



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

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Application of San Diego Gas & Electric) A.09-08-020
Company (U 902-M), Southern California) (Filed September 8, 2010)
Edison Company (U 338-E), Southern)
California Gas Company (U 904-G) and)
Pacific Gas and Electric Company (U 39-M))
for Authority to Establish a Wildfire Expense)
Balancing Account to Record for Future)
Recovery Wildfire-Related Costs)

**REQUEST BY THE CITY OF SAN DIEGO AND THE COUNTY OF SAN DIEGO TO
NOT EXPEDITE CONSIDERATION OF AND TO EXTEND THE DEADLINE TO
PROTEST THE JOINT AMENDED APPLICATION OF SOUTHERN CALIFORNIA
EDISON COMPANY (U 338-E), PACIFIC GAS AND ELECTRIC COMPANY (U 39-M),
SAN DIEGO GAS & ELECTRIC COMPANY (U 902-M), AND SOUTHERN
CALIFORNIA GAS COMPANY (U 904-G)**

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Dated: September 8, 2010

I.

Introduction

On August 6, 2010, Administrative Law Judge Maribeth A. Bushey set forth a schedule requiring protests to the Joint Amended Application of Southern California Edison Company (U 338-E), Pacific Gas and Electric Company (U 39-M), San Diego Gas & Electric Company (U 902-M), and Southern California Gas Company (U 904-G) (hereafter, “Joint Amended Application”) be filed and served by September 8, 2010. Pursuant to California Public Utilities Commission Rules of Practice and Procedure, Rule 2.6(a), the Administrative Law Judge has the discretion to issue another ruling extending the time for filing protests. For the reasons set forth below, the Administrative Law Judge should grant the instant request to not expedite consideration of and extend the deadline to protest the Joint Amended Application.

In the Joint Amended Application, the Utilities apply for authority to “(1) establish a Wildfire Expense Balancing Account (WEBA) to record wildfire-related costs, and (2) recover WEBA balances in retail rates.” (Joint Amended Application, p. 1.) At the end of their Joint Amended Application, the Utilities also ask the Commission to “Commence a second phase of this proceeding to consider Commission action to limit the Utilities’ civil liability exposure for wildfires.” (Joint Amended Application, p. 20.) “The Utilities urge the Commission to expedite this proceeding.” (Joint Amended Application, p. 13.)

The City of San Diego (“the City”) and the County of San Diego (the “County”) are large SDG&E rate payers and on this basis alone have a vested interest in the Utilities’ application. Further, the City and the County are financially limited and have an interest in the base, method and time for the proposed rate payer charges and how this may affect City and County tax revenues and public services. Finally, the City and the County are plaintiffs in pending civil lawsuits against San Diego Gas & Electric Company (“SDG&E”) and its parent, Sempra Energy, over government losses sustained in the 2007 Witch Creek, Guejito, and Rice Canyon Fires caused by SDG&E power

lines. The City and the County thus also have a vested interest in the Utilities' application to transfer fire related risks to ratepayers via the proposed WEBA, which might provide reimbursement to SDG&E for the very damages the City and the County seek from SDG&E and Sempra.

Relief of the magnitude the Utilities seek should not be made without a full and fair opportunity for interested parties to be heard and certainly should not be made on an expedited basis. Since the filing of the Joint Amended Application took place during the City's and County's Summer legislative recess, the City Council and County Board of Supervisors have not had an opportunity to review the application and be consulted regarding whether or not they wish to seek to intervene in the matter and file a protest. The City and the County thus request that the Commission not make its decision on an expedited basis and that the Commission extend the deadline for protesting the Joint Amended Application until November 8, 2010.

II.

Due to the Timing of the Joint Amended Application Filing, the City and County Have Not Had an Adequate Opportunity to Evaluate the Application and Determine Whether to File a Protest

The Joint Amended Application raises entirely new issues than the applicants' original August 2009 filing. The City Council and County Board of Supervisors were on Summer legislative recess at the time the Joint Amended Application was filed and during the majority of the scheduled protest period, and have not had an opportunity to review the application and be consulted regarding whether or not the City and/or County wish to intervene in the matter and file a protest.

III.

The October 2007 Witch Creek, Guejito and Rice Canyon Fires and the Resulting Civil Actions

In October 2007, San Diego County was devastated by fires caused by the negligence and wrongdoing of SDG&E and others. The fires resulted in the largest evacuation of persons in the history of the United States. The financially strapped City and County incurred massive fire suppression costs and suffered extensive damage to public property. Additionally, two people were burned to death, and others suffered personal injury from the flames. Several hundreds of homes were burned to the ground, along with all of their owners' and occupants' personal possessions. The City and County, as well as numerous individual plaintiffs, remain uncompensated for the fire damages they incurred as a result of the 2007 fires.

Over three years after the fires, the civil cases against SDG&E and other defendants will go to trial. A series of three trials will commence in March 2011, with the third trial likely to start in early 2012.

IV.

Relief of the Magnitude the Utilities Seek Should Not Be Made Without a Full and Fair Opportunity for Interested Parties to Be Heard and Certainly Should Not Be Made on an Expedited Basis

The Utilities urge the Commission to allow recovery from rate payers if power line fire losses “result from claims based on inverse condemnation and/or strict liability where the Utility was not at fault or the wildfire was due to conditions beyond the Utility’s control” but not if the fire is “the result of intentional or reckless misconduct by Utility management.” (Joint Amended Application, p. 8-9.) This raises at least the following questions under the Utilities’ proposal which the Utilities do not answer:

- If a fire was caused by a combination of weather, which is “beyond the Utility’s control,” and fault of the Utility, may the Utility recover from rate payers?
- May a Utility recover for losses caused by a fire resulting from the Utility’s negligence as opposed to “intentional or reckless misconduct?”

- Are “willful” acts proscribed in Public Utilities Code § 2106 “intentional or reckless” under the Utilities’ proposal?

These and many other issues are implicated by the 2007 Fires which, based on findings of Cal Fire and the CPUC and evidence adduced in the civil litigation, were caused by SDG&E’s’ General Order violations and “willful” acts during Santa Ana winds and Red Flag warning conditions:

Witch Creek Fire. The Witch Creek Fire was caused by overhead conductors which were too close together and had too much sag, allowing them to blow into one another or come close enough to arc, thus sparking and igniting a brush fire. The power lines faulted multiple times before the fire but were automatically re-energized by automatic reclosers despite a trouble shooter advising that the lines should be patrolled.

The Guejito Fire. The Guejito Fire was caused by an overhead conductor and communication line/lashing wire being too close together which allowed contact or arcing that ignited a brush fire. The proximity of the conductor and the communication line/lashing wire resulted from, variously or in combination: failure to maintain required clearance during installation, removal of a mid-span pole resulting in the lines sagging further and coming closer together, broken and unraveled telecommunications cable lashing wire, and failure to properly inspect and correct the lines.

The Rice Canyon Fire. The Rice Canyon Fire was caused by a failure to properly inspect and trim a hazard tree near power lines, which had open and obvious included bark and co-dominant limbs. Trees with such conditions are recognized to be prone to failure and require prompt trimming. As a result, one of the co-dominant limbs broke and fell on an overhead conductor which ignited the fire.

The Utilities assert “this rate recovery proposal maintains appropriate Utility incentives to decrease wildfire risk.” (Joint Amended Application, p. 6.) But if the Utilities’ proposed rate recovery does not exclude losses arising from negligence while

