

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



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In the Matter of the Application of San Diego Gas &
Electric Company (U 902 E) for Authorization to Recover
Unforeseen Liability Insurance Premium and Deductible
Expense Increase as a Z-Factor Event

A.09-08-019
(Filed August 31, 2009)

**MOTION OF PROTESTOR RUTH HENRICKS IN OPPOSITION TO
THREE DAY NOTICE OF GRANT OF REQUEST FOR INDIVIDUAL EX PARTE
MEETING BY SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E)**

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August 20, 2010

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OF THE STATE OF CALIFORNIA**

In the Matter of the Application of San Diego Gas & Electric Company (U 902 E) for Authorization to Recover Unforeseen Liability Insurance Premium and Deductible Expense Increase as a Z-Factor Event

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INTRODUCTION

Pursuant to Rule 11.1 of the Commission’s Rules of Practice and Procedure, Protestor Ruth Henricks responds in opposition to the “Three Day Notice of Grant of Request for Individual Ex Parte Meeting by San Diego Gas & Electric Company” in which Commissioner Timothy A. Simon “granted the request of San Diego Gas & Electric Company for an individual ex parte meeting on Monday, August 23, 2010.”

BACKGROUND

On 31 August 2009 SDG&E filed an application in A.09-08-019 titled, “Application of San Diego Gas & Electric Company for Authorization to Recover Unforeseen Liability Insurance Premium and Deductible Expense Increases as a Z-Factor Event.”¹

¹ “Application of San Diego Gas & Electric Company for Authorization to Recover Unforeseen Liability Insurance Premium and Deductible Expense Increases as a Z-Factor Event.”

Shortly thereafter, protests were submitted by Ruth Henricks on 18 September 2009, the Utility Consumer Action Network (UCAN) on 25 September 2009, and the Department of Ratepayer Advocates on 5 October 2009.²

SDG&E filed a response to the protests on 15 October 2009 and maintained its desire to establish an account to track the costs for “wildfire insurance” and pass these costs onto ratepayers.³

A Prehearing Conference on the matter was held on 14 December 2009 and attended by all parties. All parties, following the Prehearing Conference, continued with the proceeding schedule as established by the Commission-appointed Administrative Law Judge.

A Scoping Memo was filed by DRA, followed by Responses filed by UCAN and SDG&E.⁴ The Commission-assigned Commissioner and Administrative Law Judge issued a Scoping Ruling which further outlined the issues to be addressed in A.09-08-019.⁵

On 12 April 2010, Protestor Ruth Henricks filed a Motion for Commission Hearing in this proceeding in which Henricks requested oral argument under Public Utilities Commission Rules of Practice and Procedure Rule 13.13.⁶ SDG&E, in turn, filed a response opposing the

² “Protest of Ratepayer Ruth Henricks to the Application of San Diego Gas & Electric Company for Authorization to Recover Liability Insurance Premium and Deductible Expense Increases”; “Protest of Utility Consumers Action Network”; “Protest of the Division of Ratepayer Advocates.”

³ “Reply of San Diego Gas & Electric Company to Protest.”

⁴ “Motion of the Division of Ratepayer Advocates for Clarification of Scope of Issues to be Adjudicated in San Diego Gas & Electric Company’s Z-Factor Application”; “Response of Utility Consumers Action Network to DRA’s Motion for Clarification of Scope of Issues.”

⁵ “Scoping Memo and Ruling of the Assigned Commissioner.”

⁶ Motion of Ruth Henricks for Commission Hearing in This Proceeding.

scheduling of oral argument in this proceeding.⁷ In opposing the motion for oral closing, SDG&E argued that the issues had been adequately briefed. Specifically, SDG&E wrote:

Given the complicated and often nuanced nature of the issues involved in the administrative proceedings conducted by the Commission, written briefing, which allows parties to provide a more thorough and well-organized explanation of the relevant issues, is a superior vehicle for articulating complex arguments for the Commission's consideration.⁸

Further, SDG&E argued that establishing oral closing argument in this proceeding would lead to an unnecessary expense for both the Commission and parties. Specifically, SDG&E wrote:

The Commission's rules make clear, however, that it retains the discretion to liberally construe its rules 'to secure just, speedy, and inexpensive determination of the issues presented.' Thus, the Commission is not required to perform a particular action merely because a party to a proceeding demands that it does so, particularly where it is clear that grant of a party's demand will likely cause delay and will impose burden and expense on the Commission and parties.⁹

On 26 May 2010 the Commission-appointed Commissioner and Administrative Law Judge approved the request for oral argument.¹⁰

The parties in A.09-08-019 filed Opening Briefs¹¹ and Protestor Henricks later filed a Closing Brief.¹²

The Commission-appointed Commissioner and Administrative Law Judge issued "Administrative Law Judge's Ruling Setting Final Oral Argument Before the Commission" on

⁷ San Diego Gas & Electric Company Response to Request for Oral Argument. p. 2.

⁸ Id. at 2.

⁹ Id. at 2.

¹⁰ "Administrative Law Judge's Ruling Granting Motions for Oral Argument, to Amend Notice of Intent to Claim Intervenor Compensation, and to Receive Exhibits 19 and 20 into the Evidentiary Record."

¹¹ "Opening Brief of the Division of Ratepayer Advocates"; "Opening Broed of Petitioner Ruth Henricks Following Hearings on April 5,6, and 7, 2010"; "Opening Brief of Utility Consumers' Action Network (UCAN)"; "Opening Brief of San Diego & Electric Company (U 902 E)."

¹² "Closing Brief of Protestor Ruth Henricks."

