

STATE OF CALIFORNIA
Edmund G. Brown Jr., Governor

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



April 6, 2017

Advice Letter 3035-E

Clay Faber
Director, CA & Federal Regulatory
San Diego Gas & Electric
8330 Century Park Court
San Diego, CA 92123-1548
Email: cfaber@semprautilities.com

Subject: Request for Approval of Advice Letter 3035-E

Dear Mr. Faber:

On January 27, 2017, San Diego Gas & Electric, (SDG&E), submitted Advice Letter (AL) 3035-E requesting approval of SDG&E's required Compliance Plan pursuant to Decision 12-12-036 and Resolution E-4874.

Background

SDG&E originally filed its Compliance Plan in AL 2822-E. The Commission addressed AL 2822-E and issued Resolution E-4874 on August 18, 2016, which required SDG&E to resubmit SDG&E's Compliance Plan in accordance with D.12-12-036.

D. 12-12-036 established the Code of Conduct, and requires that utilities submit a Compliance Plan for Commission approval. The purpose of this Compliance Plan is to ensure that an Independent Marketing Division (IMD) set up to market or lobby on Community Choice Aggregator (CCA) issues does not violate the Code of Conduct and that any communications that could be construed as marketing or lobbying under D.12-12-036 are funded exclusively by utility shareholders. The Compliance Plan is also required to demonstrate that the IMD is functionally and physical separate from the utility's ratepayer-funded utility business.

SDG&E filed an application for rehearing (AFR) of Resolution E-4874 on September 19, 2016.

The AFR is pending before the Commission.

On November 17, 2016, SDG&E refiled its revised Compliance Plan as a Supplemental Advice Letter 2822-E-A.

On November 17, 2016, SDG&E refiled its revised Compliance Plan as a Supplemental Advice Letter 2822-E-A. On the next day, November 18, 2016, Energy Division directed SDG&E to make a procedural adjustment. Instead of using a Supplemental Advice Letter (AL 2822-E-A), Energy Division directed SDG&E to refile the Compliance Plan as a new advice letter, and

SDG&E did so by filing Advice Letter 3008-E on November 21, 2016. Energy Division rejected AL 3008-E on December 27, 2016 because it did not comply with Ordering Paragraphs 5, 6, 7, and 8 of Resolution E-4874.

Protests

AL 3035-E was protested by: Dianne Jacob, Supervisor of the Second Supervisorial District of San Diego County, CalCCA, and the Joint Parties of Shell Energy, AReM, LEAN Energy U.S., Sierra Club, and Climate Action Campaign.

1) Dianne Jacob, Supervisor of the Second Supervisorial District of San Diego County

Supervisor Dianne Jacob submitted a letter to President Picker expressing her continued opposition to San Diego Gas and Electric's intent to form an independent marketing division. Supervisor Jacob noted that CCA provides ratepayers with an option to select their energy provider, and creates competition in the market. Supervisor Jacob stated that that SDG&E's real intent is to derail the formation of a Community Choice Aggregator before it even has a chance to prove its success in San Diego County. The letter did not address any specific issues with the advice letter.

2) CalCCA

CalCCA protests the advice letter on the grounds that it fails to remedy the flaws specifically identified in the Disposition Letter, and for failing to comply with SB 790, the CCA Code of Conduct, and Resolution E-4874. Specifically, CalCCA noted that SDG&E's proposed Compliance Plan fails to demonstrate the "holistic review" of shared services, as required by Resolution E-4874.

CalCCA requested that the Commission order SDG&E to disclose all marketing and lobbying, as defined by the Code of Conduct (COC), that SDG&E and Sempra Services Corporation have engaged in without a Commission-approved Compliance Plan. CalCCA also requested that the Commission order SDG&E and Sempra Services Corporation to cease and desist all marketing until SDG&E's Compliance Plan is approved by the Commission.

3) The Joint Parties - Shell Energy, AReM, LEAN Energy U.S., Sierra Club, and Climate Action Campaign

The Joint Parties protest the advice letter on two grounds.

First, the joint parties assert that SDG&E's amended Compliance Plan fails to comply with Resolution E-4874 respecting the treatment of "shared services."

Second, the Joint Parties claim that SDG&E's amended Compliance Plan fails to describe the accounting for "shared services." The Joint Parties state that approving this amended compliance plan would give SDG&E a "blank check" to implement accounting procedures at another date. The Joint Parties cite to page three of the amended Compliance Plan, which states, "The Procedures will be posted on the SDG&E Intranet prior to the start of marketing or lobbying." The Joint Parties ask the Commission to reject SDG&E's advice letter and direct SDG&E to provide its proposed accounting protocols and "Transaction Procedures" for Commission approval.

SDG&E's Response to the Protests

SDG&E filed a response to the protests on February 24, 2017.

SDG&E stated that only the Joint Parties challenged the adequacy of SDG&E's language in AL 3035-E. SDG&E asserted that it fulfilled the shared services requirements of Resolution E-4874 by stating the following in its Compliance Plan:

“SDG&E will not share with its Division affiliate, employees or agents (including contractors or consultants) who are themselves engaged in marketing or lobbying, as determined by an examination of job functions.”¹

SDG&E contended that this examination of job functions relates to the function of the individual and not just their title.

