San Diego Energy District Foundation

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December 9, 2015

The Honorable President Michael Picker
The Honorable Commissioner Mike Florio
The Honorable Commissioner Catherine Sandoval
The Honorable Commissioner Carla Peterman
The Honorable Commissioner Liane Randolph

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

RE: Protest Letter in response to San Diego Gas & Electric's (SDGE) Advice Letter 2822-E, filed November 20.

Dear President Picker and Commissioners,

On behalf of the undersigned Directors and Advisors of the San Diego Energy District (SDED), we respectfully file this letter of protest in response to the above captioned matter. SDED is a 501c3 member-funded public interest organization, dedicated since 2011 to education and outreach on community choice aggregation as a means of achieving a 100% clean electricity future as expeditiously as possible.

SDED files this protest and request for a full proceeding. We respectfully request that the Energy Division reject SDGE's Advice Letter 2822-E (AL) without prejudice and suspend further consideration of the matter until the Commission acts to explore the policy implications raised by SDGE's actions more fully in a formal proceeding. We make this request on the grounds that the relief requested in the AL: (a) is a mis-application of Commission procedure under General Order 96-B; (b) raises significant questions of policy that have not been explored fully in previous actions; and c) violates clearly stated legislative intent. We will address each of these points further below.

A. AL 2822-E is a misapplication of procedure.

General Order 96-B (GO 96-B) sets forth the basic procedures under which utilities are to file Advice Letters. In § 3.7, GO 96-B states that Advice Letters are intended by their nature to be for matters that are "informal". "Informal" is defined as an "uncontested matter or a matter for which a hearing is not required to resolve the contested issues". In §5.1, GO 96-B states that the Advice Letter procedure is intended as a "quick and simplified review of the types of utility requests that are expected neither to be controversial nor to raise important policy questions". SDED submits that the relief requested and actions proposed in AL 2822-E raise questions that are not simple, that are and will be controversial, that do raise important policy questions as we discuss below, and that will be contested.

In AL 2822-E, SDGE states that "SDG&E believes this Advice Letter is subject to Energy Division disposition and should be classified as Tier 2 (effective pending disposition) pursuant to D.12-12-036 and GO 96-B." SDG&E also requests that the filing become effective December 21, 2015, 30 days after its filing on November 20.

In these two statements, SDGE has put the CCA community on notice of its plan to step outside the framework of neutrality that has heretofore governed its CCA communications, that it will do so unilaterally with no review or comment by the Commission, and that it will begin working in this "non-neutral" manner as of December 21. This peremptory action appears hasty, undeterred by any possible consequences, and therefore tainted with mal-intent.

Per GO 96-B §7.4.2, SDED protests SDGE AL2822-E on the grounds that:

"(2) The relief requested in the advice letter would violate statute..." ;

"(5) The relief requested in the advice letter requires consideration in a formal hearing or [and] is otherwise inappropriate for the advice letter process", and

"(6) The relief requested in the advice letter is … discriminatory..."

We urge the Energy Division to reject the AL without prejudice and determine that the matters raised require full explication and review in a formal proceeding/ hearing process. By

rejecting the AL, the Energy Division will stop the processes underway and avoid the deliberate release of confusing information about CCAs by the intended Sempra "marketing division" until such time as the Commission can explore and determine the validity of the issues we raise next.

B. AL 2822-E raises important matters of policy

SDED stipulates that it is within the right of Sempra's shareholders to invest its profits as deemed fit, including to create a fully-funded "marketing entity" to carry out its corporate objectives. We expect that Sempra will convey a sizable chunk of shareholder funds to a private marketing entity, for the purposes of sponsoring a "campaign to educate" an uninformed and unsuspecting public about the evils of CCAs. The David and Goliath defacto "discriminatory impact" of this step is clear when one compares the shareholder assets of Sempra (2014 profit of $437 million) to that of the member-funded non-profit 503c3 organizations set up by interested consumers to advocate for CCAs.

What we question is whether the Commission intends to wash its hands of the "wild west" of mis-information that could spring from unrestrained anti-CCA marketing. The forms this "marketing" could take are many and often subtle. Not only does Sempra have financial resources and "market power" which stands to be unfettered and unrestrained in any way. It also has the network of local community organizations traditionally funded by SDGE. Whereas heretofore SDGE's support for any anti-CCA opinions expressed by these organizations would only be unstated or implicit, this restraint will be true no longer. As an example, in the present circumstance, the Code of Conduct's #17 explicitly restricts the IOU from offering any "inducement offers" or "conditional services", i.e., an incentive, program, funding or other service offered by the IOU on the condition that a customer, city/ town reject CCA service. Can the Sempra "marketing entity" now make such conditional offers of service? i.e., to provide funding for a city's climate action plan on the condition that no CCA be considered? We submit that this undermines the intent of the Code of Conduct and other Commission support in policy and actions for the development of CCAs.

One large question that hangs over the AL 2822-E is whether the expedited Complaint process in D.12-12-036 Code of Conduct will apply in any way, for any action of the "electrical corporation's" parent company, Sempra. Or, in the absence, is there *any* constraint on Sempra's ability to exercise free speech on the matter of CCAs, short of violations of law? When does the policy interest of the State come back into the picture – in a context where the actions under focus (namely, creating "community choice" programs) are matters of State law and policy. When does impeding the formation of these entities become a violation of law?

