31

1 **A. The 2009-2010 Insurance Renewal Process was Reasonable**

2 Although Mr. Sulpizio bases his purported expertise regarding insurance matters on his
3 years spent as an insurance broker, he appears to question SDG&E’s reliance upon insurance
4 broker, Marsh USA, Inc. (“Marsh”), to handle the direct negotiations in the 2009-2010 liability
5 insurance renewal, asserting that it was “not prudent that [SDG&E] relegated the negotiation
6 process to an intermediary.”¹ While Mr. Sulpizio implies that use of an insurance broker is
7 uncommon, most, if not all, companies of Sempra’s size, including utility companies, use
8 insurance brokers to assist in determining appropriate insurance coverage levels and types, and
9 most importantly to deal directly with insurance underwriters in negotiating liability insurance
10 pricing and premiums.

11 While SDG&E’s risk management representatives are permitted to deal directly with
12 mutual insurers AEGIS and EIM² without being licensed, we are not licensed to deal directly
13 with insurers in London or Bermuda. Brokers such as Marsh, however, are licensed to conduct
14 insurance business on behalf of their clients in their jurisdiction. Nearly every AEGIS and EIM
15 member uses the vast resources of a broker in the renewal process, especially to negotiate price
16 and premiums. Because Marsh does many placements with AEGIS and EIM, they can use their
17 leverage and knowledge to secure the best deal from these insurers. Marsh is a prominent and
18 well-respected insurance brokerage firm, and SDG&E’s insurance broker, Joseph Phillips, has
19 represented SDG&E for over 20 years and is among the top insurance brokers in the utility
20 sector.³

21 Contrary to Mr. Sulpizio’s claims, SDG&E works closely with Mr. Phillips during each
22 insurance renewal process, and did so for the 2009-2010 renewal. Each year’s insurance renewal
23 process involves a constant dialogue between SDG&E and Mr. Phillips, as Mr. Phillips
24 negotiates pricing with underwriters, reports back with ongoing status updates, receives
25 instructions from SDG&E, and carries out the negotiation process. The 2009-2010 renewal

¹ Prepared Testimony of Robert Sulpizio (“Sulpizio Direct”), p. 7,

² Associated Electric & Gas Insurance Services Limited (AEGIS) is a mutual insurance company owned by its policyholder-members. AEGIS was formed to serve the utility and related energy industry. Member companies currently include gas and electric utilities, related energy companies, oil & gas exploration and production companies, water utilities, and transmission & distribution companies. See AEGIS website: http://www.aegislink.com/portal/about_us.do

Energy Insurance Mutual Limited (EIM) is a mutually owned excess liability insurance carrier. Membership is available to utilities along with members of the energy services industry that meet the underwriting standards established by the company. See EIM website: <http://www.eimltd.com/flowmeter.cfm?meter=1>

³ Mr. Phillips was recently named as a finalist for the 2009 “Power Broker –Utilities” designation conferred by *Risk & Insurance* magazine. See <http://global.marsh.com/news/press/pr2010feb26.php>

1 involved this same process and was notable only in that the process involved a greater number of
2 underwriters than in previous years, as well significant increases in cost.

3 Mr. Sulpizio is similarly mistaken in his assumption that SDG&E did not meet with the
4 Company's primary insurer, AEGIS. Sempra's former Director of Risk Management, James
5 Lathers, did in fact meet personally with AEGIS during the 2009-2010 insurance renewal
6 process.⁴ Mr. Lathers met with the AEGIS underwriter in both 2008 and 2009. He also met with
7 the industry's other mutual insurance company, EIM in 2008. These meetings involved
8 discussion of the status of and any details known at that time relating to the 2007 wildfire losses,
9 including the applicability of the inverse condemnation doctrine, any concerns the underwriters
10 had, and anything related to SDG&E's application and underwriting submission. Mr. Lathers
11 also delivered his informational underwriting presentation on Sempra Energy's activities and
12 operations. SDG&E's insurance broker representative from Marsh, Mr. Phillips, was present at
13 these meetings. In 2009, Mr. Lathers met the AEGIS underwriter twice - at the annual EIM Risk
14 Manager Informational Meeting in February and at the AEGIS Policyholder Conference in July,
15 discussing generally the same issues. Mr. Phillips was with Mr. Lathers at both of these
16 meetings. What was **not** discussed at these 2008 or 2009 meetings was anything regarding
17 premiums, rates or pricing, as those negotiations are traditionally handled by insurance brokers.

18 In the spring of 2008, Mr. Lathers met with all the insurance markets. The discussion
19 during these meetings centered primarily on any facts known about the 2007 wildfires and the
20 magnitude of damages known at the time of the meetings. Mr. Lathers also addressed the issue
21 of how inverse condemnation might apply to the civil lawsuits filed against SDG&E.
22 Underwriters wanted to know how SDG&E would defend itself against these complaints.
23 Underwriters did not, however, ask many questions beyond this point as they did not fully
24 understand or appreciate the significance of inverse condemnation as it is understood today.

25 As I explain in my prepared direct testimony, the fire claims became more fully
26 developed over time and as a result, underwriters' knowledge and understanding of inverse
27 condemnation and its potential future applicability grew from their own internal discussion with
28 their legal counsel who were involved in the wildfire claims process. In early 2009, the facts
29 about the wildfire claims, including the relevance of the inverse condemnation doctrine and the
30 potential for indemnification,⁵ were fully known and understood by underwriters. By this time,

⁴ Mr. Lathers has since retired from Sempra, effective January 29, 2010.

⁵ SDG&E has filed cross-complaints against Cox.

1 and *before* SDG&E held renewal meetings with underwriters, underwriters had posted full loss
2 limit reserves.

3 There appeared to be no intrinsic value in highlighting facts and issues surrounding the
4 wildfire claims during these renewal meetings, as underwriters were already participating in the
5 claims process and were well aware of their existence. Moreover, the meetings and discussions
6 with underwriters in 2009, including AEGIS, focused on what actions SDG&E was taking to
7 mitigate its wildfire risk exposure – *e.g.*, inspections, hardening of assets, the proposed
8 emergency shut-off plan, etc. Mr. Sulpizio’s assertion that SDG&E should have instead focused
9 underwriters’ attention on the massive 2007 wildfire liability claims or the unfavorable potential
10 applicability of the inverse condemnation doctrine makes no sense – these details were well-
11 known by underwriters and the goal of these meetings was to explain what SDG&E was doing to
12 *improve* its risk profile with regard to wildfires, not draw attention to the most detrimental
13 aspects of its risk profile.

14 Mr. Sulpizio’s assertion that “[a]nother factor that SDG&E should have emphasized is
15 the Company’s loss history,” is perplexing.⁶ Plainly, SDG&E’s loss history was a major issue
16 for underwriters. Mr. Sulpizio incorrectly assumes that SDG&E sustained little to no losses in
17 the years prior to the 2007 wildfires. While it is true that SDG&E submitted no claims to AEGIS
18 for *wildfire* losses for the ten-year prior to 2007, SDG&E did sustain *non-wildfire* liability losses
19 insured by AEGIS. Regardless, this fact holds little relevance in light of the \$105 million that
20 AEGIS paid out in claims on behalf of SDG&E for claims related to the 2007 wildfires.
21 Moreover, Mr. Sulpizio’s assumption that AEGIS never “lost money on the SDG&E account” is
22 both uninformed and unsupportable.⁷ As most insurance industry professionals are aware,
23 underwriters make or lose money based on premiums they earn plus investment income which
24 are offset by funds paid out for losses. However, neither he nor I can accurately say if AEGIS
25 lost money in its account with SDG&E over ten year’s period of time. Mr. Sulpizio is too quick
26 to assume that AEGIS did not lose money, particularly given the general facts known regarding
27 losses related to the 2007 wildfires and published in insurance industry publications such as
28 *Business Insurance and Risk & Insurance*.

⁶ Sulpizio Direct, p. 7,

⁷ *See id.*

1 Thus, Mr. Sulpizio’s assertion that the 2009-2010 insurance renewal process was
2 imprudent and that SDG&E failed to play an effective role is wholly without merit.
3 SDG&E did, for example, meet with underwriters from AEGIS and other insurers in order to
4 “tell [its] own story in a persuasive fashion.”⁸ What we did not do was negotiate the pricing and
5 premium directly with AEGIS and the other underwriters; as is industry custom, this negotiation
6 was handled by our insurance broker, Marsh. Mr. Sulpizio confuses the “negotiation process”
7 and the “renewal process.” In so doing, Mr. Sulpizio ignores the numerous ways in which
8 SDG&E participated in the entire renewal process and mischaracterizes the actions taken by
9 SDG&E.

