BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U 902 M) for Authority, Among Other Things, to Update its Electric and Gas Revenue Requirement and Base Rates Effective on January 1, 2019.	Application No. 17-10-007
Application of Southern California Gas Company (U 904 G) for Authority, Among Other Things, to Update its Gas Revenue Requirement and Base Rates Effective on January 1, 2019.	Application No. 17-10-008

RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M) TO THE MOTION FOR PARTY STATUS OF PROTECT OUR COMMUNITIES FOUNDATION

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I. INTRODUCTION

Pursuant to Rule 11.1(e) of the Rules of Practice and Procedure of the California Public Utilities Commission ("CPUC" or "Commission") and Administrative Law Judge ("ALJ") Lirag's May 2, 2018 email ruling, San Diego Gas & Electric Company ("SDG&E") respectfully submits this Response to the Motion for Party Status of Protect Our Communities Foundation ("POC").

SDG&E opposes POC's motion for party status because the issue POC seeks to address – to challenge SDG&E's anticipated purchase of the Otay Mesa Energy Center ("OMEC") – already has been decided by the Commission and is outside the scope of this General Rate Case ("GRC") proceeding. As explained in more detail below, the Commission, in Decision ("D.") 06-09-019, already has approved SDG&E's purchase of OMEC under specified conditions. As such, revisiting this issue here would

represent an improper collateral attack on the Commission's prior decisions and would significantly and unreasonably expand the scope and complexity of this proceeding.

To be specific, in D.06-09-019 (at p. 5) – pursuant to a joint petition filed by the Office of Ratepayer Advocates ("ORA"), The Utility Reform Network ("TURN"), the Utility Consumers' Action Network ("UCAN") and SDG&E – the Commission granted OMEC the right to "put" the Otay Mesa plant to SDG&E at a specified price in 2019 without any "additional Commission review or approval required" and found (at Finding of Fact 18) that "it is reasonable to approve the acquisition by SDG&E of the Otay Mesa plant at the end of the ten-year PPA if OMEC exercises its Put Option." As demonstrated in SDG&E's testimony, SDG&E reasonably expects OMEC to exercise this put option.[1]

II. DISCUSSION

A. POC's Argument

In its motion (at p. 1), POC explains that it wishes "to submit testimony and make legal arguments in this proceeding on the specific issue of [SDG&E's] request for ratepayer funds to purchase [OMEC], a fossil fuel power plant located in SDG&E service territory." In support of its argument, POC (at pp. 5-6) contends that:

- "The Commission has already determined that no procurement of additional fossil fuel resources is needed through 2030 in R.16-02-007."
- "Purchase of the Otay Mesa plant will lead to over-procurement of generation – in particular fossil fuel generation."

[1] Exhibit SDG&E-16 (at pp. 5-6). In its testimony, ORA states that it "concurs with SDG&E that it is reasonable to expect that Calpine to exercise its put option, and [that] SDG&E will own the OMEC sometime in the 2019 timeframe," but offers an alternative procedural vehicle for recovery of SDG&E's future OMEC costs. See Exhibit ORA-08 (at pp. 7 and 9).

- "SDG&E spending on Otay Mesa may frustrate the formation and success of new CCEs [Community Choice Energy] in SDG&E service territory, such as the CCE that the City of San Diego is currently considering. Any decisions made in this proceeding regarding the purchase of Otay Mesa must take into consideration the evidence and rulings in the PCIA [Power Charge Indifference Adjustment] proceeding regarding assessment of PCIA fees for utility spending on new generation."

- "The Commission should not permit new fossil fueled power generation in San Diego, including the approval of SDG&E's request to set aside funds to purchase of Otay Mesa, as this will interfere with the City of San Diego's approved target of procuring 100 percent renewable energy by 2035."

- "The Commission should not permit new fossil fueled power generation in San Diego, including the approval of SDG&E's request to set aside funds to purchase of Otay Mesa, as such approval is inconsistent with California renewable procurement and greenhouse gas reduction mandates and the Commission's own decisions implementing California statutory mandates."

SDG&E responds to these arguments in the section below.

B. SDG&E's Response

Pursuant to D.06-09-021, SDG&E has contracted for OMEC's local capacity and energy through a Power Purchase Tolling Agreement ("PPTA") since October 3, 2009 with the PPTA reaching the end of its term on October 2, 2019. In D.06-09-021, the Commission also approved "put" and "call" options to provide SDG&E with the opportunity to purchase the plant after the expiration of the PPTA.

In D.06-09-021, the Commission explained the put and call options as follows.

