



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

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Application of San Diego Gas & Electric Company (U 902-M), Southern California 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

A.09-08-020
(Filed August 31, 2009)

**JOINT MOTION OF THE CONSUMER PROTECTION AND SAFETY
DIVISION, DISABILITY RIGHTS ADVOCATES, DIVISION OF RATEPAYER
ADVOCATES, PROTESTOR RUTH HENRICKS, MUSSEY GRADE ROAD
ALLIANCE, AND THE UTILITY REFORM NETWORK TO REVISE THE
PROPOSED PROCEDURAL SCHEDULE**

Nicholas Sher
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: 415-703-4232
Email: nicholas.sher@cpuc.ca.gov
Attorney for Consumer Protection and Safety
Division

Marion Peleo
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 355-5539
Email: marion.peleo@cpuc.ca.gov
Attorney for Division of Ratepayer Advocates

Diane Conklin
Spokesperson
Mussey Grade Road Alliance
P.O. Box 683
Ramona, CA 92065

Karla Gilbride
Disability Rights Advocates
2001 Center Street, Third Floor
Berkeley, California 94704-1204
Telephone: 510-665-8644
Fax: 510-665-8511
TTY: 510-665-8716

Michael J. Aguirre, Esq.
maguirre@amslawyers.com
AGUIRRE, MORRIS & SEVERSON LLP
444 West C Street, Suite 210
San Diego, CA 92101
Telephone: (619) 876-5364
Facsimile: (619) 876-5368
Attorney for: PROTESTOR HENRICKS
Nina Suetake
Staff Attorney
The Utility Reform Network
115 Sansome Street, 9th Floor
San Francisco, CA 94104
Phone: (415) 929-8876 x 308
Fax: (415) 929-1132
Email: nsuetake@turn.org

January 24, 2011

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

Application of San Diego Gas & Electric Company (U 902-M), Southern California 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

A.09-08-020
(Filed August 31, 2009)

**JOINT MOTION OF THE CONSUMER PROTECTION AND SAFETY
DIVISION, DISABILITY RIGHTS ADVOCATES, THE DIVISION OF
RATEPAYER ADVOCATES, PROTESTOR RUTH HENRICKS, MUSSEY
GRADE ROAD ALLIANCE, AND THE UTILITY REFORM NETWORK TO
REVISE THE PROPOSED PROCEDURAL SCHEDULE**

I. INTRODUCTION

Pursuant to Rule 11.1 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure, the Consumer Protection and Safety Division (“CPSD”), Disability Rights Advocates (“DisabRA”), the Division of Ratepayer Advocates (“DRA”), Protestor Ruth Henricks, Mussey Grade Road Alliance (“MGRA”), and The Utility Reform Network (“TURN”) (henceforth referred to as the “Moving Parties”), respectfully submit this joint motion to revise the proposed procedural schedule that was tentatively set to address the Joint Amended Application of Southern California Edison Company (“SCE”), Pacific Gas and Electric Company (“PG&E”), San Diego Gas & Electric Company (“SDG&E”), and Southern California Gas Company (“SoCalGas”) for Authority to Establish a Wildfire Expense Balancing Account (“WEBA”) to Record for Future Recovery Wildfire-Related Costs.

II. BACKGROUND

On August 31, 2009, SDG&E, PG&E, SCE, and SoCalGas (“Utilities”) filed their

original Application 09-08-020 with the Commission which sought unlimited ratepayer funding of costs arising from wildfires greater than the coverage provided by the Utilities' insurance policies. On December 21, 2009, Assigned Commissioner Simon and Administrative Law Judge ("ALJ") Bushey issued a Ruling¹ ("ACR") directing the Utilities to amend their application and all parties to meet and confer to develop ideas for addressing the financial impact of wildfires on the Utilities. After months of meetings among all parties, the Utilities submitted their amended Application on August 20, 2010, and a prehearing conference was scheduled for September 14, 2010.