10
11 **B. SDG&E Accepted Terms that were Reasonable Given the Circumstances**

12 Mr. Sulpizio asserts at p. 4 of his testimony that that SDG&E assented to terms
13 demanded by AEGIS that were unreasonable. He dismisses the notion that the massive 2007
14 wildfire liability claims, or any of the other four factors cited in my direct testimony as causing
15 insurance costs to increase, were relevant to AEGIS’s underwriting process, and suggests that
16 SDG&E’s pre-2007 loss history should have been the sole deciding factor in setting price.⁹ As
17 explained above and in my direct testimony, Mr. Sulpizio’s wildly optimistic viewpoint was not
18 shared by any underwriters from AEGIS or the other participating insurers. As a price taker,
19 SDG&E can attempt to positively influence underwriters’ decisions, but ultimately cannot
20 control underwriters’ decisions on limits offered and pricing.

21 SDG&E accepted terms that were economically reasonable for risk transfer from AEGIS,
22 the only insurer to offer coverage in the primary layer for a utility/energy company. As Mr.
23 Sulpizio is or should be aware, AEGIS provides the broadest coverage available in the
24 commercial insurance market for companies such as SDG&E. However, Mr. Sulpizio was not
25 aware that SDGE had a nearly 100% loss ratio for the prior 10 years for *non-wildfire third party*
26 *liability losses*.¹⁰ Coupled with the fact that SDG&E submitted three wildfire claims to AEGIS
27 for \$105 million in losses (three claims and the full policy limit of \$35 million each claim),
28 SDG&E’s complete past loss experience, wildfire and non-wildfire, would lead any reasonable
29 insurance professional to conclude that the terms offered by AEGIS were an economically viable

⁸ See *id.*

⁹ The other four factors include: (i) potential applicability of the inverse condemnation doctrine; (ii) underwriters’ assessment of the risk for future wildfire losses; (iii) a loss of reinsurance due to wildfire exposure; and (iv) general market pressures outside of the California wildfire situation. (Prepared Direct Testimony of Maury De Bont, pp. 3-5).

¹⁰ This means that AEGIS paid out \$1 in claims for every \$1 paid in premiums.

1 risk transfer option. Looking forward, any reasonable insurance professional would conclude
2 that, due to inverse condemnation and climate/weather conditions in SDG&E's service territory,
3 future loss expectations are not good.

4 Despite its comparatively disadvantageous negotiation position in the 2009-2010
5 renewal, SDG&E did not merely accede to "unreasonable" terms with AEGIS. Rather, in
6 consultation with and at the direction of SDG&E, Marsh negotiated coverage terms and
7 conditions and pricing over many months with the AEGIS underwriter, going back and forth to
8 achieve final terms. Ultimately, SDG&E made it known to AEGIS that there may come a point
9 in time where AEGIS would price coverage to a level where it would be deemed too expensive
10 and would no longer represent an acceptable risk transfer. We informed AEGIS through Marsh
11 that we would self insure the \$35 million layer should it increase the premium above what was
12 already being offered.

13 Mr. Sulpizio's suggestion that SDG&E had the means to prevent insurer "payback" is
14 baffling. It is a well-known fact that premiums always increase after an insured party sustains a
15 large loss. As a former broker, Mr. Sulpizio should know this. The length of the payback period
16 is not quantifiable, but is directly related to the severity of the loss(es). As Mr. Sulpizio notes,
17 insurers are in the business of assessing and accepting risk.¹¹ Once an insured party sustains a
18 major loss, underwriters will view that party's risk profile as being more susceptible to the same
19 kind of loss and will set pricing (as well as capacity limits offered and deductible levels)
20 accordingly. This would include, in SDG&E's case, a rather large element of payback. Because
21 AEGIS is a mutual insurer, every member of AEGIS incurs an element of payback for other
22 members' losses. This was true for the 2007 wildfire losses, whereby members had an element
23 of payback included in their renewal premiums for 2009. Given the nature of SDG&E's losses,
24 however, it is logical to conclude that SDG&E's payback was much greater than other AEGIS
25 members, including the other California utilities. AEGIS will have ultimately paid out \$105
26 million in wildfire losses, and following markets will likely pay their share of the \$1.2 billion in
27 limits available. Payback is a major element to insurers' pricing.

28 It is true, as Mr. Sulpizio notes, that new insurers may have benefited indirectly from the
29 payback pricing where each layer of coverage is based upon the pricing of the preceding layer.¹²
30 However, the nature of the insurance marketplace does not allow for price differentiation within
31 the same layer, a fact of which Mr. Sulpizio is or should be aware. Due to the catastrophic risk

¹¹ Sulpizio Direct, p. 4.

¹² *Id.* at pp. 4, 9.

1 posed by wildfires, SDG&E needed all the available and reasonable capacity it could procure;
2 SDG&E would have found it imprudent to decline new capacity being offered in addition to the
3 capacity being offered by incumbent payback insurers. For Mr. Sulpizio to imply that new
4 capacity insurers could be forced to provide a lower price because they did not pay any losses is
5 inconsistent with the insurance market mechanism as it exists today.

6
7 **C. Alternatives to the Traditional Insurance Market were Considered but not**
8 **Deemed Viable**

9 **(i) ART mechanisms versus traditional insurance**

10 SDG&E has explored and continues to explore alternative risk transfer (“ART”)
11 mechanisms, as Mr. Sulpizio acknowledges in his testimony.¹³ SDG&E has looked at
12 catastrophe bonds (“Cat Bonds”), reinsurance, pooling wildfire liability with other IOUs, and
13 formation of a “captive” insurance company (*i.e.*, an insurance company formed to insure the
14 risks of businesses that are related through common ownership). To date, SDG&E has found
15 that the timing and costs associated with these ART alternatives makes them infeasible and not
16 cost competitive with the commercial insurance market. Nevertheless, SDG&E continues to
17 consider ART options and does not foreclose the possibility that it would pursue any such an
18 option in the future.¹⁴

19 Mr. Sulpizio’s opinions regarding the advantages of ART mechanisms over traditional
20 insurance appear to be based upon a flawed premise. I disagree with Mr. Sulpizio’s assertion
21 that the “first rule of insurance” is “spread of risk.”¹⁵ The first rule of insurance, from a risk
22 management and insurance buyer perspective, is to find the insurance mechanism that provides
23 the best coverage at the best price that transfers risk exposure. The captive mechanisms
24 proposed by Mr. Sulpizio would spread risk across a much *smaller* group of participants – *e.g.*,
25 single-parent captive, pooling among the three California utilities. This would violate his “rule”
26 (spread of risk) and would contravene SDG&E’s goal of obtaining significant capacity for its

¹³ See *id.* at p. 14.

¹⁴ At pp. 17-18 of his direct testimony, Mr. Sulpizio makes an inaccurate assumption that the group captive option was not discussed by SDG&E and the other two California utilities and that SDG&E has “declined” cooperative action. This erroneous conclusion appears to be based upon a limited scope of questioning during deposition and my responses to questions concerning my *personal* involvement in discussions regarding group captive efforts. My understanding is that SDG&E has had many communications with PG&E and SCE related to the wildfires and Commission proceedings that have not involved me.

¹⁵ Sulpizio Direct, p. 11.

1 catastrophic wildfire risk. Application of Mr. Sulpizio’s so-called “first rule of insurance” would
2 have resulted in more expensive and less adequate insurance coverage for SDG&E.

3 Mr. Sulpizio is correct in his assessment that there is not much competition for utility risk
4 in the insurance market beyond AEGIS and EIM. However, AEGIS and EIM were formed to
5 address this very issue by providing the broadest coverage possible designed for utility and
6 energy companies like SDG&E at the most economical price. SDG&E has a long history of
7 coverage continuity with AEGIS, going back to 1975. SDG&E was the 22nd member of AEGIS,
8 which was formed in 1975. This long-term history is due to the valuable and most economical
9 coverage AEGIS provides to its insured members. This is why 95% of the utility industry places
10 their primary liability insurance layer with AEGIS, including PG&E and SCE. Again, the “first
11 rule of insurance” that is the most logical and prudent from a risk management standpoint is to
12 procure risk transfer that provides the best coverage at the best price. In doing so, SDG&E is
13 representative of the collective wisdom of 95% of utilities in the industry. To follow Mr.
14 Sulpizio’s advice of diversifying your risk transfer portfolio for the sake of diversification alone
15 is not prudent and may result in higher risk transfer costs than are necessary.

