

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

Application 22-10-021

PUBLIC ADVOCATES OFFICE OPENING BRIEF

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I. INTRODUCTION

Pursuant to Rule 13.12 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure and the February 28, 2023 *Assigned Commissioner's Scoping Memo and Ruling* (Scoping Memo), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits this opening brief. This brief addresses Cal Advocates' recommendations on San Diego Gas & Electric Company's (SDG&E) filed Application (A.) 22-10-021, seeking approval to recover incremental disaster-related expenses and capital costs related to eight catastrophic events (Catastrophic Event Memorandum Account (CEMA) events).¹ SDG&E recorded \$77.2 million for the eight CEMA Events, of which \$66.0 million is subject to review under California Public Utilities Commission jurisdiction and \$11.2 million subject to Federal Energy Regulatory Commission (FERC) jurisdiction.² Based on Cal Advocates' review, Cal Advocates recommends a disallowance of just over \$2 million as further discussed below.

¹ Application at 1.

² Application at 2.

II. BACKGROUND

In Resolution E-3238, the Commission authorized public utilities to establish CEMA accounts to record incremental costs incurred for declared catastrophic emergencies that could be recovered in rates.³ Public Utilities Code section 454.9 also allows for public utilities to establish catastrophic event memorandum accounts, with the recovery of costs subject to Commission approval.⁴ Utilities are authorized to record categories of costs such as restoring utility services to customers; repairing, replacing, or restoring damaged utility facilities; and complying with governmental agency orders in connection with events declared disasters by competent state or federal authorities.⁵

Due to the subject eight catastrophic events, SDG&E incurred costs to restore service to customers; repair, replace or restore damaged facilities; and, comply with governmental agency orders in connection with events declared disasters by government authorities.⁶

On October 31, 2022, SDG&E filed its Application requesting a finding that \$42.9 million of Operation and Maintenance expenses and \$8.4 million of capital expenses are incremental and recoverable.⁷ For the \$8.4 million in capital costs, SDG&E requests that the Commission authorize the recovery of depreciation, return and taxes that have already been expensed and will be expensed through 2027.⁸ SDG&E further requests that the remaining electric and gas capital-related costs be incorporated into the Test Year (TY) 2028 General Rate Case.⁹ In addition, SDG&E requests to recover an electric distribution revenue requirement of \$29.3 million, and a gas distribution revenue requirement of \$7.0 million, both of which are related to incremental costs incurred

³ See Resolution E-3238.

⁴ Pub. Util. Code § 454.9.

⁵ Pub. Util. Code § 454.9.

⁶ Application at 2.

⁷ Application at 2.

⁸ Application at 2.

⁹ Application at 2.

during these eight CEMA Events, including interest.¹⁰ SDG&E additionally requests to recover ongoing annual electric capital-related costs of \$1.8 million to be incurred from 2025 through 2027, including interest with the remaining electric capital-related costs to be incorporated into the TY 2028 General Rate Case.¹¹

Administrative Law Judge O'Rourke held a prehearing conference on January 20, 2023 and Commissioner Shiroma issued the Scoping Memo on February 28, 2023. The Scoping Memo includes the issue of whether SDG&E's CEMA costs are incremental, reasonable, and recoverable.¹²

On June 30, 2023, Cal Advocates issued its *Report on the Results of Examination for San Diego Gas & Electric Company's Application for Authorization to Recover Costs of Several Catastrophic Events Recorded in Its Catastrophic Event Memorandum Account* (Cal Advocates' Report).¹³

Based on its examination, Cal Advocates concludes the following:

1. Cal Advocates does not oppose SDG&E's request for the recovery of incremental O&M expenses of \$42.9 million for the catastrophic events requested in the Application.
2. Cal Advocates recommends the recovery of \$6.368 million in capital costs as incremental, which is \$2.071 million less than SDG&E's request of \$8.439 million. Cal Advocates recommends a downward adjustment of \$2.071 million for overhead costs associated with capital work that should be considered non-incremental.¹⁴

Specifically, Cal Advocates recommends a downward adjustment of \$2.071 million in capital overhead costs related to (1) capital labor overheads that reflect payroll taxes and incentive compensation plan (ICP); (2) other common overheads for non-labor

¹⁰ Application at 2.

¹¹ Application at 3.

¹² Scoping Memo at 2.

¹³ Exhibit CA-01.

¹⁴ Ex. CA-01, Cal Advocates' Report, at 7.

portion of capital work for contract administration, shop order, small tools and purchasing and warehouse; and (3) additional overheads related to non-labor portion of capital work for engineering, department overheads and administrative and general expenses.¹⁵

Cal Advocates' Report finds that the overhead costs associated with the non-labor portion of the capital work are non-incremental and that overhead costs already recovered in rates as part of SDG&E's General Rate Case's (GRC's) previously authorized funding levels are non-incremental.¹⁶ The Report further finds that although Cal Advocates asked SDG&E for additional support for its request for recovery of overhead costs as incremental, SDG&E's testimony and its responses to Cal Advocates' data requests were insufficient to support such a finding.¹⁷

SDG&E served its *Prepared Rebuttal Testimony of R. Craig Gentes* (SDG&E's Rebuttal Testimony)¹⁸ on July 21, 2023. In its Rebuttal Testimony, SDG&E maintains that it is entitled to recovery of the disputed \$2.071 million in capital overhead costs.¹⁹ SDG&E argues that all of its requested CEMA costs were neither sought for recovery nor recovered in any other proceeding, including SDG&E's pending GRC proceeding.²⁰ SDG&E further argues the Cal Advocates' Testimony fails to demonstrate that SDG&E's CEMA costs were recovered in another proceeding, such as a GRC, and contends that no such "evidence" in another case exists, because the costs were not actually included in the GRC.²¹

On November 2, 2023, an Evidentiary Hearing was held. Cal Advocates and SDG&E appeared and entered their testimonies into the record.