At the prehearing conference, the parties and ALJ Bushey compromised on a tentative procedural schedule that was, in part, based on the understanding that a scoping memo would be issued very soon after the prehearing conference. The schedule proposed at the prehearing conference was as follows:

- September 24 – Statement from Intervenors on Phase 2 issues due
- September 29 – Replies from Applicants due
- February 25 – Intervenor testimony due
- March 28 – Rebuttal testimony due
- April 11-15 – Evidentiary hearings

III. DISCUSSION

Four months have passed since the prehearing conference, and the Commission has yet to issue a scoping memo. While in many, more routine, cases, a scoping memo may be a *pro forma* document primarily used to set the official procedural schedule, with contentious applications it is often necessary for the scoping memo to explicitly authorize

¹ Ruling of the Assigned Commissioner and Administrative Law Judge Directing Applicants to Amend Application and All Parties to Meet and Confer, filed December 21, 2009 (henceforth "Assigned Commissioner and ALJ Ruling").

or reject a party's request to address specific issues. Such direction is crucial for parties to form their litigation strategy and clearly delineate the bounds of discovery inquiries.

In this proceeding, parties have raised issues that will significantly impact the scope of this proceeding if they are included by the scoping memo. In their protests, TURN² and DisabRA³ raised the issue of balancing the risks and rewards between shareholders and ratepayers. TURN explicitly argued that the Commission should reach that balance by reducing the Utilities' authorized rate of return if their request for a wildfire expense balancing account is approved.⁴ MGRA and the attorneys for protestor Ruth Henricks stated their support for the inclusion of this issue in the scope of the proceeding during the prehearing conference.⁵ The Utilities, however, have objected to including any discussion of the authorized rate of return in this proceeding.⁶ If the scoping memo includes the issue of rate of return as part of the scope of this proceeding, it could significantly affect the direction of discovery for several parties.

In their protests TURN,⁷ DisabRA,⁸ and MGRA⁹ all argued that the Utilities had not followed the directives of the ACR which required the Utilities to consider

² Protest of The Utility Reform Network to the Joint Amended Application of Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Gas Company (henceforth "TURN Protest"), filed September 8, 2010, p. 3.

³ Protest of Disability Rights Advocates to Joint Amended Application of San Diego Gas & Electric Company, Southern California Edison Company, Southern California Gas Company, and Pacific Gas & Electric Company for Authority to Establish a Wildfire Expense Balancing Account to Record for Future Recovery of Wildfire-Related Costs (henceforth "DisabRA Protest"), filed September 8, 2010, pp. 4-7.

⁴ TURN Protest, p. 3.

⁵ Transcript of the Prehearing Conference, pp. 88-90.

⁶ Reply of Southern California Edison Company (U 338-E), San Diego Gas & Electric Company (U 902-M), Southern California Gas Company (U 904-G), and Pacific Gas and Electric Company (U 39-M) to Protests (henceforth "Utility Reply to Protests"), filed September 15, 2010, p. 6.

⁷ TURN Protest, p. 2.

⁸ DisabRA Protest, pp. 1-4.

alternatives to their proposed balancing account. The ACR provided several examples of such alternatives that the Utilities should consider.¹⁰ In their reply to protests the Utilities did not address any particular issues or alternatives recommended by the ACR for consideration but merely stated that they had complied with the requirements of the Assigned Commissioner Ruling.¹¹ If the scoping memo responds to party protests by requiring the Utilities to provide testimony on the alternative approaches to their proposed balancing account, it would significantly expand the scope of inquiry for all parties.

Finally, DisabRA raised the issue of safety incentives for the Utilities, noting that the proposed narrow exception to complete ratepayer responsibility for wildfire-related costs does not include fires that result from ordinary negligence or violations of Commission safety standards. Rather, it only excludes fires resulting from willful or reckless conduct of utility management.¹² If the Commission agrees to consider this issue, it will also affect the scope of inquiry and the litigation strategy of the parties.