16 Mr. Sulpizio’s assertion that AEGIS and other insurers are “too small too and thinly
17 capitalized” to be viable options is disproved by the fact that ratings agencies such as A.M. Best
18 and S&P have assigned these very same insurers financial strength ratings of “superior” to
19 “excellent” in their ability to meet their on-going obligations to policyholders.¹⁶ Why would
20 brokers like Marsh, Aon and Willis place business with these markets if they were “too small
21 and too thinly capitalized to offer any assurance of long term stability in insurance costs?” Mr.
22 Sulpizio’s claims concerning the purported limitations of smaller insurers AEGIS and EIM are
23 belied by the everyday, standard business practices of the insurance industry.

24 Mr. Sulpizio draws a comparison between the financial assets of AEGIS versus Sempra
25 in an apparent attempt to bolster his erroneous claims regarding AEGIS’ financial strength. This
26 is not a valid argument. If this were a guideline used by brokers like Marsh, Aon and Willis to
27 determine whether or not business should be placed with an insurer, AEGIS would not have 95%
28 of the utility industry as its insured members. For Mr. Sulpizio to suggest that this comparison is
29 a relevant criterion in making insurance placement decisions is misleading and disingenuous.

30 Finally, SDG&E notes that Mr. Sulpizio narrowly focuses on risk transfer alternatives –
31 *e.g.*, captives and risk retention groups, a \$50 million loss stability program – to replace AEGIS

¹⁶ See *id.* at p. 14.

1 and EIM limits at the bottom of SDG&E’s liability insurance program. However, Mr. Sulpizio
2 fails to make any suggestions or recommendations concerning SDG&E’s excess layers or our
3 greatest concern, the need for catastrophic limits. This represents a form of analytical “cherry-
4 picking” that is not helpful to the Commission’s consideration of SDG&E’s application. The
5 Commission should not be distracted by theoretical alternatives which do not solve real world
6 problems, even when applied in hindsight.

7
8 **(ii) SDG&E’s analysis of ART options**

9 Mr. Sulpizio assertion that “either before or immediately after the 2007 wildfires,
10 SDG&E needed to develop the best possible alternative to the traditional insurance market in
11 consideration of the dim prospects that exist with regard to the availability of wildfire liability
12 coverage in the future” is similarly illogical.¹⁷ Plainly, abandoning the traditional insurance
13 market in favor of spending time, resources and money to develop commercial insurance
14 alternatives would have made no sense *prior* to the 2007 wildfires. Moreover, Mr. Sulpizio
15 apparently fails to recognize that prior to the 2009-2010 renewal period, wildfire liability was
16 included in SDG&E general liability insurance coverage, along with other third party liability
17 risk exposures. Thus, a wildfire-only coverage strategy was not contemplated. Commercial
18 liability insurance provided coverage for wildfire liability within its policy terms and was the
19 most cost-effective mechanism available to transfer catastrophic risk. For an insurance buyer to
20 pursue an ART option when commercial insurance capacity is plentiful and price is competitive
21 is inconsistent with the way an intelligent and informed insurance buyer would operate.

22 Mr. Sulpizio is also misguided in his assumption that SDG&E did not anticipate
23 shrinking capacity and increased pricing stemming from the 2007 wildfires. SDG&E did, in
24 fact, foresee this possibility for both the 2008 and 2009 insurance renewals. As I explain in my
25 direct testimony, however, virtually all insurers who had written liability insurance for SDG&E
26 in 2007 renewed coverage in 2008 and several new underwriters also offered coverage. Rates
27 were moderately higher than in 2007, but SDG&E was able to procure \$1.17 billion in limits that
28 included no restrictions for wildfire liability.¹⁸ If SDG&E were to have followed Mr. Sulpizio’s
29 approach for the 2008 renewal, it would have missed out on the broadest and most competitively

¹⁷ See *id.* at p. 5.

¹⁸ In his direct testimony at p. 5, Mr. Sulpizio states “SDG&E’s Risk Manager, Maury De Bont, reported that rates were slightly higher in **2007** . . .” (emphasis added). This is a mistaken reference - “2007” should be “2008.”

1 | priced risk transfer mechanism for wildfire risk in favor of a more costly and likely more
2 | restrictive and narrower alternative mechanism.

3 | For the 2009 renewal, we began the renewal process seven months ahead of the renewal
4 | date due to the fact the wildfire claims had become much more fully developed and a more
5 | difficult renewal with the insurance markets was anticipated. As my direct testimony describes,
6 | the response from underwriters was, in fact, unparalleled in that no other utility company had
7 | ever before experienced such a market response from liability underwriters. Mr. Sulpizio fails to
8 | recognize the fact that SDG&E's insurance program provided the broadest coverage at the best
9 | price compared to other risk transfer alternatives. SDG&E did indeed look to alternatives, but
10 | those alternatives were logistically and/or economically not feasible.

11 | Mr. Sulpizio concedes, as he must, that SDG&E did consider alternative insurance
12 | strategies.¹⁹ Evaluation of these options was conducted during numerous telephone
13 | conversations by knowledgeable insurance industry professionals within Sempra Risk
14 | Management, Marsh, and leading global reinsurer, Swiss Re. Contrary to Mr. Sulpizio's claim,
15 | it is not necessary to have a written "formal analysis" to make a decision on whether a particular
16 | alternative strategy is feasible or not. For example, captive studies and Cat Bond modeling are
17 | internally and externally labor intensive, and costly. One would proceed with a study only after
18 | an initial analysis proved the alternative is viable. The cost for modeling the Cat Bond SDG&E
19 | explored in 2009 was upwards of \$250,000. SDG&E was able to make the determination over
20 | several conversations with our insurance broker and professionals at Swiss Re (in person as well
21 | as many telephone discussions) that alternatives like the Cat Bond were not viable, thus avoiding
22 | the cost of modeling and more formalized analysis. With his nearly 50 years of insurance
23 | industry experience and as a former insurance broker himself, I am surprised that Mr. Sulpizio
24 | fails to acknowledge the value of the collective intellect and experience of the insurance
25 | professionals taking part in such telephone discussions. Contrary to Mr. Sulpizio's assertion,
26 | feasibility studies and the like are not necessary in order for knowledgeable and experienced
27 | professionals to make valid and well-informed business decisions.

19 | *See Sulpizio Direct, p. 14.*

1 ***(iv) The analysis of SDG&E's self-insurance option is flawed***

2 Mr. Sulpizio incorrectly asserts that SDG&E did not consider the option of self-insurance
3 in the 2009-2010 insurance renewal.²⁰ SDG&E looked at the option of self-insuring the first \$35
4 million of liability (instead of participating in 50% loss sharing for the first \$35 million layer) as
5 explained above. SDG&E also explored putting AEGIS capacity limits above the primary \$35
6 million layer that AEGIS offered. However the AEGIS underwriter advised that the price for
7 AEGIS's capacity would remain the same even if SDG&E placed AEGIS atop a \$35 million self
8 insured retention. The AEGIS underwriter felt that the catastrophic potential of wildfires would
9 cause a loss much greater than the \$35 million capacity limits he was offering, regardless of
10 whether AEGIS limits would start to pay for losses above a \$5 million or \$35 million self
11 insured retention. Thus, it was more cost-effective to participate in the 50% sharing than to self-
12 insure the first \$35 million.

13 I have reviewed Mr. Sulpizio's calculations on page 10 of his testimony and have found
14 numerous errors in Mr. Sulpizio's analysis. First, Mr. Sulpizio incorrectly lists the AEGIS
15 coverage and premiums charged. The wildfire premium charged by AEGIS for wildfire
16 coverage was \$4.4 million, not \$12.4 million. The \$12.4 million premium includes \$8 million
17 for *non-wildfire* liability coverage, and is not applicable to his mathematical example used here.
18 To clarify further, the \$35 million limit for non-wildfire liability for \$8 million in premium is
19 neither aggregated nor quota-shared.

20 The following represents the correct data regarding what AEGIS was paid: \$4.4 million
21 for a net amount of \$17.5 million of insurance, excess of a \$5 million self insured retention.
22 Thus, applying Mr. Sulpizio's line of thinking, but using the correct premium figures, SDG&E
23 would have paid \$4.4 million in premium for a "net" amount of \$13.1 million of insurance
24 (\$17.5 million minus \$4.4 million), and not \$5.1 million. In comparison (and in reality) SDG&E
25 is only exposed to \$22.5 million in combined self insured retention and loss sharing (\$5 million
26 SIR plus \$17.5 million loss sharing), and benefits from \$17.5 million in coverage limits for the
27 first \$40 million in wildfire loss – all for \$4 million in premium costs.

