

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA



FILED

11-13-12
04:59 PM

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 REPLY COMMENTS OF THE CENTER FOR ACCESSIBLE TECHNOLOGY,
THE UTILITY REFORM NETWORK, DIVISION OF RATEPAYER ADVOCATES,
AND THE CONSUMER PROTECTION AND SAFETY DIVISION ON THE
PROPOSED AND ALTERNATE DECISIONS

CENTER FOR ACCESSIBLE
TECHNOLOGY
Melissa W. Kasnitz
3075 Adeline Street, Suite 220
Berkeley, CA 94703
Phone: 510/841-3224 x 2019
service@cforat.org

The Utility Reform Network
Nina Suetake
115 Sansome Street, 9th Floor
San Francisco, CA 94104
Phone: 415/929-8876 x 308
Fax: 415/929-1132
nsuetake@turn.org

Division of Ratepayer Advocates
California Public Utilities Commission
Marion Peleo
505 Van Ness Avenue
San Francisco, CA 94102
Phone: 415-703-2130
map@cpuc.ca.gov

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

November 13, 2012

I. INTRODUCTION

In accordance with Rule 14.3(d) of the Commission's Rules of Practice and Procedure, the Center for Accessible Technology, TURN, CPSD and DRA (Joint Consumers) submit these Reply Comments in response to the Opening Comments of Applicants San Diego Gas & Electric Company and Southern California Gas Company on Proposed Decision of ALJ Bushey and Alternate Decision of Commissioner Simon (Applicants' Opening Comments).

Nothing in Applicants' Opening Comments should detract from the fundamentals of this proceeding: Applicants are requesting creation of an extraordinary cost recovery mechanism, unlike anything currently in existence, which would essentially guarantee recovery of virtually all costs in excess of insurance through rates following any wildfire. In making such an extraordinary request, the burden is on Applicants to demonstrate that such a step would be just and reasonable. Throughout their comments, Applicants imply that their request should be presumed reasonable and the burden is on intervenors to justify any result other than a complete grant of their request.¹ This is not the case. Unless the Applicants can carry their burden, the status quo is maintained.

Despite discussions in both the PD and the AD about Applicants' failure to carry their burden, the Applicants fail to discuss this issue in their Opening Comments. Instead, they argue that the PD commits factual error by determining that a guarantee of full rate recovery for wildfire costs in excess of insurance would reduce safety incentives and that the PD commits legal error by failing to provide a guarantee of recovery in rates. On their face, even separate from the issue of burden, each argument fails.

¹ *See, e.g.* Applicants' concluding argument that "the two proposed decisions pending in this matter appear to concede the need for a WEBA-type ratemaking mechanism inasmuch as both open the door to ratemaking for the costs Applicants would otherwise place within the WEBA mechanism..." This glosses over the fundamental dispute among the parties and disregards completely the fact that the PD denies the Applicants' request for creation of a WEBA mechanism and finds existing ratemaking mechanisms to be adequate to protect the Applicants' rights.

II. DISCUSSION

A. A Decision to Retain the Status Quo Does Not Constitute Legal Error

1. Under the Status Quo, Applicants Retain their Rights to Seek Reasonable Recovery, Satisfying all Due Process Requirements

If the Commission denies their Application, Applicants face no changes in their existing rights for a fair opportunity to recover reasonable costs of conducting business, as a decision to deny the pending application maintains the status quo. As correctly noted by Applicants, under existing law, “the Commission affords utilities this fair opportunity through a comprehensive, integrated multi-layered regulatory structure addressing the full range of costs reasonably incurred in the provision of utility services.”² However, existing law does not *guarantee* recovery of costs through rates, only an opportunity to seek reasonable costs. In their Opening Comments, Applicants inappropriately seek to conflate these alternatives, but failure to provide a guarantee of recovery of all costs through rates is not error.

