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Committee on Policy and Governance
California Public Utilities Commission
505 Van Ness Avenue
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RE: SDG&E and SoCalGas Comments on Pilot Program to Ex Parte Communications as presented by Michael Strumwasser and Edward O'Neill

To the Committee on Policy and Governance,

San Diego Gas and Electric (SDG&E) and Southern California Gas Company (SoCalGas) submit the following comments to the Pilot Program to Ex Parte Communications (Pilot Program), which the California Public Utilities Commission (Commission) Committee on Policy and Governance presented at its August 12, 2015 meeting.

SDG&E and SoCalGas appreciate Mr. Strumwasser and Mr. O'Neill's thoughts on improving efficiency and transparency at the Commission. The Pilot Program attempts to address certain specific communication issues, but it does not take into consideration the complexities of proceedings before the Commission and instead models itself after court proceedings, which is a very different forum. The Commission is not like a court; it is tasked with setting and implementing broad energy policy for the state. SDG&E and SoCalGas suggest that it would be more effective to clarify the existing rules and require more transparent reporting of communications rather than to propose a new system that is foreign to Commission practitioners and is likely to have unintended consequences.

When the ex parte rules were initially enacted in 1991, the Commission observed that the rules "represented a realistic balancing of competing goals of ensuring the Commission has adequate information to discharge its decision making obligations and that the due process rights of parties are maintained." The Commission further found that the rules regarding communication cannot "impede our ability to obtain critical input necessary to fulfill our obligation to act affirmatively in the public interest; our role is not merely to respond passively to the issues presented in our proceedings. *The public interest is not served if the Commission is deprived of knowledge and expertise it needs to function effectively.*" These concerns are as valid and relevant today as they were almost 25 years ago.

The Pilot Program will designate presently pending and newly filed ratesetting proceedings as "prospective pilot proceedings" which could be included in the Pilot Program. The Pilot Program would prohibit any ex parte communication during the pilot proceedings.

Communication will only occur during en banc proceedings, where the parties have only 15 minutes (unless specifically granted more time by the Commission) to answer the Commission's questions.

SDG&E and SoCalGas have several concerns about this proposal. First, the Pilot Program creates an en banc hearing process as the *only* venue where parties will be allowed to communicate with the Commission. The parties are limited to fifteen minutes to answer the Commission's questions, and to advocate its position. The issues in ratesetting matters (such as a utility's general rate case, or applications to build capital projects) are highly complex and technical in nature. These proceedings involve witnesses who are professional engineers, accountants and have an intricate knowledge of the utility's operations and systems. These types of proceedings can last several days to several weeks, with numerous witnesses. A question asked by the Commission in any of these subject areas can require a lengthy explanation. It is quite possible that one answer could encompass the full fifteen minutes. Furthermore, such questions are generally handled by a subject matter expert, not an attorney. An attorney would be put in a difficult position of testifying on behalf of the company while not being the witness or subject matter expert.

Furthermore, it is impractical to think that the Commissioners or Commission staff can sit in on en banc hearings for the approximately 500 active proceedings¹ and be fully informed after fifteen minutes with each interested party without needing further information to inform their decisions, especially because they are deciding upon issues that impact California's economy and energy future. This belies the broad nature of the Commission's role and the complicated nature of ratesetting proceedings.

SDG&E and SoCalGas are not only concerned with the additional regulatory procedures this creates, but also the delay that may be caused by additional hearings. The Commission will essentially hold a second hearing to allow parties time for oral arguments when parties have already had time, in some cases more than two years, to outline their positions and be heard by the Commission. This process only adds to the Commission's workload, and slows down the already lengthy Commission process, as noted in Mr. O'Neill's report.² The Pilot Program would force Commissioners to hold important decisions until en banc hearings are held, and then only after they are held can Commissioners come to a decision. SDG&E and SoCalGas are concerned that this does not serve the public interest if Commissioners are required to delay a decision in critical safety-related proceedings.

Furthermore, SDG&E and SoCalGas respectfully point out that the Commission may not have the resources to execute the logistics of the Pilot Program, due to the need for additional rooms for en banc hearings, and the scheduling of such hearings. This resource constraint could also add further delay the final resolution of proceedings.

SoCalGas and SDG&E are concerned that implementing the Pilot Program now would be premature. The State Legislature is currently reviewing several bills that would have a direct impact to Commission ex parte rules. While the Commission may be able to enact the Pilot Program at this time, changes in statutory law may either restrict portions of the Pilot Program, or cause the objectives of the program to become moot points. Even if legislation is not enacted

¹ Mr. O'Neill's estimate.

² In Mr. O'Neill's report, he notes that proceedings range from a year and a half to complete to almost five years, depending on the type of proceeding.

at this time, more input from stakeholders is needed regarding the Pilot Program, such as through workshops.

SoCalGas and SDG&E fully support a Commission process to clarify the ex parte rules through a workshop with stakeholders and ultimately by resolution. Some of the issues to be raised at the workshop could include the definition of the difference between procedural and substantive communications. SoCalGas and SDG&E would support strong enforcement of the rules by regular auditing of compliance. Further, there should be transparent reporting of the fact that an ex parte communication has occurred. SDG&E and SoCalGas would support clarifying what level of detail is required to be written in an ex parte communication by the interested party, as well as many other areas. As evidenced at the Committee meeting, it appears that all stakeholders have many thoughtful proposals to address these concerns and they could share them through a workshop.

SDG&E and SoCalGas believe what is needed is to clarify the ex parte rules. The Pilot Program, on the other hand, does not offer clarification of the rules but rather it adds another layer of process and delay to an already overburdened agency. As numerous parties testified in the Office of Planning and Research workshop, it is important to retain communication between the Commission and all parties that come before it, outside of formal proceedings. The rules need to be clarified to continue to allow a free flow of information between the Commission and all interested parties in a transparent manner so that the Commission can obtain the information it needs quickly to inform its decisions.

Kind Regards,

/s/ Dan Skopec

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