28
29
30
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²⁰ See *id.* at p. 10.

1 (v) ***The analysis of the “likely” outcome had SDG&E pursued alternative***
2 ***risk financing is flawed***

3 Mr. Sulpizio opines that SDG&E could have negotiated a “loss stabilization program”
4 directly with the reinsurance market, although he does not expressly identify the purported
5 benefits of such an approach.²¹ Under this mechanism, SDG&E would essentially self-insure
6 against loss, with significant risk transfer to reinsurers. While the loss stabilization plan Mr.
7 Sulpizio advocates may have some superficial appeal, his plan entails use of the reinsurance
8 market, the same market he has disparaged SDG&E, AEGIS, EIM, and Lloyds and London
9 companies for being overly reliant upon.²² Mr. Sulpizio does not meaningfully address how he
10 imagines SDG&E will avoid the difficulties obtaining reinsurance that AEGIS and other insurers
11 experienced in the 2009-2010 insurance renewal, which would be a major concern. He makes
12 vague reference to “leading reinsurers” who have purportedly assured him that they are “happy
13 to consider” his proposal. This is hardly a rational basis upon which to form any conclusion
14 regarding the “likely” outcome of SDG&E’s pursuit of alternative risk financing.

15 Moreover, Mr. Sulpizio’s analysis of this option is based upon current market conditions,
16 not the conditions that existed in 2008 and 2009. In 2008 and 2009, reinsurers were not as
17 amenable to writing wildfire liability insurance coverage for SDG&E as Mr. Sulpizio appears to
18 suggest. It is also worth noting that Mr. Sulpizio’s proposed five-year plan would lock SDG&E
19 into a process that may well become more costly after the first or second year of such a program
20 than the commercial insurance market. The further SDG&E moves from the 2007 wildfire
21 losses, and the longer the utilities do not sustain any wildfire losses, the better market conditions
22 will become. Lastly, his option is a modest proposal for limited capacity. SDG&E’s greatest
23 need was and is for very large amounts of wildfire liability insurance to address the catastrophic
24 risk exposure wildfires presented to SDG&E. Mr. Sulpizio’s loss stabilization alternative is
25 somewhat anemic and does not secure the necessary level of protection.

26
27 **D. SDG&E is Disproportionately Affected by the Z-factor Event**

28 As explained in the direct testimony of Lee Schavrien, the Z-factor event at issue in this
29 proceeding is the increase in liability insurance costs and reduction in available coverage.²³ Mr.

²¹ *Id.* at p. 19-20.

²² *See id.* at p. 12 (“Both AEGIS and EIM have . . . been heavily dependent upon the purchase of reinsurance to support their underwriting capacity, thus making them highly susceptible to the erratic behavior of the insurance market.”)

²³ Prepared Direct Testimony of Lee Schavrien, p. 5.

1 Sulpizio’s analysis of the “disproportionate impact” factor is not entirely clear, but he appears to
2 focus solely on the latter issue (reduction in available coverage), concluding that “there is a large
3 body of opinion that the problem of obtaining wildfire liability coverage affects all public
4 utilities in California and is not limited to SDG&E.”²⁴ He does not address the fact that SDG&E
5 was disproportionately impacted by a lack of insurance capacity as well as a dramatic increase in
6 insurance costs where the amount paid by SDG&E, as compared with that paid by PG&E and
7 SCE, represent a much greater percentage of its annual revenue than for the other California
8 utilities.

9 In discussing the reduction in available coverage, Mr. Sulpizio underestimates the
10 significant impact that SDG&E’s three wildfire claims have had on the insurance marketplace
11 and SDG&E’s future ability to secure liability insurance. SDG&E understands from discussions
12 with the PG&E Risk Management Dept. that during its 2009 insurance renewals, PG&E
13 explicitly differentiated themselves from SDG&E by highlighting the divergent climate and
14 terrain in PG&E’s service territory as compared to SDG&E’s service territory, as well as their
15 analysis of how inverse condemnation does not affect PG&E in the same manner that it does
16 SDG&E. SCE has sustained wildfire losses, but these losses were nowhere near the magnitude
17 of SDG&E’s wildfire losses. Thus, SDG&E stands out from the other California utilities in
18 regards to wildfire risk exposure and the availability of liability insurance.

20 **III. REBUTTAL TO DRA**

21 DRA witness, Mr. Logan, suggest that SDG&E may have acted imprudently in seeking
22 the same level of coverage in the 2009-2010 renewal as in prior coverage years, pointing out that
23 SDG&E was not under a “mandate” to procure insurance for the same coverage level as the
24 previous year.²⁵ It is not clear what Mr. Logan means by a “mandate,” but I disagree with his
25 implication that the coverage level sought in the 2009-2010 renewal was unreasonable.

26 Companies will buy large amounts of insurance to transfer risk they deem to be too
27 catastrophic to retain themselves. The question of the “right” amount of insurance to buy
28 requires familiarity with and evaluation of the complexities of the insurance market, and sound
29 professional judgment. One need only look to the Southern California wildfires of 2007 or the
30 devastating Oakland fires of the 1990’s to see the order of magnitude and catastrophic loss

²⁴ Sulpizio Direct, p. 20.

²⁵ Report on the Application by San Diego Gas & Electric Company for Authorization to Recover Unforeseen Liability Premium and Deductible Expense Increases as a Z-Factor Event (hereinafter “DRA Report”), p. 6.

1 potential that wildfires represent to a company like SDG&E. Consideration of such loss
2 potential is part of making a sound and prudent decision regarding the appropriate amount of
3 insurance to obtain. It does not appear that Mr. Logan is an expert on risk management or
4 insurance issues. Thus, I think it would be difficult for him to provide an informed opinion
5 regarding the reasonableness of SDG&E's insurance procurement approach.
6

7 **IV. REBUTTAL TO INTERVENOR HENDRICKS (Witness Christensen)**

8 **A. Separate Premiums for Wildfire and General Liability Insurance**

9 In his testimony, Mr. Christensen provides a lengthy description of the information
10 included in the insurance invoices provided to Hendricks in discovery and asserts that "SDG&E
11 failed to provide any invoices from a third party, insurance broker or insurance underwriter
12 which illustrated . . . a new and separate classification of insurance called wildfire insurance,"²⁶
13 Mr. Christensen is correct that the breakdown between general liability and wildfire premiums
14 generally does not appear in the invoices – this information is typically set forth in insurance
15 binder documents and/or broker documents, which were also provided to Hendricks in discovery.
16 In conducting his "investigation," Mr. Christensen apparently relied on examination of the wrong
17 documents or failed to examine all the documents carefully.²⁷

18 As I explained in my direct testimony, for the 2009-2010 policy year, separate towers of
19 limits were developed for wildfire liability and all other third party liability risks ("general
20 liability" or "non-wildfire liability"). Prior to the 2009-2010 policy year, wildfire liability risk
21 and general liability risk were homogenous; wildfire and general liability losses were treated the
22 same with no differentiation between the two. There was no wildfire aggregate limit associated
23 with the AEGIS policy. For the 2009-2010 policy year, SDG&E learned during the renewal
24 process that AEGIS would place a wildfire liability aggregate limit on our policy. Because of
25 this, we asked underwriters to segregate wildfire liability aggregate limits from the general
26 liability limits in order to have dedicated wildfire limits for wildfire-only losses. This did not,
27 however, create "a new and separate classification of insurance called wildfire insurance."
28 AEGIS merely "ring-fenced" coverage that SDG&E has always had in order to preserve the
29 applicable aggregate limits for wildfire losses only. Nor did this require our insurance vendors to

²⁶ Prepared Direct Testimony of Kevin Christensen (Christensen Direct), p. 1.

²⁷ Mr. Christensen also makes the inaccurate observation that SDG&E "did not provide invoices from . . . **2010-2011** which show a segregation of costs related to general liability and wildfire liability insurance." (Christensen Direct, p. 3) In addition to the fact that this breakdown would generally not appear on the invoices, no invoices exist for 2010-2011 since this policy period is not yet in effect.

1 change how they *invoiced* SDG&E for policy insurance premiums, or how insurers reflected
2 premiums on the policies they issued. What Mr. Christensen found on most of the 2009-2010
3 policy year invoices was a *combined* total policy insurance premium, which is common for the
4 insurance industry.

