

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Application of San Diego Gas & Electric  
Company (U902E) 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 OFFICE OF RATEPAYER ADVOCATES**

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October 30, 2015

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**I. INTRODUCTION**

Pursuant to Rule 2.6 of the California Public Utilities Commission's (CPUC or Commission) Rules of Practice and Procedure (Rules), the Office of Ratepayer Advocates (ORA) hereby submits its Protest to the Application of San Diego Gas & Electric Company (U902E) for Authorization to Recover Costs Related to the 2007 Southern California Wildfires Recorded in the Wildfire Expense Memorandum Account (WEMA) (Application). San Diego Gas & Electric Company (SDG&E) filed its Application on September 25, 2015.

In the Application, SDG&E states that it seeks the Commission's authorization to recover \$379 million from ratepayers, which is a portion of the \$2.413 billion in costs and legal fees that SDG&E asserts were associated with resolving damage claims from the Witch, Rice and Guejito Fires of 2007.<sup>1</sup> SDG&E allocates to shareholders \$42

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<sup>1</sup> Application at 1. Gentes Testimony at Appx. 4.

million in costs.<sup>2</sup> The legal fees identified in this Application total \$169 million, while “settlements/reserves” total \$2.244 billion.<sup>3</sup>

ORA opposes the request of SDG&E to recover \$379 million from ratepayers. It would be an injustice to allow SDG&E to collect from ratepayers the costs identified in this Application.

## **II. BACKGROUND AND IDENTIFIED ISSUES**

### **A. Fire Investigations I.08-11-006, I.08-11-007**

Cal Fire reported that the Witch Fire and the Guejito Fire together burned approximately 197,990 acres. Cal Fire also reported that two people died and approximately 40 firefighters were injured. Further, approximately 1,141 homes, 509 outbuildings and 239 vehicles were destroyed; while 77 homes and 25 outbuildings were damaged.<sup>4</sup> Cal Fire reported that the Rice Fire burned approximately 9,472 acres, destroyed approximately 206 homes, 2 commercial properties, and 40 outbuildings.<sup>5</sup> The Commission investigated SDG&E’s violations associated with the ignition of the Witch, Rice and Guejito Fires in I.08-11-006 and I.08-11-007 (Fire OIIs).

SDG&E may argue that given the settlement of the 2007 Fire OIIs, the reasonableness of its acts or omissions associated with the ignition of the Witch, Rice and Guejito Fires are already resolved. This is untrue. The fact that SDG&E reached a settlement with the Consumer Protection and Safety Division (CPSD, currently the Safety and Enforcement Division, or SED) in 2009 does not excuse SDG&E from the obligation to prove the reasonableness of its conduct in this proceeding.

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<sup>2</sup> Gentes Testimony at Appx. 4. SDG&E also states that it will apply “annual credits of any miscellaneous revenue it receives above the amount authorized for recovery in rates to the WEMA balance[.]” Application at 7.

<sup>3</sup> Gentes Testimony at Appx. 4.

<sup>4</sup> Cal Fire Investigation Report, Witch Fire, p. 2, ln. 7-11.

<sup>5</sup> Cal Fire Investigation Report, Rice Fire, p. 3, ln. 3-5.

Further, the possibility of evaluating the OII-related evidence in a case such as this one was preserved by the settlement. The parties included this critical phrase in the filed settlement agreement:

SDG&E and CPSD enter into this Settlement Agreement without prejudice to any positions, including positions related to OII-related evidence, that any party might take in any other proceeding, including but not limited to SDG&E's CEMA proceeding (A.09-03-011) and any Commission proceedings relating in any way to the Witch, Rice, and Guejito fires or to the remedial measures contained in this Settlement Agreement.<sup>6</sup>

Necessarily the reasonableness of SDG&E's actions before, during and after the fires all bear on any meaningful evaluation regarding the recovery of the costs claimed in this Application. Furthermore, this evaluation is not limited to the issues raised in the OIIs, such as SDG&E's alleged violations of PU Code section 451 and General Order 95.

**B. SDG&E Bears the Burden of Proof**

The Commission has held that:

The burden rests heavily upon a utility to prove ... that it is entitled to the requested rate relief and not upon the Commission, its staff, or any interested party to prove the contrary.<sup>7</sup>

In this proceeding, SDG&E will have the burden to prove by a preponderance of the evidence whether it should be authorized to recover from ratepayers \$379 million in costs and legal fees associated with resolving damage claims from the Witch, Rice and Guejito Fires of 2007.

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<sup>6</sup> D.10-04-047, Attachment 1, pp. 5-6.

<sup>7</sup> D.90-09-088, 37 CPUC 2d 488, 499.

### **III. PROCEDURAL MATTERS**

ORA does not oppose categorizing this proceeding as ratesetting.

Evidentiary hearings will be necessary, unless the Application is dismissed with prejudice. ORA requests that any evidentiary hearings be held in Southern California. The primary issues to be considered are those discussed in Sections II, although additional issues may arise during discovery. Facts related to such issues may be presented at evidentiary hearings.

ORA further requests that the Prehearing Conference (PHC) be held in Southern California. ORA also requests that Public Participation Hearings be held in San Diego County, near the impacted communities.

### **IV. PROCEDURAL SCHEDULE**

ORA reserves the right to propose a schedule at the upcoming PHC, after conferring with parties.

### **V. CONCLUSION**

ORA opposes the request of SDG&E to recover \$379 million from ratepayers for costs associated with resolving damage claims from the Witch, Rice and Guejito Fires of 2007. A utility should not be compensated when it fails to prevent its facilities from triggering disasters.

Respectfully Submitted,

/s/ EDWARD MOLDAVSKY

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