BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Application of San Diego Gas & Electric Company (U902M), Southern California Edison Company (U338E), Southern California Gas Company (U904G) and Pacific Gas and Electric Company (U39M) 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 RESPONSE OF CONSUMER PROTECTION AND SAFETY DIVISION, DISABILITY RIGHTS ADVOCATES, DIVISION OF RATEPAYER ADVOCATES AND THE UTILITY REFORM NETWORK TO JOINT MOTION OF SAN DIEGO GAS & ELECTRIC COMPANY, SOUTHERN CALIFORNIA GAS COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY

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I. INTRODUCTION

Pursuant to Rule 11.1 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules), and the February 24, 2011, Administrative Law Judge's Ruling Shortening Time, the Division of Ratepayer Advocates (DRA), the Consumer Protection and Safety Division (CPSD), The Utility Reform Network (TURN) and Disability Rights Advocates (DisabRA), (collectively, Joint Respondents) jointly file this Response to the Joint Motion of San Diego Gas & Electric Company (SDG&E), Southern California Gas Company (SoCalGas) (together, Sempra), and Southern California Edison Company (SCE) (collectively, Applicants or Joint Utilities) for Stay of Ruling and Establishment of Procedural Schedule.

In response to the February 18, 2011, Assigned Commissioner's and Administrative Law Judge's Ruling (ACR) requiring Pacific Gas and Electric (PG&E), SCE and Sempra to show cause why their application seeking the authority to establish a

Wildfire Expense Balancing Account (WEBA) should not be dismissed, the Joint Utilities filed, on February 23, 2011, a joint motion to stay the ACR and establish a revised procedural schedule.[1] The Joint Utilities request that a stay be granted for two reasons: (1) to enable Joint Utilities to continue recently re-initiated settlement discussions; and (2) because the ACR would prematurely end the proceeding, thus failing to allow the Joint Utilities an opportunity to develop a complete record. Both of the Joint Utilities' proposed justifications for a stay are unpersuasive, and their request should be denied.

As discussed below, Joint Respondents request that the Commission dismiss Applicants' WEBA application. As proposed, WEBA will undermine the core obligations of PG&E, SCE and Sempra to ensure the safety of their facilities and services at the very time that the public is demanding more safety by the utilities and greater vigilance on the part of this Commission to enforce the utilities' obligations. The ACR should not be stayed in order for preliminary settlement negotiations to continue or for the record to be more fully developed. Applicants' amended application did not address the issues set forth in the December 21, 2009 Assigned Commissioner Simon and Administrative Law Judge (ALJ) Bushey Ruling (December 21, 2009 Ruling[2]). Applicants have the burden of showing that the extraordinary relief they seek is warranted; neither their original application nor their amended application met that burden, and they should not be given a third bite at the apple in the form of evidentiary hearings.[3]

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[1] PG&E did not join Sempra and SCE in their motion requesting a stay of the ACR.

[2] A.09-08-020, Ruling of the Assigned Commissioner and Administrative Law Judge Directing Applicants to Amend Application and All Parties to Meet and Confer, p. 10 (Dec. 21, 2009).

[3] In fact, the ACR gives Applicants just such a third bite at the apple by allowing them to file briefs on the Order to Show Cause explaining why the case should go forward.

II. DISCUSSION

A. Joint Utilities Have Mischaracterized the Status of Settlement Discussions.

After Applicants approached certain parties in the proceeding to re-initiate settlement discussions, Joint Respondents convened with Applicants to determine whether it would be appropriate and possible to re-initiate settlement meetings that had fallen apart in 2010. While it would be inappropriate to discuss the content of what transpired, it is clear that Joint Respondents and Applicants are very far apart. Suffice it to say no settlement proposals were made at this one preliminary meeting. Moreover, the wording in Joint Utilities' Motion implies much further progress than Joint Utilities have actually committed to:

> [T]he Joint Utilities remain willing to **attempt to** reach an agreement … Although there can be **no assurance** that a settlement will be reached, the Joint Utilities remain **optimistic** about their ability to work with other parties to achieve a satisfactory outcome. (Emphasis added.)