6 August 2010, and citing Rule 13.13(b), scheduled closing arguments for Wednesday, 11 August 2010 from 3 p.m. to 4 p.m. The order allocated a total of 60 minutes for arguments by SDG&E and the three Protestor and Commissioner comments.

All parties – Protestor Henricks, UCAN, DRA, and SDG&E – were present and made closing arguments before the Commission on 11 August 2010 during that one hour.

DISCUSSION

The Commission-appointed Commissioner’s granting of an Oral Ex Parte hearing to SDG&E *after* closing arguments have been made before a quorum of the full Commission is improper and should not be permitted because it is in contravention of both the PUC Rules of Practice and Procedure and the due process rights of the parties to the proceeding.

First, Rule 13.13 states that a party has “a right to make a **final**¹³ argument before the Commission....A quorum of the Commission shall be present.” (**emphasis added**) In this instance, all parties were afforded the opportunity to give their arguments to a quorum of the Commission. To allow one party – after the closing briefs and the **final** arguments have been submitted – to have access to again argued to the Commission is in direct contravention of Rule 13.13. Meeting with SDG&E in private would render no one’s argument before the quorum of the Commission on 11 August 2010 “final.”

Second, Rule 13.14 states that upon the submission of evidence and closing arguments, the proceeding is closed for submission and reopening the record is the sole method to make changes to the record. Specifically, Rule 13.14(a) states:

¹³ “Final”: **1 a** : not to be altered or undone <all [sales](#) are final> **b** : of or relating to a concluding court action or proceeding <final decree>; **2** : coming at the end : being the last in a series, process, or progress <the final chapter>; **3** : of or relating to the ultimate purpose or result of a process <our final goal. [Merriam-Webster Online Dictionary](#). 2010.

A proceeding **shall stand submitted** for decision by the Commission after the taking of evidence, the filing of briefs, and the presentation of oral argument as may have been prescribed. **(emphasis added)**¹⁴

According to Rule 13.14(a) the proceeding was taken under submission by the Commission and, therefore, closed.

Pursuant to Rule 13.14 (b), once a proceeding is submitted with a decision of the Commission pending, any party seeking access to the Commission to influence the decision would be required to move to set aside the submission and reopen the hearing. Specifically, Rule 13.14(b) states:

A motion to set aside submission and reopen the record for the taking of additional evidence, or for consideration of a settlement under Article 12 shall specify the facts claimed to constitute grounds in justification thereof, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing. It shall contain a brief statement of proposed additional evidence, and explain why such evidence was not previously adduced....¹⁵

Additional issues to be taken into consideration are due process issues of the all parties. Each party had an opportunity to make their record in final argument, answer specific questions by the quorum of the Commission, and rebut the arguments of opposing parties. To permit just one party to gain private access -- after a full hearing with the opportunity to face witnesses and cross-examine under oath, subsequent briefing and closing arguments (albeit allotted 10 minutes each in contrast to the 60 minutes now afforded SDG&E in private), and the matter considered submitted -- would violate the most basic notions of due process rights of the other parties. The Oral Ex Parte granted by Commissioner Simon allows SDG&E one hour to discuss the

¹⁴ California Public Utilities Commission Rule of Practice and Procedure Rule 13.14 (a). P. 2.

¹⁵ Id. at 2.

proceeding when the entire closing argument – which included the argument by four separate parties – was only allocated one hour before the Commission.

Aside from being unlawful according to the PUC Rules, it is disingenuous for SDG&E to have first filed a motion opposing oral argument based on the imposition of “burden and expense on the Commission and parties”¹⁶ and then now seek a private, one-on-one meeting with one of the Commissioners deciding the matter already submitted. Should the Oral Ex Parte proceed, every other party in the proceeding would be twice burdened by having to **again** travel to San Francisco to make the same arguments that were just made to a quorum of the Commission just two weeks earlier. SDG&E is part of a large corporation with hundreds of employees; in comparison, the parties to this case are non-profits and individuals comprised of limited resources.

CONCLUSION

Both due process protection and CPUC Rules of Practice and Procedure Rules 13.13 and 13.14 preclude the granting of the Oral Ex Parte *after* closing arguments have been made and the proceeding has been taken under submission by the quorum of the Commission. Additionally, the granting of the Oral Ex Parte would prejudice the other parties right to equal access in this proceeding by forcing them to spend their limited resources just to *again* argue what was a *final* argument.

¹⁶ San Diego Gas & Electric Company Response to Request for Oral Argument. p. 2.

Protestor Henricks respectfully requests that the “Three Notice of Grant of Request for Individual Ex Parte Meeting by San Diego Gas & Electric Company” should be revoked and the request for Oral Ex Parte Communication should be denied. This would allow the Commissioners to consider the matter currently submitted and final pursuant o CPUC Rules.

Respectfully Submitted,

Dated: August 20, 2010

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **MOTION OF PROTESTOR RUTH HENRICKS IN OPPOSITION TO THREE DAY NOTICE OF GRANT OF REQUEST FOR INDIVIUAL EX PARTE MEETING BY SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E)** by electronic mail to each party listed in the attached CPUC Service List for Proceeding A0908019.

Dated this 20th day of August, 2010, at San Diego, California.

/s/ Maria E. Byrnes

Maria E. Byrnes

CALIFORNIA PUBLIC UTILITIES COMMISSION

Service Lists

PROCEEDING: A0908019 - SDG&E - TO RECOVER U
FILER: SAN DIEGO GAS & ELECTRIC COMPANY
LIST NAME: LIST
LAST CHANGED: AUGUST 5, 2010

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