¹⁵ Ex. CA-01, Cal Advocates' Report at 13.

¹⁶ Ex. CA-01, Cal Advocates' Report at 13.

¹⁷ Ex. CA-01, Cal Advocates' Report at 15.

¹⁸ Exhibit SDG&E-02.

¹⁹ Ex. SDG&E-02, SDG&E's Rebuttal Testimony, at 3.

²⁰ Ex. SDG&E-02, SDG&E's Rebuttal Testimony, at 8.

²¹ Ex. SDG&E-02, SDG&E's Rebuttal Testimony, at 3.

III. SDG&E’S REQUEST FOR RECOVERY OF CEMA COSTS MUST BE PARTIALLY DENIED BECAUSE THE REQUESTED COSTS ARE NOT INCREMENTAL

- A. The Commission should disallow \$2.071 million of SDG&E’s requested overhead costs associated with capital work that is non-incremental.

SDG&E requests \$8.439 million for overhead costs associated with capital work, such as capital labor overheads that reflect payroll taxes and ICP; and other overheads related to the non-labor portion of capital work. SDG&E has not established that these costs are incremental. Like all applicants, SDG&E bears the burden of proof of justifying its request.²² In addition, in its CEMA application, SDG&E’s burden includes proving that these costs are incremental to costs requested in prior GRCs.²³ In this case, SDG&E’s overhead costs associated with the non-labor portion of the capital work were already recovered in rates as part of SDG&E’s General Rate Case’s (GRC) previously authorized funding levels and should thus not be considered incremental.²⁴

Resolution E-3238 emphasizes that the establishment of a CEMA account does not ensure recovery of the recorded costs. The accounts are intended to allow utilities to recover “extraordinary additional costs they may incur immediately after a disaster,” which are “truly unusual, catastrophic events.”²⁵ These costs must be incremental to the usual costs that are authorized pursuant to the utility’s general rate case. Resolution E-3238 notes that costs in CEMA accounts “may not necessarily all be properly recoverable from ratepayers” and that the Commission “will examine closely all costs” before

²² See, e.g., Decision (D.) 00-02-046, 2000 Cal. PUC LEXIS 239, *55 (February 17, 2000) (“The inescapable fact is that the ultimate burden of proof of reasonableness... never shifts from the utility which is seeking to pass its costs of operations onto ratepayers on the basis of the reasonableness of those costs”); *In re Energy Cost Adjustment Clauses* (1980) 4 CPUC 2d 693, 701, 1980 Cal. PUC LEXIS 1023, *18.

²³ Resolution E-3238, at 3. (“Before authorizing recovery from customers of any costs, the Commission will examine how they relate to the overall costs currently authorized for these types of repairs. The costs recorded in the account will not be recoverable in rates without a request by the affected utility, a showing of their reasonableness, and approval by the Commission.”)

²⁴ Ex. CA-01, Cal Advocates’ Report at 10 and 12.

²⁵ Resolution E-3238, at 2; see also Decision (D.) 07-07-041 (discussing the background of Resolution E-3238 and the prohibition against retroactive ratemaking).

allowing recovery.²⁶ The Resolution affords the Commission the discretion to consider factors that should limit recovery. Specifically, it notes that:

Recovery may be limited by consideration of the extent to which losses are covered by insurance, the level of loss already built into existing rates, and *possible other factors relevant to the particular utility and event*. Before authorizing recovery from customers of any costs, the Commission will examine how they relate to the overall costs currently authorized for these types of repairs.²⁷

In response to data requests, SDG&E failed to provide supporting documentation that demonstrates it paid incremental payroll taxes associated with the CEMA capital overtime labor. Although payroll taxes and incentive compensation plan payout may nominally increase, SDG&E did not provide a comparison of what was collected in rates for normal operations and what was paid. Consequently, SDG&E has not shown that these CEMA event costs are not already covered through authorized revenues and rates.

Similarly, SD&E did not provide sufficient support and analysis to distinguish what was collected in authorized GRC rates for overheads, and what was expended for overheads in routine work as part of normal operations. Because SDG&E has not proved that the overheads requested for the CEMA events are incremental, it has failed to meet its burden to justify the incremental nature of these overhead costs. Cal Advocates recommends a downward adjustment of \$2.071 million for overhead costs associated with capital work that should be considered non-incremental. Therefore, Cal Advocates recommends the recovery of \$6.368 million in capital costs as incremental which is \$2.071 million less than SDG&E's request of \$8.439 million.

IV. CONCLUSION

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

²⁶ Resolution E-3238, at 2.

²⁷ Resolution E-3238, at 2-3 (emphasis added).

authorized funding levels. Accordingly, the Commission should reject SDG&E's request for recovery of these costs.

Respectfully submitted,

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