With respect to the Put Option – which requires OMEC to provide SDG&E notice of its intent to exercise the option by no later than April 1, 2019[2] - the Commission stated (at p. 5):

[2] Exhibit SDG&E-16 (at p. 5).

- "The Put Option, exercisable at OMEC's sole discretion at the end of the ten-year PPA, would require SDG&E to purchase the Otay Mesa plant at a set price [$280 million]."[3]

- "Pursuant to the terms of the Put Option, *there would be no additional* Commission *review or approval required before OMEC's potential exercise of the option*." (emphasis added)

Also, with respect to the Put Option, the Commission, in D.06-09-021 (Finding of Fact 18) expressly found that:

- "[I]t is reasonable to approve the acquisition by SDG&E of the Otay Mesa plant at the end of the ten-year PPA if OMEC exercises the Put Option."

With respect to the Call Option, the Commission stated (at p. 5):

- "The Call Option, exercisable at SDG&E's sole discretion at the end of the ten-year PPA, would require OMEC to sell the Otay Mesa plant at a set price [$377 million].[4]

- "Under the terms of the Call Option, SDG&E would seek further Commission review and approval prior to exercising that option."

Although SDG&E has decided not to pursue its Call Option, SDG&E fully anticipates that OMEC will exercise its Put Option. Because of the Commission's determination in D.06-09-021 and SDG&E's expectation that Calpine will exercise its put option, SDG&E included the $280 million purchase price of the Put option in this application.[5]

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[3] At the time the Commission issued D.06-09-021, the price of the Put Option ($280 million) was subject to the Commission's confidentiality rules. The pricing has subsequently been made public.

[4] As with the Put Option, the price of the Call Option ($377 million) was subject to the Commission's confidentiality rules at the time the Commission issued D.06-09-021, but has since been made public.

[5] As SDG&E explained in Exhibit SDG&E-16 (at p. 6): "To help ensure that ratepayers only pay SDG&E for the plant (depreciation, taxes, and return, otherwise known as 'capital-related costs') when and if the ownership of the plant shifts to SDG&E, SDG&E is proposing to track the revenue requirement for this particular asset in a balancing account so customers are indifferent to the timing of the transfer. SDG&E's balancing account proposal also would protect ratepayers in

Because the Commission already has approved SDG&E's potential purchase of OMEC, relitigating the issue in this GRC, as POC is requesting, would be an improper collateral attack on the Commission's prior decisions.[6] As a matter of law, POC cannot seek to re-visit the Commission's approval of the OMEC agreement.[7] Moreover, even assuming that POC is correct that the Commission would now prefer other resources to natural-gas fired plants, as a matter of law, any such preference does not apply to contracts signed prior to 2017, as is the case with OMEC.[8]

Addressing POC's issue also would unreasonably and significantly expand the scope and complexity of this proceeding, which already is exceptionally complex due to a variety of reasons including the incorporation for the first time of SDG&E's Risk Assessment Mitigation Phase ("RAMP") results into this GRC proceeding.

The scope of this GRC with respect to OMEC should be limited to addressing the reasonableness of SDG&E's forecasts of the 2019 going-forward O&M and capital costs of owning and operating OMEC, *not* the decision to purchase the plant or the specified purchase price, which the Commission already determined in D.06-09-021.

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the unlikely event that the plant is not put to SDG&E and the PPTA merely expires (which SDG&E does not expect)." In response to data requests, SDG&E has clarified that the proposed balancing account would track the revenue requirement for *both* capital *and* operations and maintenance ("O&M") costs.

[6] Section 1709 of the Public Utilities Code establishes that "[i]n all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive." The Commission has defined a collateral attack as "an attempt to invalidate the judgment or order of the Commission in a proceeding other than that in which the judgment or order was rendered." D.07-04-017 (at p. 8). Collateral attacks on Commission decisions are prohibited. *See, e.g.*, D.08-04-063, D.07-10-015, D.07-04-017, D.07-03-047.

[7] Public Utilities ("P.U.") Code Section 454.5(d)(2).

[8] P.U. Code Section 454.5(b)(9)(D)(iii).

GRC proceedings are not an appropriate forum to re-litigate the merits of effective commercial transactions.[9]

III. CONCLUSION

In conclusion, for the reasons set forth above, SDG&E respectfully requests that the Commission reject POC's motion for party status.

Respectfully submitted,

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[9] The Federal Energy Regulatory Commission ("FERC") also approved the put and call options. See 118 FERC ¶ 62,055 (January 22, 2007). The Commission cannot now deny rate recovery of the costs associated with a FERC-approved transaction. *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953 (1986).