5 As noted above, break-down of insurance premiums is more typically included on
6 insurance *binders*.²⁸ In addition, when insurance premiums necessitate allocations of some sort,
7 insurance brokers will typically provide such premium allocations for their clients.²⁹

8 Accordingly, Marsh prepared a premium allocation spreadsheet for SDG&E, which shows the
9 breakdown in invoiced premium amounts between wildfire and general. SDG&E provided this
10 allocation spreadsheet to both Hendricks and DRA in discovery.³⁰ It is also important to note
11 that the insurance premium invoices alone do not make up the entire picture for SDG&E's
12 liability insurance costs. Where required by law, Sempra directly files and pays insurer taxes
13 (California surplus lines tax and/or Federal Excise Tax) that add to the total amount of expense
14 related to SDG&E's liability insurance.

15 16 **B. Availability of Marsh Broker**

17 Mr. Christensen's allegation that SDG&E "refused" to produce its broker for deposition
18 is patently false.³¹ At the pre-hearing conference (PHC) held in this proceeding, SDG&E agreed
19 to endeavor to arrange for the deposition of relevant third party witnesses on the insurance
20 issue.³² Shortly following the PHC, at the request of Hendricks counsel,³³ SDG&E provided a
21 comprehensive list of insurer contacts (this was not a pre-existing document) to Hendricks and
22 the other parties to the proceeding. SDG&E also contacted its Marsh broker, Joe Phillips, to
23 request that he make himself available for deposition. Mr. Phillips indicated that the nature of
24 the request would require the involvement of Marsh counsel, who would need to approve his
25 participation in the regulatory proceeding. A contact within the Marsh legal department was not

²⁸ The insurance *policies* themselves, in nearly all cases, will only show a combined total premium.

²⁹ By referencing this premium allocation document, it is possible to confirm whether invoices amounts are for wildfire liability or general liability insurance by confirming policy number, layer limits, and premium amounts noted on the invoice.

³⁰ The spreadsheet was provided to Hendricks in response to its Data Request #2, Question 3.

³¹ See Christensen Direct, p. 10.

³² PHC Tr., p. 20.

³³ See, e.g. *id.* at pp. 8, 14-15 (requesting "names" of "insurer and insurance companies" in order to conduct "one or two" depositions; see also Letter from Mike Aguirre to Aimee Smith dated December 21, 2009.

1 provided until January, 2010. A letter formally requesting that Mr. Phillips be made available
2 was thereafter sent to Marsh counsel, Richard Rosen.³⁴

3 My understanding is that Mr. Rosen thereafter contacted SDG&E counsel regarding the
4 request and that a series of discussions were held over the ensuing few weeks to respond to
5 various questions posed by Mr. Rosen and to discuss the logistics related to making Mr. Phillips
6 available to the parties. Marsh ultimately agreed to make Mr. Phillips available in San Diego
7 (rather than requiring parties to travel out-of-state), subject to certain limitations (*e.g.* “the
8 subject matter of the testimony must be limited to the placement that is underlying the
9 proceeding”). Marsh counsel prepared a letter agreeing to make Mr. Phillips available and
10 setting forth the conditions of his availability. This letter was received by SDG&E on February
11 8 and was immediately forwarded to parties by SDG&E counsel. (Please see attached
12 correspondence).

13 The only party to reply promptly to the correspondence from Marsh was Hendricks. Of
14 the other parties, DRA responded on February 11, indicating that it did not intend to depose Mr.
15 Phillips, and UCAN provided no response. In his response, Hendricks counsel accused SDG&E
16 of bad faith, demanded that SDG&E absorb the cost of Mr. Phillips’ deposition and made several
17 other inflammatory statements. SDG&E provided a written response to Hendricks counsel’s
18 allegations,³⁵ which prompted yet another communication from Hendricks counsel, in which he
19 essentially repeated the assertions made in his initial communication, but did not indicate
20 whether he wished to depose Mr. Phillips. (Please see attached correspondence).

21 Ultimately, no party elected to avail themselves of the opportunity to depose Mr. Phillips.
22 Thus, Mr. Christensen’s claim that SDG&E “refused” to make Mr. Phillips available is a blatant
23 misrepresentation.³⁶ SDG&E acted in good faith in devoting resources to the effort to secure Mr.
24 Phillips’ availability, only to have such efforts go to waste. With regard to the timing of the
25 availability of Joe Phillips, it is important to note that Mr. Phillips is not an SDG&E employee or
26 otherwise under SDG&E’s control. The timing of Marsh’s agreement to make Mr. Phillips
27 available was controlled solely by Marsh and its counsel. It is also worth noting that had parties
28 made their deposition request at an earlier point rather than delaying nearly four months and then

³⁴ Letter from Maury De Bont to Richard Rosen sent January 13, 2010.

³⁵ SDG&E also responded to Hendricks counsel’s request that SDG&E make several additional employees available for deposition, including SDG&E CEO, Debra Reed, Jim Lathers, Ron van der Leeden, and Scott Kyle. Mr. Christensen incorrectly states that SDG&E failed to respond to these requests for additional depositions.

³⁶ *See* Christensen Direct, p. 10.

1 making the request just before the holidays (which caused predictable delay), the timing might
2 have been more favorable.

3 This concludes my rebuttal testimony.

4

APPENDIX

**Correspondence Regarding Insurer
Contacts and Phillips Deposition**

Letter From Michael J. Aguirre, Esq.
to Aimee Smith Dated December 21, 2009

AGUIRRE, MORRIS & SEVERSON LLP
ATTORNEYS AT LAW

444 West C Street, Suite 210
San Diego, CA 92101
Telephone (619) 876-5364
Facsimile (619) 876-5368

Michael J. Aguirre, Esq.
maguirre@amslawyers.com

Via Electronic Mail

December 21, 2009

Aimee M. Smith, Esquire
Senior Regulatory Counsel
SEMPRA ENERGY
101 Ash Street, HQ-12
San Diego, CA 92101

RE: A.09-08-019 – Data Request

Dear Ms. Smith:

We need your assurance that you will provide this week the names of those who assembled the insurance costs you seek to recover in your Z-Factor filing. This means the people within SDGE and with the third party insurance representatives. We do not need a general list of every person with which SDGE does insurance business. Rather, we need those names that can document, based upon personal knowledge, SDGE's Z-factor application basis.

Also, please do not involve us in any dispute or issue about whether the people who assembled SDGE's Z-factor information will agree to be deposed. If SDGE does not produce them, we will be forced to move to dismiss SDGE's case for failing to provide the needed support. We do not intend to be misled by any pretending that those who have provided insurance bids and services to SDGE in connection with the Z-Factor application are not under its control.

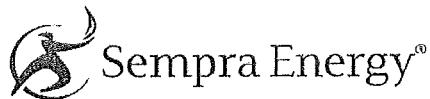
Please keep in mind the specific representations that were made to the court during our session last week about the information needed to be able to meet the deadlines. The judge was clear she wanted no delays and cooperation to be the rule not the exception. I look forward to your immediate confirmation that SDGE will meet its commitment and obligations to provide the information sought and its assurance that it will discontinue any further delay. Thank you.

Very truly yours,



Michael J. Aguirre, Esq.

Letter From Maury De Bont to
Richard C. Rosen Sent January 13, 2010



Maury De Bont
Risk Manager

Sempra Energy
Risk Management
101 Ash Street
San Diego, CA 92101-3017

Tel: (619) 696-2057
Fax: (619) 696-4464
MDeBont@sempra.com

Richard C. Rosen
Chief Privacy and Senior Litigation Counsel
Marsh & McLennan Companies, Inc.
1166 Avenue of the Americas
New York, NY 10036

Re: Deposition of Joe Phillips in CPUC Proceeding A.09-08-019

Dear Mr. Rosen:

This correspondence follows up on several conversations between Sempra Energy's Risk Manager, Maury De Bont and Marsh USA Client Executive, Joe Phillips regarding the availability of Mr. Phillips to be deposed in connection with proceeding A.09-08-019 at the California Public Utilities Commission (the "CPUC" or the "Commission"). The proceeding involves an application filed by San Diego Gas & Electric Company ("SDG&E") to recover unforeseen liability insurance premium expenses incurred in the 2009-2010 insurance renewal process.