Discussion and Disposition

The CCA Code of Conduct prescribed by the CPUC in D12-12-036 governs the conduct of the IOUs relative to CCAs.

Supervisor Jacob correctly identified in her letter that CCA provides ratepayers an option to select their energy provider and creates competition in the market. Supervisor Jacob also objected to the formation of an Independent Marketing Division on the grounds that SDG&E's real intent is to derail the formation of a Community Choice Aggregator. However, the rules and requirements for forming an Independent Marketing Division set forth in the Code of Conduct do not factor in the intent of the Investor Owned Utility. Instead, the Code of Conduct governs the conduct of the IOU relative to CCAs. As a result, SDG&E's intent in forming an Independent Marketing Division is not relevant to the assessment of their Compliance Plan.

SDG&E's Compliance Plan does state that shared services will be reviewed and “determined by an examination of job functions”. A review of job function is substantially the same thing as the holistic review of job functions required in Resolution E-4874.

CalCCA and the “Joint Parties” asserted that the Compliance Plan does not provide for the “holistic review” of shared services. However, although SDG&E does not use the word “holistic” in their plan, the plan does state that shared services will be reviewed and “determined by an examination of job functions.”² A review of job function is substantially the same thing as the holistic review of job functions required in Resolution E-4874.

The “Joint Parties” also protested the Advice Letter on the grounds that SDG&E failed to describe the accounting for shared services. The “Joint Parties” noted that in the amended

¹ AL 3035-E, page 6.

² AL 3035-E, page 6.

Compliance Plan, SDG&E states that: "The Procedures will be posted on the SDG&E intranet prior to the start of marketing or lobbying."³ The Joint Parties maintain that this creates a lack of transparency regarding the accounting protocols to be employed for the transfer of shared services costs to the IMD. Additional reporting regarding the implementation of SDG&E's functional review of shared services being required in this disposition letter will reveal if SDG&E's accounting protocols have sufficient transparency or not.

Energy Division finds that SDG&E has appropriately incorporated a review of job functions in the shared services section of its Compliance Plan.

The Joint Parties contend that SDG&E's amended Compliance Plan fails to comply with Resolution E-4874 respecting the treatment of "shared services."

Resolution E-4874 Ordering Paragraph 7 states:

San Diego Gas and Electric Company shall not share with its Independent Marketing Division, employees or agents (including contractors or consultants) who are themselves involved in marketing or lobbying. "Involved in marketing or lobbying" shall be interpreted by review of the job functions of the personnel in question."⁴

In Resolution E-4874, Energy Division explained the rationale for this requirement of holistic review of the job functions. Resolution E-4874 stated:

Because the language of COC Rule 13 specifically prohibits the sharing of personnel that "are themselves engaged in marketing or lobbying" and does not specify the departments or titles of such personnel, we are concerned that unless the job functions are used in complying with this COC, it would circumvent the purpose of the COC. If job functions are not used as the determinant, the electric corporation could use certain titles such as communications, public affairs, or regulatory relations for personnel actually engaged in lobbying or marketing.

Consequently, the prohibition against sharing of personnel that "are themselves engaged in marketing or lobbying" shall be interpreted by a holistic review of the job functions of the personnel in question. This review will focus on the duties and responsibilities of the personnel, not merely their title or department.⁵

In the amended Compliance Plan, SDG&E stated that "shared services" would be reviewed by job function. The Compliance Plan states:

SDG&E shall not share with its Division affiliate, employees or agents (including contractors or consultants) who are themselves engaged in marketing or lobbying, as determined by an examination of job functions.⁶

Energy Division finds that additional reporting regarding the implementation of SDG&E's functional review of shared services will be necessary.

Upon review of this advice letter, Energy Division finds that additional reporting regarding the implementation of SDG&E's functional review of shared services will be necessary to determine

³ Compliance Plan, page 3.

⁴ Resolution E-4874, page 23.

⁵ Resolution E-4874, page 15.

⁶ AL 3035-E, page 6.

whether and how SDG&E had actually implemented its examination of job functions of shared services.

In order to ensure that SDG&E and Sempra Services Corporation do not share personnel who have engaged in marketing or lobbying, Energy Division requires SDG&E to report to Energy Division the following information every 6 months in an Information Compliance Filing, beginning within 30 days of the issuance of this disposition letter.

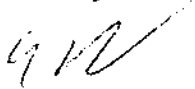
- 1) A list of all personnel in Sempra Services Corporation that also currently work for SDG&E.
- 2) For each individual identified in (1), a description of the individual's role(s) at SDG&E, including title, department, and primary responsibilities.
- 3) A justification as to why each individual identified in (1) has been deemed to not have engaged in "marketing or lobbying."

Subject to SDG&E's compliance with the reporting requirement above, Energy Division finds the Advice Letter consistent with the requirements set forth in Resolution E-4874 and D.12-12-036.

Upon review of this advice letter, Energy Division finds that it is consistent with the requirements set forth in Resolution E-4874 and D.12-12-036.

Advice Letter 3035-E is approved, subject to SDG&E's compliance with the reporting requirements above.

Sincerely,



Edward Randolph,
Director, Energy Division

