

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



FILED

10-30-15
04:59 PM

Application of San Diego Gas & Electric
Company (U 902 E) for Authorization to
Recover Costs Related to the 2007 Southern
California Wildfires Recorded in the Wildfire
Expense Memorandum Account (WEMA)

A.15-09-010
(Filed September 25, 2015)

PROTEST OF THE UTILITY CONSUMERS' ACTION NETWORK (UCAN)

Donald Kelly, Esq
Executive Director
Utility Consumers' Action Network
3405 Kenyon St, Suite 401
San Diego, CA 92110
(619) 696-6966
dkelly@ucan.org

OCTOBER 30, 2015

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

Application of San Diego Gas & Electric Company (U 902 E) for Authorization to Recover Costs Related to the 2007 Southern California Wildfires Recorded in the Wildfire Expense Memorandum Account (WEMA)

A.15-09-010
(Filed September 25, 2015)

PROTEST OF THE UTILITY CONSUMERS' ACTION NETWORK (UCAN)

I. INTRODUCTION

Pursuant to Rule 2.6 of the California Public Utilities Commission's ("CPUC or Commission") Rules of Practice and Procedure, the Utility Consumer's Action Network ("UCAN") files this protest objecting to the Applications of San Diego Gas & Electric Company ("SDG&E") that seeks recovery for the \$379 million in uninsured costs related to the 2007 wildfires which were caused by SDG&E equipment. This protest is timely as it is filed within 30 days of September 30, 2015, the date the notice of filing of the application first appeared on the Daily Calendar.

In this application SDG&E is seeking a reasonableness review for their expenses that resulted from fires ignited by their own utility lines in 2007. Several of the issues that need to be examined concern how SDG&E's equipment caused the fires and whether SDG&E exercised prudence in the operation of their utility prior to the fires igniting. In SDG&E's application they note their reasonableness in their litigation strategy in settling the wildfire lawsuits. This aspect of examination only focuses on SDG&E's conduct after the fires ignited. UCAN believes that the primary area of inquiry is whether SDG&E was imprudent, in the operation of their utility by failing to maintain their system such that the fires were started in the first place. UCAN therefore protests SDG&E's application in this matter. UCAN also urges that since the 2007 wildfires resulted deaths, massive destruction of property and in the evacuation of almost

500,000 people¹ that the Commission should hold at least 2 Public Participation Hearings in San Diego County

II. UCAN URGES THAT THE RECORD FOR I.08-11-006 AND A.09-08-020 BE DEEMED PART OF THE RECORD IN THIS PROCEEDING

Many of the issues presented in this application have been considered by the Commission in at least two prior proceedings, I.08-11-006 and A.09-08-020. This application is being filed 8 years after the fires and differs from the earlier proceedings in that SDG&E is now seeking a reasonableness review for their incurred expenses. The two prior proceedings, opened respectively one and two years after the fires occurred examined many of the same issues and more closely in time to the events in question.

In I.08-11-007 the Commission issued an Order Instituting Investigation (OII) to examine if SDG&E's conduct leading up to the fires violated any statutes or rules. Specifically the OII stated:

“By this Order, the Commission institutes a formal investigation to determine whether San Diego Gas & Electric Company (SDG&E) violated any provision of the Public Utilities Code, general orders, other rules, or requirements in regards to: 1) utility facilities which have been linked to the October 2007 Witch and Rice Fires; and 2) failing to cooperate with the Consumer Protection and Safety Division (CPSD).”²

In the scoping memo for this OII it was noted:

“The purpose of the Witch and Rice Fires OII is to determine: (1) whether SDG&E was in violation of any provision of the Public Utilities Code, general orders, other rules, or requirements, regarding its facilities linked to the Witch Fire; (2) whether SDG&E was in violation of any provision of the Public Utilities Code, general orders, other rules, or requirements, regarding tree inspection and trimming policies and the facilities linked to the Rice Fire; (3) whether SDG&E failed to cooperate, and/or is continuing to fail to cooperate, with the CPSD investigation concerning the Witch and/or Rice Fires.”³

In addition to the OII, there was also a second proceeding A.09-08-020 (the WEBA application) that examined the issues of SDG&E's costs for the wildfires, and whether a special

¹<http://www.sandag.org/enewsletter/archives/october2008/images/2007fireevacuations.pdf>;