In accordance with standard Commission practice, SDG&E submitted prepared testimony in support of its application, including testimony by Mr. De Bont that detailed the procurement process for the 2009-2010 insurance renewal period. At the pre-hearing conference held in the proceeding, the assigned Administrative Law Judge directed SDG&E to request that Mr. Phillips make himself available to be deposed by parties to the proceeding in order to provide information regarding the procurement process undertaken in connection with the 2009-2010 renewal period.

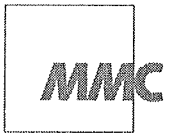
As you are aware, Sempra Energy has a long-standing relationship with Marsh USA and has placed several million dollars of liability insurance through the company. In keeping with the strong business relationship that exists between Sempra Energy and Marsh USA, we request that Marsh USA make Mr. Phillips available in January, 2010 for depositions in the above-referenced proceeding.

Please contact me at your earliest opportunity to discuss the above request and identify potential dates for deposition of Mr. Phillips.

Sincerely,


Maury De Bont, A.R.M.

Letter From Marsh Counsel, Richard Rosen, to
Aimee Smith, Dated February 8, 2010



MARSH MERCER KROLL
GUY CARPENTER OLIVER WYMAN

Richard C. Rosen
Chief Privacy & Senior Litigation Counsel
Marsh & McLennan Companies, Inc.
1166 Avenue of the Americas
New York, NY 10036
212 345 5220 Fax 212 345 5627
richard.c.rosen@mmc.com
www.mmc.com

February 8, 2010

VIA ELECTRONIC MAIL (AMSmith@sempra.com)

Aimee M. Smith, Esq.
Senior Regulatory Counsel
Sempra Energy
101 Ash Street, HQ-12
San Diego, California 92101

Re: Testimony of Joseph E. Phillips

Dear Ms. Smith:

As you know, I represent the interests of Marsh USA Inc. ("Marsh"), a Marsh & McLennan Company, in connection with the request to produce Marsh employee Joseph E. Phillips in connection with San Diego Gas & Electric's Z-Factor Application Proceeding ("Proceeding"). I understand that the Intervenor has specifically requested Mr. Phillips' testimony.

Marsh is willing to have Mr. Phillips produced to assist the Intervenor in the Proceeding. However, Marsh requires certain limitations on Mr. Phillips' testimony:

1. Mr. Phillips will not be appearing as an expert witness. Rather, his testimony will be purely that of a fact witness. Speculative or hypothetical questions will not be acceptable.
2. The subject matter of the testimony must be limited to the placement that is the underlying the Proceeding. Mr. Phillips will not be permitted to provide testimony regarding any other Marsh business.
3. Given time constraints, Mr. Phillips' testimony must be limited to no more than three total hours of testimony.
4. Mr. Phillips is willing to go to the Intervenor in San Diego, California, but the time and expense of his travels require reimbursement. Please advise on those costs.

As you have explained, I understand that the Intervenor's request is not common, so there may be some additional limitations as we go through this process. Please let me know how the Intervenor and San Diego Gas & Electric wishes to proceed. Please contact Mr. Phillips regarding the Proceeding only through me until we have arranged for all of the details.

Very truly yours,

Richard C. Rosen

cc: Mr. Joseph E. Phillips (Marsh)

February 8, 2010 E-mail from Aimee Smith
forwarding Marsh Letter to Parties

Smith, Aimee

From: Smith, Aimee
Sent: Monday, February 08, 2010 4:31 PM
To: 'Moldavsky, Ed'; 'Maria C. Severson'; 'mshames@ucan.org'; 'maguirre@amslawyers.com'
Cc: Melville, Keith W.; Manzuk, Chuck; 'Richard.C.Rosen@mmc.com'
Subject: A.09-08-019 (Z-factor): Deposition of Joe Phillips, Marsh USA
Attachments: Sempra - Phillips.pdf

Parties to A.09-08-019:

Please see the attached letter from Marsh USA counsel, Richard Rosen, regarding the availability of Joe Phillips for deposition in the above-referenced proceeding. Please note that Mr. Rosen has advised that Mr. Phillips is not available on Friday, February 12.

Please indicate at your earliest convenience, but not later than COB Tuesday, whether you wish to depose Mr. Phillips. **Please ensure that you include Mr. Rosen on your response.** As with the prior depositions, SDG&E is willing to provide the location for the depositions. All other costs associated with the depositions, including Mr. Phillips' travel costs, shall be the responsibility of the deposing part(ies).

Thanks,

Aimee M. Smith
 Senior Regulatory Counsel
 Sempra Energy
 101 Ash Street, HQ-12
 San Diego, CA 92101
 Direct: (619) 699-5042
 Mobile: (619) 823-3091
 amsmith@sempra.com

From: Smith, Aimee
Sent: Tuesday, January 12, 2010 4:45 PM
To: Smith, Aimee; 'Moldavsky, Ed'; 'Maria C. Severson'; 'mshames@ucan.org'; 'maguirre@amslawyers.com'
Cc: Melville, Keith W.; Urick, Lisa; Manzuk, Chuck; van der Leeden, Ronald
Subject: RE: A.09-08-019 (Z-factor): SDG&E Witness Depositions

Parties to A.09-08-019:

A couple of administrative/scheduling matters related to the depositions to be held later this week:

1. At your earliest convenience, kindly forward the names of the individuals that will be attending the depositions for each party and the anticipated dates of their attendance. This information is necessary to obtain security badges, which are required to enter the building.
2. We will plan to dial in DRA using the polycom in the conference room. Please advise if more than one phone line is required and we will arrange a conference bridge.
3. Deborah Yee has had an urgent family matter arise and will not be available on Friday. We propose to move her deposition to Jan. 20 at 10 am. We ask that parties that intend to depose Ms. Yee confirm their

3/17/2010

availability on this date.

Thanks,

Aimee M. Smith
Senior Regulatory Counsel
Sempra Energy
101 Ash Street, HQ-12
San Diego, CA 92101
Direct: (619) 699-5042
Mobile: (619) 823-3091
amsmith@sempra.com

From: Smith, Aimee
Sent: Thursday, January 07, 2010 6:11 PM
To: 'Moldavsky, Ed'; 'Maria C. Severson'; 'mshames@ucan.org'; 'maguirre@amslawyers.com'
Cc: Melville, Keith W.; Urick, Lisa; Manzuk, Chuck; van der Leeden, Ronald
Subject: RE: A.09-08-019 (Z-factor): SDG&E Witness Depositions

Parties to A.09-08-019:

Based upon the information provided by the parties, set forth below are scheduling details for Z-factor witness depositions:

January 14

Witness: Maury De Bont
Deposing Parties: UCAN, Hendricks, DRA?
Time: 10:00 am
Location: Sempra Energy – 101 Ash Street, San Diego

January 15

Witness: Deborah Yee
Deposing Party: Hendricks, DRA?
Time: 10:00 am
Location: Sempra Energy – 101 Ash Street, San Diego

Witness: Lee Schavrien
Deposing Party: Hendricks, DRA?
Time: 1:00 pm
Location: Sempra Energy – 101 Ash Street, San Diego

SDG&E reminds parties that while it will provide the location for the depositions, all other costs associated with the depositions (*e.g.*, court reporter, parking, etc.) shall be the responsibility of the deposing part(ies).

SDG&E notes further that counsel for Ms. Hendricks has not yet executed the nondisclosure and protective agreement forwarded to parties by SDG&E in mid-December. If counsel for Ms. Hendricks fails to do so prior to the depositions, Ms. Hendricks' counsel will be excluded from those portions of the deposition involving discussion of confidential matters and parties must refrain from disclosing confidential information to counsel for Ms. Hendricks at all times, including during the depositions.

Please feel free to contact me if you have any questions.

Best regards,
Aimee M. Smith

Senior Regulatory Counsel
Sempra Energy
101 Ash Street, HQ-12
San Diego, CA 92101
Direct: (619) 699-5042
Mobile: (619) 823-3091
amsmith@sempra.com

From: Smith, Aimee
Sent: Tuesday, January 05, 2010 4:57 PM
To: 'Moldavsky, Ed'; Maria C. Severson; mshames@ucan.org; maguirre@amslawyers.com
Cc: Melville, Keith W.; Urick, Lisa; Borthwick, Robert; Davis, C. Larry; McDonnell, Kimberly; van der Leeden, Ronald; Manzuk, Chuck
Subject: A.09-08-019 (Z-factor): SDG&E Witness Depositions

Parties to A.09-08-019:

As a follow-up to the meet & confer held in the above-referenced proceeding on December 29, 2009, SDG&E requests that each party indicate no later than close of business on **January 6, 2010** whether you will depose SDG&E witnesses Lee Schavrien, Maury De Bont and/or Deborah Yee. SDG&E witnesses Lee Schavrien and Maury De Bont are available for deposition on January 14, and SDG&E witness Deborah Yee is available on January 15. If you intend to depose Mr. Schavrien, we request that you do so the morning of January 14.

