

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

Application of San Diego Gas & Electric Company
(U 902 M) for Authorization to Recover Costs of Several
Catastrophic Events Recorded in Its Catastrophic Expense
Memorandum Account (CEMA).

A.22-10-021
(Filed October 31, 2022)

**RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M) TO THE
JULY 27, 2023 RULING ORDERING PARTIES TO MEET AND CONFER TO
CLARIFY POSITIONS REGARDING NEED FOR HEARING AND HEARING DATES**

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I. INTRODUCTION

San Diego Gas & Electric Company (SDG&E) respectfully submits this response to the July 27, 2023 email Ruling of Administrative Law Judge (ALJ) Shannon O’Rourke entitled: “A.22-10-021: Ruling Ordering Parties to Meet and Confer to Clarify Positions Regarding Need for Hearing and Hearing Dates” (hereafter, Ruling). The Ruling follows July 25, 2023 Motion of San Diego Gas & Electric Company to Request Evidentiary Hearings (SDG&E’s Motion), to which the Commission’s Office of Public Advocates (Cal Advocates) responded on July 26, 2023 indicating that it “neither supports nor opposes” SDG&E’s Motion. Additionally, Cal Advocates indicated that an evidentiary hearing date set in the Scoping Memo of this proceeding was not feasible for Cal Advocates, to which SDG&E indicated that some of Cal Advocates’ proposed alternative dates were not feasible for SDG&E.

ALJ O’Rourke’s Ruling stated:

The Motion refers to Cal Advocates’ testimony that ‘Cal Advocates disagrees with SDG&E’s determination that overhead costs associated with the non-labor portion of the capital work is incremental. Cal Advocates considers overheads already recovered in rates as part of SDG&E’s General Rate Case’s (GRC’s) previously authorized funding levels and should not be considered incremental.’ The Motion and the Reply fail to identify with specificity the particular fact or facts that are in dispute, how they are material, and whether the statements by Cal Advocates referenced in the Motion are factual or legal. In addition, the Motion

and Reply reflect that SDG&E and Cal Advocates have different dates that they are available for an evidentiary hearing.

SDG&E and Cal Advocates are directed to meet and confer to clarify their positions and attempt to reach agreement regarding the issues described in this ruling and to each file and serve a response to this ruling by August 7, 2023, that fully addresses the issues described in this ruling.¹

As an initial matter, SDG&E reports that it initiated contact with Cal Advocates to convene the required “meet and confer,” and it was held on July 31, 2023. Subject to confirmation by Cal Advocates in its response to the Ruling, SDG&E understands that both parties agreed there is a material factual dispute, and thus it is necessary and appropriate for the Commission to hold an evidentiary hearing to have a complete evidentiary record regarding the disputed fact. Given Cal Advocates’ vague, unexplained and unsupported claim that SDG&E’s showing was somehow deficient, SDG&E has the right to cross-examine its witness to determine the factual grounds – if any – for this claim. It would be error not to allow SDG&E to challenge what it believes to be an incorrect, unsupported factual assertion through evidentiary hearings.

In addition to responding to the Ruling’s questions about the nature of the factual dispute, discussed in Section II.A., below, this response addresses two additional, important topics. First, SDG&E and Cal Advocates have agreed on a new evidentiary hearing date (and an alternative) as well as new opening and reply briefing dates (Section II.B.). Second, SDG&E also requests that the next ruling on these matters allow SDG&E to clarify its position in response to Cal Advocates’ position by authorizing SDG&E to submit further, limited testimony that will make unequivocally clear SDG&E’s position on the fact dispute (Section II.C.).

¹ Ruling at 2-3.

II. DISCUSSION

The Ruling itself frames the key, material factual dispute for which evidentiary hearings are warranted. As quoted above, the Ruling notes that “Cal Advocates considers overheads already recovered in rates as part of SDG&E’s General Rate Case’s (GRC’s) previously authorized funding levels and should not be considered incremental.”² This language comes directly from Cal Advocates’ June 30, 2023 Testimony, at page 10, which states:

Cal Advocates disagrees with SDG&E’s determination that overhead costs associated with the non-labor portion of the capital work is incremental. **Cal Advocates considers overheads already recovered in rates as part of SDG&E’s General Rate Case’s (GRC’s) previously authorized funding levels and should not be considered incremental.** Cal Advocates disagrees with SDG&E’s rationale and recommends the Commission deny SDG&E’s CEMA recovery request for incremental overhead costs as discussed below.³

This same language was quoted in SDG&E’s Motion. If this language is still somewhat unclear as to the nature of the factual dispute, it is because Cal Advocates has not offered any other support, factual or otherwise, to justify this assertion. This single sentence comprises the entirety of Cal Advocates’ recommended \$2.1 million downward adjustment to SDG&E’s requested relief in its subject Application. SDG&E finds this sentence to be incorrect as a matter of fact, and thus its recommended adjustment is premised on an assertion that is actually false and therefore cannot justify Cal Advocates’ recommended adjustment.

SDG&E intends to use the Commission’s well-established evidentiary hearing process to do the necessary work of putting on the record what it believes is the absence of any support for

² *Id.*

³ Cal Advocates’ Report on the Results of Examination for SDG&E’s Application for Authorization to Recover Costs of Several Catastrophic Events Recorded in Its CEMA (June 30, 2023) at 10:20-26 (emphases added).