An example of this effort to conflate a right to seek reasonable costs with a guarantee of full cost recovery can be found in the astonishing argument that the PD errs because it requires Applicants to “limit” the costs that they could recover. This argument appears to stem from the PD’s concern that the proposed WEBA would expose ratepayers to “limitless potential liability for uninsured damages to third parties.”³ Of course, the “limit” that the PD places on recovery using existing mechanisms is simply “reasonableness.” This stands in contrast to the Applicants’ efforts to remove all reasonableness review through the proposed WEBA mechanism.⁴

As has been noted throughout this proceeding and permitted by both the PD and the AD, Applicants have the right under the status quo to seek to recover reasonable unanticipated wildfire costs through the Z-Factor mechanism or through a separate application.⁵ Applicant

² Applicants’ Opening Comments at p. 5.

³ Applicants’ Opening Comments at 7, citing PD at p. 16.

⁴ For a discussion of Applicants’ efforts to ensure that any WEBA mechanism does not incorporate reasonableness review, see Joint Consumers’ Opening Brief at pp. 11-17.

⁵ It is imperative to note that Applicants’ former partners in this proceeding, Pacific Gas & Electric (PG&E) and Southern California Electric (SCE) fully agree that the status quo allows them to file a future application to seek cost recovery of uninsured wildfire costs: PG&E and SCE understand “that they are not limited in their ability to seek cost recovery ... in the future. On this basis, PG&E and SCE make no recommendation with respect to the

SDG&E has been recording costs from the 2007 fires (the only existing event that has led to costs in excess of insurance) in its Z-Factor account. SDG&E also had the right to ask to record costs in order to seek recovery through a separate application, using reasonableness review. Instead, Applicants chose to ask for a WEMA and the creation of a WEBA. This was a strategic call on their part; they did not obtain the right to a WEBA simply by asking for it.⁶

2. Applicants Inappropriately Request Modifications to the Z-Factor Mechanism

In Opening Comments, Applicants attack the structure and administration of the existing Z-Factor mechanism, and demand modifications to the Z-Factor with regard to the 2007 wildfire costs if their request for a WEBA is rejected.⁷ This is a fundamentally inappropriate demand to include in comments on a proposed decision in an application that does not implicate the Z-Factor except to note its existence as part of the status quo. While Joint Consumers do not, at this point in time, object to Applicants' request seeking authorization to file a Z-Factor application, any requests for changes to the Z-Factor mechanism are completely outside the scope of this proceeding and should not be given any consideration.⁸

The Z-Factor mechanism allows Applicants to seek recovery of reasonable costs under standards established by the Commission. Applicants' request for modifications to the Z-Factor mechanism, which is based on no record and is completely outside the scope of this proceeding, would shift the standard from one that provides a fair opportunity for cost recovery through rates to a virtual guarantee of recovery. Essentially, Applicants are requesting a guarantee that SDG&E's 2007 fire costs would be eligible for rate recovery in a Z-Factor Application.⁹ As

Proposed Decision." Opening Comments of PG&E and SCE, p. 2. Clearly the "due process" sky is not falling, as neither the Proposed Decision nor the Alternate Decision, in any way limit Applicants' due process rights.

⁶ Applicants' argument that existing mechanisms are inferior to WEBA, Applicants' Opening Comments at p. 7, is shocking given the fact that WEBA has never been approved. It stands to reason that an option that exists under the status quo is actually superior to a non-existent option.

⁷ Applicants' Opening Comments at pp. 9-11.

⁸ Joint Consumers cannot, until Applicants file a Z-Factor application, prejudge whether such an application is appropriate or inappropriate and thus reserve the right to state a position, if and when Applicants file a Z-factor application.

⁹ Applicants demand first that any ambiguity in determining whether costs were within "management control" must be resolved "in such a way as to allow these costs to be eligible for rate recovery, Opening Comments at p. 9, and also that the definition of an "exogenous event" must be clarified so that "uninsured wildfire-related costs could be

argued repeatedly by Joint Consumers and as recognized in the PD, Applicants have no right to a guaranteed recovery through rates, and they have no basis to argue in these comments for changes to the Z-Factor criteria.