For each witness that you plan to depose, please coordinate with the other parties and indicate where and at what time the relevant witness should appear. To facilitate matters for the parties, SDG&E has arranged to make a conference room available at the Sempra headquarters building located at 101 Ash Street in San Diego on January 14 and/or 15. All other scheduling matters, including securing of a court reporter, shall be the responsibility of the deposing part(ies).

Please feel free to contact me if you have questions.

Best regards,
Aimee M. Smith
Senior Regulatory Counsel
Sempra Energy
101 Ash Street, HQ-12
San Diego, CA 92101
Direct: (619) 699-5042
Mobile: (619) 823-3091
amsmith@sempra.com



MARSH MERCER KROLL
GUY CARPENTER OLIVER WYMAN

Richard C. Rosen

Chief Privacy & Senior Litigation Counsel
Marsh & McLennan Companies, Inc.
1166 Avenue of the Americas
New York, NY 10036
212 345 5220 Fax 212 345 5627
richard.c.rosen@mmc.com
www.mmc.com

February 8, 2010

VIA ELECTRONIC MAIL (AMSmith@sempra.com)

Aimee M. Smith, Esq.
Senior Regulatory Counsel
Sempra Energy
101 Ash Street, HQ-12
San Diego, California 92101

Re: Testimony of Joseph E. Phillips

Dear Ms. Smith:

As you know, I represent the interests of Marsh USA Inc. ("Marsh"), a Marsh & McLennan Company, in connection with the request to produce Marsh employee Joseph E. Phillips in connection with San Diego Gas & Electric's Z-Factor Application Proceeding ("Proceeding"). I understand that the Intervenor has specifically requested Mr. Phillips' testimony.

Marsh is willing to have Mr. Phillips produced to assist the Intervenor in the Proceeding. However, Marsh requires certain limitations on Mr. Phillips' testimony:

1. Mr. Phillips will not be appearing as an expert witness. Rather, his testimony will be purely that of a fact witness. Speculative or hypothetical questions will not be acceptable.
2. The subject matter of the testimony must be limited to the placement that is the underlying the Proceeding. Mr. Phillips will not be permitted to provide testimony regarding any other Marsh business.
3. Given time constraints, Mr. Phillips' testimony must be limited to no more than three total hours of testimony.
4. Mr. Phillips is willing to go to the Intervenor in San Diego, California, but the time and expense of his travels require reimbursement. Please advise on those costs.

As you have explained, I understand that the Intervenor's request is not common, so there may be some additional limitations as we go through this process. Please let me know how the Intervenor and San Diego Gas & Electric wishes to proceed. Please contact Mr. Phillips regarding the Proceeding only through me until we have arranged for all of the details.

Very truly yours,

Richard C. Rosen

cc: Mr. Joseph E. Phillips (Marsh)

Email from Michael Aguirre to Aimee Smith, Ed
Moldavsky, Maria Severson, and Michael Shames
Dated February 8, 2010

Smith, Aimee

From: Michael Aguirre [maguirre@amslawyers.com]
Sent: Monday, February 08, 2010 6:28 PM
To: Smith, Aimee; 'Moldavsky, Ed'; 'Maria C. Severson'; mshames@ucan.org
Cc: Melville, Keith W.; Manzuk, Chuck; Richard.C.Rosen@mmc.com
Subject: RE: A.09-08-019 (Z-factor): Deposition of Joe Phillips, Marsh USA

Ms. Smith you have failed to produce the witness Mr. Phillips and have waited until 10 days before our testimony is due. I must say I am amazed at the bad faith shown by your client with your involvement. The letter from Mr. Rosen makes clear he does not represent Mr. Phillips. You have failed to produce a key witness or offer testimony from him. You offered Marsh witnesses in other proceedings. His testimony is critical. You are subject to the jury instruction that follows a failure to produce evidence. I request you produce Mr. Phillips any day this week at your expense. Please let us know if you will agree to do so. Mike Aguirre

From: Smith, Aimee [mailto:AMSmith@sempra.com]
Sent: Monday, February 08, 2010 4:31 PM
To: 'Moldavsky, Ed'; 'Maria C. Severson'; 'mshames@ucan.org'; 'maguirre@amslawyers.com'
Cc: Melville, Keith W.; Manzuk, Chuck; 'Richard.C.Rosen@mmc.com'
Subject: A.09-08-019 (Z-factor): Deposition of Joe Phillips, Marsh USA

Parties to A.09-08-019:

Please see the attached letter from Marsh USA counsel, Richard Rosen, regarding the availability of Joe Phillips for deposition in the above-referenced proceeding. Please note that Mr. Rosen has advised that Mr. Phillips is not available on Friday, February 12.

Please indicate at your earliest convenience, but not later than COB Tuesday, whether you wish to depose Mr. Phillips. **Please ensure that you include Mr. Rosen on your response.** As with the prior depositions, SDG&E is willing to provide the location for the depositions. All other costs associated with the depositions, including Mr. Phillips' travel costs, shall be the responsibility of the deposing part(ies).

Thanks,

Aimee M. Smith
Senior Regulatory Counsel
Sempra Energy
101 Ash Street, HQ-12
San Diego, CA 92101
Direct: (619) 699-5042
Mobile: (619) 823-3091
amsmith@sempra.com

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Sent: Tuesday, January 12, 2010 4:45 PM
To: Smith, Aimee; 'Moldavsky, Ed'; 'Maria C. Severson'; 'mshames@ucan.org'; 'maguirre@amslawyers.com'
Cc: Melville, Keith W.; Urick, Lisa; Manzuk, Chuck; van der Leeden, Ronald
Subject: RE: A.09-08-019 (Z-factor): SDG&E Witness Depositions

3/17/2010

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2. We will plan to dial in DRA using the polycom in the conference room. Please advise if more than one phone line is required and we will arrange a conference bridge.
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San Diego, CA 92101
Direct: (619) 699-5042
Mobile: (619) 823-3091
amsmith@sempra.com

From: Smith, Aimee
Sent: Thursday, January 07, 2010 6:11 PM
To: 'Moldavsky, Ed'; 'Maria C. Severson'; 'mshames@ucan.org'; 'maguirre@amslawyers.com'
Cc: Melville, Keith W.; Urick, Lisa; Manzuk, Chuck; van der Leeden, Ronald
Subject: RE: A.09-08-019 (Z-factor): SDG&E Witness Depositions

Parties to A.09-08-019:

Based upon the information provided by the parties, set forth below are scheduling details for Z-factor witness depositions:

January 14

Witness: Maury De Bont
Deposing Parties: UCAN, Hendricks, DRA?
Time: 10:00 am
Location: Sempra Energy – 101 Ash Street, San Diego

January 15

Witness: Deborah Yee
Deposing Party: Hendricks, DRA?
Time: 10:00 am
Location: Sempra Energy – 101 Ash Street, San Diego

Witness: Lee Schavrien
Deposing Party: Hendricks, DRA?
Time: 1:00 pm
Location: Sempra Energy – 101 Ash Street, San Diego

SDG&E reminds parties that while it will provide the location for the depositions, all other costs associated with the depositions (e.g., court reporter, parking, etc.) shall be the responsibility of the deposing part(ies).

SDG&E notes further that counsel for Ms. Hendricks has not yet executed the nondisclosure and protective agreement forwarded to parties by SDG&E in mid-December. If counsel for Ms. Hendricks fails to do so prior to the depositions, Ms. Hendricks' counsel will be excluded from those portions of the deposition involving discussion of confidential matters and parties must refrain from disclosing confidential information to counsel for Ms. Hendricks at all times, including during the depositions.

Please feel free to contact me if you have any questions.