In addition, Joint Utilities' proposed schedule and their arguments against the Order to Show Cause reveal their true colors as to their willingness to accommodate other parties' concerns. For example, on January 24, 2011, Joint Respondents proposed a two-month extension to the procedural schedule. In response, Joint Utilities, on February 1, 2011, indicated a willingness to accept only a one-month extension, yet in their February 23, 2011 Motion, Joint Utilities insist on responsive testimony by March 25, approximately three weeks from now. Essentially, Joint Utilities want Respondents to enter into settlement negotiations under the gun of having testimony due in three weeks. With this threat hanging over Joint Respondents' heads it is no surprise as to why Joint Respondents are skeptical of the utilities' willingness "to attempt to reach an agreement."

B. The WEBA application is a request for extraordinary relief that would create a presumption of recovery from ratepayers that undermines present incentives for prudent risk management and safety compliance, and should thus be dismissed.

It is apparent that the Applicants are more concerned with liability than they are with providing safe and reliable service at just and reasonable rates. This is not just demonstrated by the filing of the WEBA application, as indicated in the Order to Show Cause.[4] The electric utilities' proposals and conduct in other proceedings manifest the same unfortunate priorities. The Applicants filed comments in the Order Instituting Rulemaking (OIR) R.08-11-005,[5] whose purpose was to reduce fire risk and other safety hazards.[6] Applicants instead took the opportunity to propose rule changes that clearly had nothing to do with improving safety, but merely constituted an attempt to reduce their legal liability. It is disingenuous at best and egregious at worst for Applicants to try to highjack a proceeding meant to increase the safety of the electric grid in order to try and weaken safety standards and to limit their liability.

In direct contravention and flagrant disregard of the OIR's Phase 2 scoping memo's exclusion of all matters focused on reducing a utility's legal liability, the Applicants proposed a rule intended to defeat rights set forth in Section 2106 of the Public Utilities Code.[7] It seems that the utilities only want to change rules for violations for which they have recently been cited. Joint Respondents have seen too many instances of utility practices that compromise safety, including deferring repairs and using maintenance funds for other purposes.

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[4] A.09-08-020, Ruling of the Assigned Commissioner and Administrative Law Judge Requiring Applicants To Show Cause Why Application Should Not be Dismissed, pp. 1-4 (Feb. 18, 2011).

[5] R.08-11-005, Order Instituting Rulemaking to Revise and Clarify Commission Regulations Relating to the Safety of Electric Utility and Communications Infrastructure Provider Facilities (Nov, 6, 2008).

[6] Unlike the other Joint Respondents, DisabRA is not a party to R.08-11-005 and is not familiar with the details of that proceeding. Consequently DisabRA is not in a position to join this section of the Response.

[7] Section 2106 authorizes damage actions against public utilities for their unlawful acts, including acts that violate Commission orders or decisions. The ALJ ruled that the proposed change must be excluded from Phase 2 of the OIR. (See, August 11, 2010 ALJ Ruling Granting Motion to Exclude Proposed Rule Changes Concerning Utility Liability From Phase 2 and the Phase 2 Workshop Report).

Applicants' requested relief in this application would create perverse incentives that would result in the deterioration of the safety and reliability of Applicants' electric infrastructure because applicants would incur limited consequences for lack of proper and full compliance with Commission Rules and General Orders.