We submit that these are matters of policy that deserve full explication before the Commission. To demonstrate just a few of the issues that arise if Sempra proceeds with "unfettered" CCA marketing and communications, we pose the following "present vs future" questions:

Issue	SDG&E under Code of Conduct (ratepayer funds)	Sempra "Marketing Division" (shareholder funds)
Market Power	Exists; is mitigated by Code	Exists. No mitigation.
Funding for outside groups	Possible under Code	Unlimited
Intentional misrepresentations of CCA costs, impacts	Possible; constrained by Code.	Possible. Unconstrained.
Lobbying Assembly re: CCA	Not allowed	Yes?
Publish IOU-CCA rate comparisons	Yes, factual	Yes ? can these differ from IOU or CCA's?
Access to customer information	Yes	No
Complaint process for violations of neutrality	Exists as deterrent.	Does not apply. No deterrent.

It should be apparent that there is huge potential for customer confusion, as the volume and multiplicity of voices speaking about CCAs begins to mount. If Sempra's marketing entity is identified with or in place of SDGE, the customer will hear a potentially biased message in lieu of the neutral message required currently. Yet, if the Sempra entity is a third, new and loud voice in debate airwaves (assuming pro-CCA forces are consistent), customers will be further confused –

who is this group, and what is their fact-basis, authority, etc., and why does their message deviate from SDGE's?

As a tool to mitigate the confusion even a little, SDED suggests that all communications materials – in any form, format, media, etc. – be required to carry an audible/ visible tagline identifying Sempra as the source, provider of funding, sponsor and "solely responsible for this content".

C. AL 2822-E is counter to legislative intent.

The right of cities and towns to form CCAs is enshrined in AB 117, signed into law in 2002. CCA formation has been in itself controversial, as attested by the numerous battles both legislative and regulatory since then, notably SB 790 which created the framework of neutrality currently shaping IOU communications per D.12-12-036. SB 790 opens with: *"(T)he Legislature finds and declares all of the following:*

> *(a) It is the policy of the state to provide for the consideration, formation, and implementation of community choice aggregation programs authorized in Section 366.2 of the Public Utilities Code.*
>
> *(c) Electrical corporations have inherent market power derived from, among other things, name recognition among customers, longstanding relationships with customers, joint control over regulated operations and competitive generation services, access to competitive customer information, and the potential to cross-subsidize competitive generation services.*
>
> *….*
>
> *(f) The exercise of market power by electrical corporations is a deterrent to the consideration, development, and implementation of community choice aggregation programs;*
>
> *(g) California has a substantial governmental interest in ensuring that conduct by electrical corporations does not threaten the consideration, development, and implementation of community choice aggregation programs.*

SB 790 ended this section by restating its intent "…. *to facilitate the consideration, development, and implementation of community choice aggregation programs, to foster fair competition, and to protect against cross-subsidization by ratepayers."*

SDED agrees that Sempra and SDGE should not use rate-payer funds to "market" against CCAs. However, we also contend that allowing Sempra to use unlimited shareholder funds for whatever anti-CCA marketing it may feel compelled to undertake sets up a situation that *continues* the "exercise of market power by electrical corporations.... to threaten the consideration, development and implementation of community choice aggregation programs". Indeed, we submit that this is SDGE- and Sempra's intent.

To the IOUs, CCAs represent a competition for "their" customers. SDED contends that this competition is a) not factual, as IOUs continue to receive a Commission-approved guaranteed rate of return for their core operation of the distribution system, as well as full-compensation for any "above market costs" remaining after load departs; b) not harmful, but beneficial to Sempra's long-term viability and corporate interests.

Rather than resisting and undermining customer choice, we submit that AL 2822-E is short-sighted. Sempra's interests would be better served through programs that enhance customer ability to generate, manage, interconnect and store energy, toward a more robust network of resilient local grids, ready for any natural or human-induced shocks ahead in the 21st century. A smart corporate parent would remain neutral and silent as the market continues to unfold through customer market choices.

In Closing

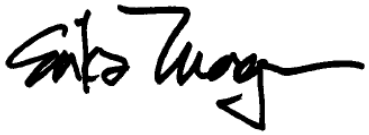
We respectfully request that the Energy Division and Commission reject AL 2822-E in its entirety. We do so on the basis that the subject matter of the AL falls outside procedure, as the matters raised are not simple but substantive, they raise important questions of policy that have not been addressed, and that are and will be controversial and contested.

In the alternative, we submit that a full proceeding and hearings are needed to adjudicate the policy implications and determine what if any guidelines should shape the actions that follow from AL2822-E, before the relief is granted. We contend that the Commission needs to create a record to support a finding that this relief is warranted. To mitigate rather than condone the re-

instituted David vs Goliath framework that will follow in violation of SB 790's intent, the Commission needs to state the basis on which these actions are NOT incorrect per GO 96-B, unaddressed or in violation of previous policy, discriminatory in impact and counter to Legislative intent.

Thank you for your consideration and for this opportunity to submit our comments in protest of SDGE AL 2822-E.

Sincerely,



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