² I.08-11-006, Order instituting Investigation at page 1

³ I.08-11-006 scoping memo at page 3.

mechanism for recovery of wildfire expenses should be adopted.⁴

In each of the proceedings identified above testimony was drafted and served and made part of the record of each proceeding. In the OII proceeding there was a settlement prior to hearings, yet parties served testimony and that testimony was relied on in forming the settlement record for the settlement that was ultimately adopted by the Commission. As noted in the joint motion to adopt the settlement the parties, CPSD and SDG&E, stated the following:

“After extensive discovery, the Parties have submitted prepared written testimony that creates a thorough record in this case. A list of exhibits is attached as Appendix A to the Settlement Agreement.

CPSD’s testimony in this proceeding consists of the documents referenced in Appendix A of the Settlement Agreement. With respect to the Witch fire, the CPSD report and testimony allege that SDG&E is in violation of CPUC requirements because it failed to design, construct, and maintain the affected lines and conductors in accordance with General Order 95 and failed to maintain the clearances between conductors required by General Order 4/ I.08-11-006, Scoping Memo, p. 3. - 8 - 95. With respect to the Rice fire, the CPSD report and testimony allege failures of SDG&E’s vegetation management practices (tree trimming) in violation of General Order 95. With respect to the Guejito fire, CPSD alleged that both Cox and SDG&E failed to maintain proper clearances in violation of Public Utilities Code Section 451 and General Order 95. Finally, with respect to all three fires, CPSD also alleges failures to adequately cooperate with CPSD’s investigation.

SDG&E’s testimony in this proceeding consists of the documents referenced in Appendix A of the Settlement Agreement. With respect to the Witch fire, SDG&E alleged that its facilities and practices were in compliance with General Order 95. With respect to the Rice fire, SDG&E alleged that its vegetation management practices were in compliance with General Order 95 and Public Resources Code Section 4293. With respect to the Guejito fire, SDG&E alleged that it maintained proper clearances, consistent with Public Utilities Code Section 451 and General Order 95. SDG&E also alleged that it cooperated with CPSD’s investigation of all three fires.

In the Settlement Agreement, the Parties have stipulated to enter all of the Parties’ prepared testimony into the record solely to form the basis of factual support for the Settlement Agreement.”⁵ (Emphasis added)

Given that the evidence referenced in I.08-11-006 concerns issues to be considered in this

⁴ The Application was originally filed by SDG&E, SoCal Gas, PG&E and SCE, however, later in the proceeding PG&E and SCE withdrew.

⁵ I.08-11-006, Joint motion of the Consumer Protection and Safety Division and Sn Diego Gas and Electric Company for approval of settlement agreement, pages 7-8.

application and was made part of the settlement record in a Commission investigation into the cause of the fires by agreement, UCAN urges that the record of that proceeding be deemed part of the record of this proceeding.

In addition, UCAN asks that the record from the WEBA proceeding, A.09-08-020, be made part of this record as well. In that proceeding the Commission examined the issues of cost recovery for SDG&E regarding their outstanding wildfire costs that resulted from the 2007 wildfires. That proceeding held multi-day hearings, and the testimony of the parties were admitted into evidence. The Commission subsequently issued decision D.12-12-029, relying on the record from that proceeding.

Given that the testimony produced for both A.09-08-020 and I.08-11-006 involved SDG&E, the 2007 wildfires, many of the same parties, and substantially similar and in many cases the same issues as this pending application, it is appropriate to augment the record in this proceeding with that evidence. UCAN urges that the testimony and evidence relied on by the parties and the Commission in these two prior proceedings be incorporated into the record of this case.

III. GROUNDS FOR PROTEST

At this early stage of the proceedings UCAN has not completed an in depth analysis, conducted discovery or hired experts regarding SDG&E's application and so UCAN's protest will only be addressing issues we have so far identified. UCAN may identify and address additional issues once we have had a chance to more closely examine the application.