C. On its face, Applicants' amended application fails to address the issues set forth in the December 21, 2009 Ruling.

In their motion requesting a stay, Joint Utilities claim that dismissal of the WEBA application would be procedurally inappropriate. While this may sound persuasive, the utilities misrepresent the due process and scheduling issues. Applicants have the burden of proving the reasonableness of their request as well as the burden of producing the evidence to support that request through their direct testimony. As the Commission has long held, "a party must place the full justification for a proposal in its written direct testimony, and may not wait until rebuttal to do so."[8] "A [utility's] direct showing must provide the clear and convincing evidence" of the relief sought in the application.[9] Nevertheless, Applicants complain that they deserve an opportunity to present the facts and policy arguments justifying their proposed cost recovery mechanism,[10] implying that they have not yet had an opportunity to do so. The utilities, however, have received two opportunities to justify their request, and in response, Respondents have twice submitted thorough and detailed protests.[11] The utilities' failure to meet their burden through their direct testimony should not be construed to be a lack of due process.

Applicants do not have the right to ignore a directive from the Assigned Commissioner and ALJ mandating that Applicants amend their application before being

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[8] D.07-11-037, Opinion Granting Rate Increases for the Region II Service Area and General Office Operations of Golden State Water Company, p. 116 (Nov. 6, 2007).

[9] D.08-01-020, Order to Show Cause on Why the Commission Should Not Fine Golden State Water Company $50,000, p. 2 (Jan. 10, 2008).

[10] A.09-08-020, Joint Motion of San Diego Gas & Electric Company, Southern California Gas Company, and Southern California Edison Company for Stay of Ruling and Establishment of Procedural Schedule, p. 3 (Feb. 23, 2011).

[11] TURN was not a party to this proceeding initially and did not file a protest to the original application.

able to move forward. For example, the December 21, 2009 Ruling states that the application must be "substantially" amended and further states:

> Financial incentives for prudent risk management and safety regulation compliance are substantially undermined by the presumption of recovery from ratepayers. These issues and others raised in the protests must be addressed to provide an adequate information basis on which to set further proceedings in this docket. The applicants' reply, however, is limited to vague assertions and opposition to evidentiary hearings. Accordingly, at this point, the record does not include sufficient information on which to set further proceedings.[12]

To date, Applicants have failed to provide anything other than "vague assertions" and "opposition to evidentiary hearings."[13] With Applicants opposed to evidentiary hearings; with Applicants having submitted their direct testimony; with other parties having protested Applicants' various filings, requesting that WEBA be dismissed; Joint Respondents submit to the Assigned Commissioner and ALJ: there is nothing further for this Commission to do, but dismiss WEBA.

III. PROCEDURAL SCHEDULE

If the Commission decides not to dismiss this application and move forward with the proceeding, the Joint Respondents request that the Commission issue a scoping memo to set forth the schedule for this proceeding. As the schedule stands now, the utilities are required to respond to the ACR by March 15 and replies to their response are due on March 22. The Commission has yet to delineate the full scope of this proceeding, and the utilities' request for a March 25 due date for intervenor testimony is therefore ridiculous, particularly in light of this recent delay in the proceeding. Joint Respondents, along with Mussey Grade Road Alliance and Protestor Ruth Henricks, filed a motion to revise the procedural schedule on January 24, 2011 that requested that intervenor testimony be due on April 25. If the Commission moves forward with this application, the schedule should

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[12] December 21, 2009 Ruling, p. 7.

[13] August 10, 2010 Joint Amended Application of SCE, PG&E and Sempra, p. 13.

be set, at a minimum, according to the joint intervenor motion. Given this current delay in this proceeding, extending the schedule beyond the schedule proposed in the January 24th motion would also be reasonable.

IV. CONCLUSION

Joint Respondents respectfully request that Applicants' motion be denied and that the WEBA application be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **"JOINT RESPONSE OF CONSUMER PROTECTION AND SAFETY DIVISION, DISABILITY RIGHTS ADVOCATES, DIVISION OF RATEPAYER ADVOCATES AND THE UTILITY REFORM NETWORK TO JOINT MOTION OF SAN DIEGO GAS & ELECTRIC COMPANY, SOUTHERN CALIFORNIA GAS COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY"** to the official service list in **A.09-08-020** by using the following service:

[**X**] **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

[ ] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **March 3, 2011** at San Francisco, California.

/s/ ROSCELLA V. GONZALEZ
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