Cal Advocates’ factual assertion and thereby enable the Commission to provide a decision that authorizes all of SDG&E’s requested relief.

With this context, Section II.A., below, addresses the Ruling’s questions. SDG&E notes, again, that based on the discussion at the “meet and confer,” both parties find that there is indeed a material factual dispute.

A. Reply to the Ruling’s Questions

i. “identify with specificity the particular fact or facts that are in dispute”

There is only one fact in dispute, at least as of now.

Cal Advocates states in its testimony, at page 10:

“Cal Advocates considers overheads already recovered in rates as part of SDG&E’s General Rate Case’s (GRC’s) previously authorized funding levels and should not be considered incremental.”

In contrast, SDG&E states in its testimony, at pages 3 – 5 of its July 21, 2023 Prepared Rebuttal Testimony of R. Craig Gentes:

“First, as stated above in Section I, SDG&E can state here for the record with no uncertainty that the instant CEMA case requests no costs that SDG&E has previously sought or is currently seeking in any other proceeding or venue, nor will it do so.”⁴

These two factual statements are diametrically at odds with each other, and therefore an evidentiary hearing is necessary to allow SDG&E to adduce sufficient facts through cross-examination to ascertain the validity – or not – of the parties’ respective positions.

⁴ Prepared Rebuttal Testimony of R. Craig Gentes on Behalf of SDG&E (July 21, 2023) at 4:15-17. SDG&E offers other evidence for its position on pages 3 through 5; however, we excerpt this piece of evidence to illustrate the disputed fact.

ii. “how they are material”

Cal Advocates’ purported “fact” (which SDG&E finds to be incorrect) is clearly material because Cal Advocates bases its recommendation to disallow SDG&E from recovering \$2.1 million of its requested relief solely on that purported fact.

iii. “whether the statements by Cal Advocates referenced in the Motion are factual or legal”

Cal Advocates statement, quoted and highlighted above, is a statement of fact. In no way does that statement refer to or suggest a legal argument or principle.

B. New Evidentiary Hearing and Briefing Dates

During the July 31, 2023 meet and confer conference, SDG&E agreed to propose the following new dates for evidentiary hearings and briefing.

September 20, 2023 Evidentiary Hearing

September 19, 2023 Alternate Evidentiary Hearing if September 20, 2023 is not available

October 12, 2023 Concurrent Open Briefs

November 2, 2023 Concurrent Reply Briefs

C. Request to Submit Additional, Prepared Direct Testimony Regarding the Non-Existence of Double-Counting.

As noted in SDG&E’s Motion, and given the nature of the factual dispute, Cal Advocates is essentially stating that SDG&E has not proven that certain costs for which it seeks recovery in this proceeding were already recovered in a previous SDG&E general rate case (GRC).⁵ Stated differently, SDG&E is being asked to prove that certain costs were not recovered in a separate, prior Commission proceeding; in other words, SDG&E is being ask to prove in this case the non-existence of those costs in a prior, unrelated Commission proceeding. SDG&E finds that its July

⁵ *Id.* at 3-5.

21, 2023 rebuttal testimony provides ample evidence to demonstrate the falsity of Cal Advocates' factual assertion. SDG&E has indeed carried its burden of proof with that evidence, part of which is quoted above in Section II.A.

However, to assist the Commission in determining with confidence which of the two parties is correct – since both cannot be correct – SDG&E requests leave to submit short and limited additional testimony that will address, whether the disputed \$2.1 million in capital overhead costs was previously included in SDG&E's GRC, as Cal Advocates contends (erroneously). SDG&E submits that it is only reasonable and fair to allow SDG&E to provide this yet additional evidence to head-off Cal Advocates' likely claim that SDG&E has not sufficiently supported its position. It would be patently unfair for Cal Advocates to make such an unsupported claim, which SDG&E finds to be false, and not allow SDG&E a chance to establish the veracity of its position through further direct testimony. SDG&E's additional testimony would foreclose that possible contention and give the Commission the benefit of a full record on which to base its decision.

SDG&E also strongly maintains that it should be entitled to be given the opportunity to cross-examine Cal Advocates' witness with respect to its false statement, which deals with an entirely unrelated, past Commission proceeding. Therefore, SDG&E will provide new testimony in this proceeding from a witness with first-hand knowledge of the entirety of the contents of SDG&E's prior GRC who can and will attest its contents and thereby resolve the fact issue that is disputed in this proceeding.

If a ruling on this request is issued by August 11, 2023, SDG&E will submit this new testimony no later than September 7, 2023.

III. CONCLUSION

The material, disputed fact in this proceeding relates to an unsupported assertion by Cal Advocates regarding the contents of a proceeding other than the instant proceeding, A.22-10-021. To preserve SDG&E's statutory right to recover in rates, its costs that it legitimately spent to restore utility service after certain emergencies, SDG&E should and must be given both an opportunity to cross-examine Cal Advocates' witness with respect to its factual position on SDG&E's showing and also submit additional evidence about SDG&E's GRC on which Cal Advocates incorrectly maintains and supports a downward adjustment to SDG&E's legitimate cost recovery request. SDG&E respectfully requests that the Commission's forthcoming ruling on these issues grant this additional procedural relief and help ensure a fair and just outcome in this proceeding.

Respectfully submitted,

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