A. Was SDG&E's operation of their utility prudent given that SDG&E equipment caused the 2007 wildfires?

One area of dispute that will be raised through this application, an issue that went undecided in I.08-11-006, is did the 2007 wildfires result from imprudent management by SDG&E. In I.08-11-006, the Commission's Consumer Protection and Safety Division, (CPSD) submitted testimony that concluded SDG&E's equipment caused the Witch and Rice wildfires. CPSD's testimony also concluded that SDG&E was in violation of the following Public Utilities code sections and CPUC orders and rules due to how the wildfires ignited:

1. PU Code § 451: Failing to safely maintain facilities, such as required clearances between SDG&E's conductors.
2. GO 95, Rule 31.1: Failing to safely maintain facilities, such as required clearances, and allowing contact to occur between SDG&E's conductors, in consideration of the given local conditions such as the well-known Santa Ana winds.
3. GO 95, Rule 38: Failing to maintain the required clearances between SDG&E's conductors. Allowing a clearance reduction of approximately 100% between conductors.⁶

SDG&E in their testimony notes that the wildfires were due to the extreme weather conditions in place in October 2007 i.e., extreme and unprecedented Santa Ana wind gusts and extreme dryness.

Whether environmental factors caused the 2007 wildfires or whether SDG&E failed to prudently manage their utility such that they were in violation of the Public Utilities Code, and the Commission's General Order 95 are issues that need to be resolved. UCAN submits that SDG&E's actions in operating their utility prior to the ignition of the 2007 wildfires is one of the key issues to resolve to determine if their actions were reasonable such that they should be allowed to recover their incurred wildfire expenses.

B. Was SDG&E's Strategy for minimizing costs and expenses reasonable?

In their application SDG&E claims that because of an adverse ruling by the courts regarding the legal doctrine of "inverse condemnation", that SDG&E was being held strictly liable, irrespective of fault, for the wildfire damages even where SDG&E's equipment was only one of several concurrent causes of a wildfire plaintiff's damages.⁷

In this proceeding UCAN will be seeking information on the issues of inverse condemnation, the court minute order granting Plaintiff's requests to plead inverse condemnation and the adverse appellate court rulings against SDG&E on this issue. Since SDG&E in their testimony notes that given the adverse ruling on this issue, that their conduct in settling with the wildfire

⁶ I.08-11-006, Rebuttal testimony of CPSD witnesses Fadi Daye and Mahmoud "Steve" Intably at page 2-1

⁷ SDG&E's application explains inverse condemnation at page 5, citing to Marshall v. Dept. of Water and Power, 219 Cal. App. 3d 1124, 1139.

litigants was reasonable, UCAN believes a thorough examination into this issue is warranted.

IV. PROPOSED SCHEDULE

In SDG&E's proposed schedule they are seeking to have intervenor testimony served by February 2016, a mere 3 months away. As already noted, the fires occurred in 2007 and two prior Commission proceedings need to be reviewed. Unfortunately many potential parties to this proceeding have not been involved in either I.08-11-006 or A.09-08-020 nor do they have access to all the records of those proceedings. In addition the multi-year litigation that resulted from the wildfires needs to be reviewed since SDG&E is claiming that their legal strategy was reasonable and therefore the costs incurred as a result of their litigation strategy deserve reimbursement.

Given these circumstances UCAN believes that SDG&E's proposed schedule is not realistic and that the schedule will need to be extended from what SDG&E has proposed. UCAN is currently evaluating our timing needs and we will be prepared at the Prehearing Conference to offer our scheduling recommendations.

V. EFFECT OF THE APPLICATION ON THE PROTESTANT

The instant application affects the interests of SDG&E's residential and small commercial ratepayers. UCAN is a non-profit consumer advocacy organization whose articles of incorporation and bylaws authorize our representation of the interests of residential and small commercial customers. UCAN has a long history of representing the interests of these SDG&E customers before this Commission.

VI. COMMUNICATIONS FOR SERVICE

UCAN also asks to be placed on the service list as an active party, and for the purpose of receipt of all correspondence, UCAN's representative shall be:

Donald Kelly,
3405 Kenyon Street, Suite 401
San Diego, CA 92110
don@UCAN.org
(619) 717-2644

VII. CONCLUSION

UCAN anticipates a thorough examination of the issues, and looks forward to the proceedings.

June 8, 2015

Respectfully submitted,

/s/ Donald Kelly

Donald Kelly, Executive Director
DON@UCAN.ORG
Utility Consumers' Action Network
3405 Kenyon Street, Suite 401
San Diego, CA 92110
(619) 696-6966