Best regards,
Aimee M. Smith
Senior Regulatory Counsel
Sempra Energy
101 Ash Street, HQ-12
San Diego, CA 92101
Direct: (619) 699-5042
Mobile: (619) 823-3091
amsmith@sempra.com

From: Smith, Aimee
Sent: Tuesday, January 05, 2010 4:57 PM
To: 'Moldavsky, Ed'; Maria C. Severson; mshames@ucan.org; maguirre@amslawyers.com
Cc: Melville, Keith W.; Urick, Lisa; Borthwick, Robert; Davis, C. Larry; McDonnell, Kimberly; van der Leeden, Ronald; Manzuk, Chuck
Subject: A.09-08-019 (Z-factor): SDG&E Witness Depositions

Parties to A.09-08-019:

As a follow-up to the meet & confer held in the above-referenced proceeding on December 29, 2009, SDG&E requests that each party indicate no later than close of business on **January 6, 2010** whether you will depose SDG&E witnesses Lee Schavrien, Maury De Bont and/or Deborah Yee. SDG&E witnesses Lee Schavrien and Maury De Bont are available for deposition on January 14, and SDG&E witness Deborah Yee is available on January 15. If you intend to depose Mr. Schavrien, we request that you do so the morning of January 14.

For each witness that you plan to depose, please coordinate with the other parties and indicate where and at what time the relevant witness should appear. To facilitate matters for the parties, SDG&E has arranged to make a conference room available at the Sempra headquarters building located at 101 Ash Street in San Diego on January 14 and/or 15. All other scheduling matters, including securing of a court reporter, shall be the responsibility of the deposing part(ies).

Please feel free to contact me if you have questions.

Best regards,
Aimee M. Smith
Senior Regulatory Counsel
Sempra Energy
101 Ash Street, HQ-12

San Diego, CA 92101
Direct: (619) 699-5042
Mobile: (619) 823-3091
amsmith@sempra.com

Email from Joel Dellosa to Michael Aguirre and Maria
Severson (with attached letter to Michael Aguirre)
Dated February 10, 2010

Smith, Aimee

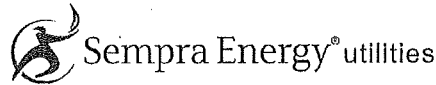
From: Dellosa, Joel
Sent: Wednesday, February 10, 2010 5:07 PM
To: 'maguirre@amslawyers.com'; 'mseverson@amslawyers.com'
Cc: Manzuk, Chuck; Smith, Aimee; Melville, Keith W.
Subject: A.09-08-019 (Z-factor)
Attachments: Z-Factor - Aguirre Response (2.10.09).pdf

Mr. Aguirre,

Please see attached letter.

Joel Dellosa

Legal Administrative Associate
SEMPRA ENERGY
Regulatory Law Department
101 Ash Street San Diego, CA 92101
Tel: 619.699.5026
E-mail: jdelloso@sempra.com



Aimee M. Smith
Senior Counsel

101 Ash Street, HQ-12
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Facsimile: (619) 699-5027
amsmith@sempra.com

February 10, 2010

VIA E-MAIL AND U.S. MAIL

Michael Aguirre
Aguirre Morris & Severson
444 West C Street, Suite 210
San Diego, California 92101

Re: **CPUC Proceeding A.09-08-019**

Mr. Aguirre:

This letter responds to your e-mail correspondence of February 8 as well as your request to depose several additional SDG&E witnesses. First, your claim of bad faith is completely unfounded and improper. Indeed, contrary to the misrepresentations in your letter, it is clear that SDG&E has been extremely cooperative throughout the discovery phase of this proceeding. While there would appear to be little benefit in responding to each of the erroneous points made in your February 8 communication, I note generally that your statements and conduct thus far demonstrate a fundamental lack of understanding of Commission process that, frankly, benefits neither the proceeding nor the interests of your client.

At the pre-hearing conference held in December, the ALJ directed SDG&E to (i) make its witness directly involved in the insurance renewal process, Maury De Bont, available for deposition;^{1/} and (ii) endeavor to arrange for the deposition of relevant third party witnesses.^{2/} Although, as the Commission has made clear, depositions are not a favored means of conducting discovery in Commission regulatory proceedings, SDG&E went beyond the direction provided by the ALJ at the pre-hearing conference and voluntarily agreed to make *all* witnesses offered in support of its application available to be deposed.^{3/} You have now requested that SDG&E make several additional employees available for deposition, including SDG&E CEO, Debra Reed, Jim Lathers, Ron van der Leeden, and Scott Kyle. It is clear, however, that deposition of these employees is duplicative, unnecessary and unreasonably burdensome. Accordingly, SDG&E declines to make the requested employees available for deposition on a voluntary basis.

^{1/} PHC Tr., pp. 13-14.

^{2/} *Id.* at p. 20.

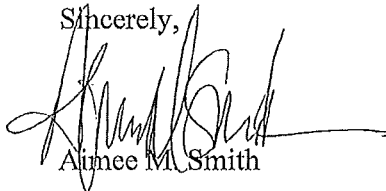
^{3/} *See, e.g.*, D.02-01-025.

Letter to Michael Aguirre
February 9, 2010
Page 2

With regard to the availability of Marsh USA employee, Joe Phillips, SDG&E notes, as it has previously, that Mr. Phillips is not an SDG&E employee or otherwise under SDG&E's control, nor is he a witness in this proceeding. His testimony is duplicative to that provided by Mr. De Bont and is not, as you assert, "critical" to our case. The timing of Marsh's agreement to make Mr. Phillips available was controlled solely by Marsh. I remind you that parties delayed nearly four months in seeking to depose Mr. Phillips and, even then, elected to depend upon SDG&E to secure Marsh's voluntary agreement to make Mr. Phillips available rather than using more formal procedures. Thus, timing issues that may exist at this point can hardly be attributed to SDG&E's actions. Your claim that Mr. Rosen does not represent Mr. Phillips is absurd and lacks any basis in fact; as counsel for Marsh USA, Mr. Rosen represents Mr. Phillips, who is a Marsh employee. The discussion of jury instructions is similarly inapposite – regulatory proceedings do not involve juries or jury instructions. Finally, you cite no authority to support your demand that SDG&E cover the costs associated with deposition of Mr. Phillips. Indeed, it is clear that as the party requesting the deposition, you are responsible for deposition expenses.^{4/}

In sum, SDG&E has fully cooperated with all reasonable requests made during the discovery phase of this proceeding and your assertions to the contrary are wholly without merit. As requested, SDG&E has facilitated Joe Phillips' availability to be deposed on a voluntary basis. To the extent you wish to avail yourself of the opportunity to depose Mr. Phillips, the burden is upon you to make the appropriate arrangements to do so and to pay the associated expenses.

Sincerely,



Aimee M. Smith

^{4/} See, e.g., Public Utilities Code § 1791.

E-mail from Joel Dellosa to Aimee Smith and Keith
Melville forwarding Michael Aguirre's E-mail Response
Dated February 10, 2010

Smith, Aimee

From: Dellosa, Joel
Sent: Wednesday, February 10, 2010 5:20 PM
To: Smith, Aimee; Melville, Keith W.
Subject: FW: A.09-08-019 (Z-factor)

FYI. Mr. Aguirre's response.

From: michael aguirre [mailto:maguirre@amslawyers.com]
Sent: Wednesday, February 10, 2010 5:20 PM
To: Dellosa, Joel
Subject: RE: A.09-08-019 (Z-factor)

Mr. Dellosa, truly I must say it has been a rare experience to see a party to a legal proceeding engage in such blatant efforts to hide the ball. Maybe this tactic will work for you, but it should not. I have repeatedly asked you to withdraw your Z factor request based on the lack of showing. The only response you have provided is to play more hide the ball. Given the deposition record of no personal knowledge, and a wholesale failure of evidence I am surprised you are continuing. You have stonewalled us and failed to produce key witnesses and documents. You may want to take a look at your showing in support of your general rate case and contrast it with your showing here. A Z factor case requires no less of an evidentiary showing than a general rate case, I believe a greater one is required. Your presentation thus far suggests you believe a lesser will do.

Please be assured your witnesses will be closely examined and the missing documents carefully brought to the hearing officer's attention. Again, I urge you to withdraw your Zfactor request and return with one that is well grounded in evidence. Mike aguirre

From: Dellosa, Joel [mailto:JDellosa@Sempra.com]
Sent: Wednesday, February 10, 2010 5:07 PM
To: 'maguirre@amslawyers.com'; 'mseverson@amslawyers.com'
Cc: Manzuk, Chuck; Smith, Aimee; Melville, Keith W.
Subject: A.09-08-019 (Z-factor)

Mr. Aguirre,

Please see attached letter.

Joel Dellosa

Legal Administrative Associate
SEMPRA ENERGY
Regulatory Law Department
101 Ash Street San Diego, CA 92101
Tel: 619.699.5026
E-mail: jdellosa@sempra.com

3/17/2010