B. The AD Correctly Excludes the 2007 Wildfires from Any WEBA Mechanism That May Be Authorized

In their Opening Comments Applicants continue an argument made in their earlier briefs that a series of vague allusions to prior activities served as effective notice that they were asking for recovery of costs from the 2007 wildfires through their proposed WEBA mechanism, despite the fact that this was never clearly stated until they provided rebuttal testimony. As set forth in Joint Consumers' Opening Brief,¹⁰ this does not satisfy Applicants' burden of proof, and the Commission should exclude 2007 fire costs from any WEBA mechanism that may be authorized.

This is consistent with the scope of the proceeding:

As the scoping ruling in this proceeding provides, this proceeding “will include all factual and legal issues necessary to determine whether the applicants have met their burden of justifying the proposed ratemaking mechanism, as required by Pub. Util. Code § 454, and that the [proposed] rates will be just and reasonable, as required by § 451.”¹¹ Whether or not DRA or other parties may have known or assumed that WEBA could encompass the 2007 fire costs does not relieve Sempra of its burden to provide a complete application with full justification in support thereof. As discussed above, Sempra has failed to meet this burden. There is no policy reason or objective served through the WEBA process that cannot already be addressed in ways that are less restrictive of Commission review.¹²

Because the Applicants retain all rights that they had under the status quo to seek recovery of reasonable costs through existing mechanisms and because Applicants failed to effectively demonstrate that 2007 fire costs were at issue in their initial application, there is no error in excluding the 2007 fires from any WEBA mechanism.

demonstrated to meet, as a matter of law, the exogeneity criterion which is a part of the Z-Factor mechanism. Applicants' Opening Comments at p. 11.

¹⁰ Joint Consumers' Opening Brief at pp. 19-22.

¹¹ A.09-08-020, Scoping Memo and Ruling of the Assigned Commissioner, June 8, 2011, p. 2.

¹² Joint Consumers' Opening Brief at pp. 20-21. In addition, Ordering Paragraphs Nos. 3 and 4 of Resolution E-4311, clearly state that any and all amounts in Applicants' WEMA shall be resolved in this proceeding (A.08-09-020), and that absent Commission authorization in this proceeding, Applicants shall not recover in rates any costs recorded in their WEMA.

C. **The Record Supports a Determination by the Commission that Granting the Application Would Result in Reduced Incentives for Safety**

The record shows that approval of a WEBA mechanism creates a perverse incentive, whereby Applicants' proposal would so thoroughly insulate Applicants from the potentially catastrophic results of operating their system in an unsafe manner, that it will diminish the Applicants' focus on operating their system safely. That is, WEBA removes the only significant financial incentive Applicants have to improve wildfire safety.¹³ Both the Proposed Decision and the Alternate Decision correctly recognize and rely on this fact in rejecting Applicants' proposal.

III. CONCLUSION

For the foregoing reasons, Joint Consumers continue to support the Proposed Decision denying the Application in full. To the extent that any WEBA mechanism may be authorized, Joint Consumers support the exclusion of the 2007 fires, and the inclusion of a financial incentive to support prudent risk management and safety regulation through a shareholder contribution for any excess costs, as described in the Opening Comments of CforAT and TURN.¹⁴

Respectfully submitted,

November 13, 2012

/s/ Melissa W. Kasnitz

MELISSA W. KASNITZ
Attorney for Center for Accessible Technology
3075 Adeline Street, Suite 220
Berkeley, CA 94703
Phone: 510-841-3224
Email: service@cforat.org

/s/ Nina Suetake

¹³ Joint Consumers' Opening Brief (February 17, 2012), pp. 18-19, and Mussey Grade Road Alliance Opening Brief (February 17, 2012), pp. 21-29.

¹⁴ Center for Accessible Technology and The Utility Reform Network's Joint Comments on the Proposed and Alternate Decision, filed November 5, 2012.

NINA SUETAKE
The Utility Reform Network
115 Sansome Street, 9th Floor
San Francisco, CA 94104
Phone: 415-929-8876
Fax: 415-929-1132
Email: nsuetake@turn.org

/s/ Nicholas Sher

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

/s/ Marion Peleo

MARION PELEO
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: 415-703-2130
map@cpuc.ca.gov