Without a scoping memo, parties are left unclear as to the bounds of this proceeding and, as such, it is difficult for parties to effectively formulate a litigation strategy. Moreover, ongoing resource constraints, including the departure of DRA staff counsel in October and the DRA project lead's medical leave from June through November (and current part-time status) have prevented any expert witness procurement and contract management activities from occurring. In addition, CPSD management and

⁹ MGRA Protest, p. 11.

¹⁰ Assigned Commissioner and ALJ Ruling, p. 9.

¹¹ Utility Reply to Protests, p. 3.

¹² DisabRA Protest, p. 3-4.

staff have had to turn their attention to other matters, especially the investigation of the San Bruno explosion.

Accordingly, the Moving Parties therefore request that the Commission revise the proposed schedule to provide the Commission time to issue a scoping memo and for parties to adapt their litigation strategies to that scoping memo.

IV. PROPOSED SCHEDULE

The Moving Parties request that the schedule be revised as follows:

- April 25 - Intervenor Testimony due
- May 25 – Rebuttal Testimony due
- June 13-17 – Evidentiary hearings

V. CONCLUSION

For the reasons stated above, the Moving Parties respectfully request that the procedural schedule tentatively adopted at the September prehearing conference be modified.

January 24, 2011

Respectfully submitted,¹³

_____/s/_____

Nina Suetake
Staff Attorney
THE UTILITY REFORM NETWORK
115 Sansome Street, 9th floor
San Francisco, CA 94104
Phone: (415) 929-8876 x 308
Fax: (415) 929-1132
Email: nsuetake@turn.org

¹³ CPSD, DisabRA, DRA, Protestor Ruth Henricks and MGRA have authorized TURN to sign the joint motion on their behalf.

CERTIFICATE OF SERVICE

I, Larry Wong, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On January 27, 2011, I served the attached:

**JOINT MOTION OF THE CONSUMER PROTECTION AND SAFETY DIVISION,
DISABILITY RIGHTS ADVOCATES, DIVISION OF RATEPAYER ADVOCATES,
PROTESTOR RUTH HENRICKS, MUSSEY GRADE ROAD ALLIANCE, AND THE
UTILITY REFORM NETWORK TO REVISE THE PROPOSED PROCEDURAL
SCHEDULE**

on all eligible parties on the attached list **A.09-08-020** by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List.

Executed this January 27, 2011, at San Francisco, California.

/S/
Larry Wong

Service List for A.09-08-020

bill@jbsenergy.com
bts1@pge.com
case.admin@sce.com
cem@newsdata.com
CentralFiles@SempraUtilities.com
clare.frank@fire.ca.gov
CManzuk@SempraUtilities.com
DavidJMiller@att.com
dbamberg@sandiego.gov
deana.ng@sce.com
dfb@cpuc.ca.gov
dj0conklin@earthlink.net
dlf@cpuc.ca.gov
ec2@cpuc.ca.gov
execwnp@socal.rr.com
henry.weissmann@mto.com
j.eric.isken@sce.com
jacque.lopez@verizon.com
jerome@calcable.org
jesus.g.roman@verizon.com
JMalkin@Orrick.com
jmh@cpuc.ca.gov
jwmitchell@mbartek.com
klk@cpuc.ca.gov
Lesla@calcable.org
lhj2@pge.com
mab@cpuc.ca.gov
maguirre@amslawyers.com
map@cpuc.ca.gov
Melodie.Durham@fire.ca.gov
mrw@mrwassoc.com
mseverson@amslawyers.com
MThorp@SempraUtilities.com
nms@cpuc.ca.gov
npedersen@hanmor.com
nsuetake@turn.org
NXKl@pge.com
pucservice@dralegal.org
RegRelCPUCcases@pge.com
rgf@cpuc.ca.gov
Robert.F.Lemoine@sce.com
robin.harrington@fire.ca.gov
sb3@cpuc.ca.gov
sjl@cpuc.ca.gov
thomas.long@sfgov.org
William.Johnson@sdcounty.gov