



FILED
8-11-16
03:13 PM

JMO/ek4 8/11/2016

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

**RULING CONFIRMING PROCEDURAL SCHEDULE
FOLLOWING BRIEFS ON THRESHOLD ISSUES**

This ruling confirms that the procedural schedule set forth in the Scoping Memo and Ruling of Assigned Commissioner and Assigned Administrative Law Judge, dated April 11, 2016 (Scoping Memo) remains in effect following the briefs on threshold issues. This ruling finds that the threshold issues identified in the briefs do not warrant dismissal of the case prior to testimony and evidentiary hearings.

SDG&E filed the instant Application (A.) 15-09-010 to recover costs tracked in its Wildfire Expense Memorandum Account (WEMA). The WEMA was authorized by Decision 12-12-029 to track settlement costs and legal fees associated with third-party damage claims brought against SDG&E following the Witch, Guejito, and Rice fires in 2007 (2007 Wildfires).

San Diego Consumers' Action Network (SDCAN), The Utility Reform Network (TURN), Utility Consumers' Action Network (UCAN), Protect Our Communities Foundation (POCF), Office of Ratepayer Advocates (ORA) and Mussey Grade Road Alliance (MGRA) filed protests to the Application. Ruth

Hendricks also filed a motion for party status, which was granted on October 2, 2015.

On February 19, 2016, these intervening parties filed a Joint Proposed Schedule requesting that the Commission allow parties to brief threshold issues on the appropriateness of the requested rate recovery prior to hearings on the reasonableness of the costs. The request was granted and the threshold issues were included in the Scoping Memo as follows:

Whether rate recovery would create a moral hazard... the fairness of imposing rate increases on San Diego customers, particularly those who were already victims of the fires..., and whether SDG&E has already been compensated for such risks in its rates and whether it warrants special recovery outside of the normal general rate case process... Scoping Memo at 6.

The Scoping Memo provided that in Phase 1 of this proceeding, the Commission would determine (a) whether any of the threshold issues serves as a bar to recovery such that early dismissal is warranted; and (b) whether SDG&E's operation, engineering and management of the facilities alleged to have been involved in the ignition of the fires was prudent. The Phase 2 scope would be whether SDG&E's actions and decision making in connection with settling of legal claims and costs were reasonable.

Opening briefs on the threshold issues were filed on May 11, 2016 individually by each of SDG&E and ORA, and jointly by UCAN, TURN, POCF, and MGRA (Joint Intervenors). Reply briefs were filed on May 26, 2016 by SDG&E and the Joint Intervenors.

The Joint Intervenors have three main arguments: (1) that recovery of the amounts tracked in the WEMA would be "a windfall at the ratepayers' expense;" (2) that recovery of the amounts tracked in the WEMA would pose a moral hazard; and (3) that "basic fairness principles" require dismissal.

This ruling treats the Joint Intervenors' request to deny the Application based on threshold issues as a motion for summary judgment or dismissal. Prior to evidentiary hearings, the Commission may dismiss a case if there are no triable issues of material fact, or if, taking all the factual allegations of the opposing party to be true, the moving party is entitled to judgment as a matter of law. *See e.g., In re W. Gas Res.-Cal., Inc.* (1999) Decision (D.) 99-11-023 at 7.

The Joint Intervenors and ORA argue that recovery would be a windfall because SDG&E already had the opportunity to be compensated for the amounts tracked in the WEMA through other rate recovery mechanisms such as the revenue requirement set in SDG&E's general rate case and the approved rate of return on equity. The Joint Intervenors argue that SDG&E took on the risk of costs that were not forecast in the general rate case and that the rate of return is calculated to absorb such risks. In this instance, however, the Commission, in D.12-12-029, previously authorized SDG&E to record its wildfire litigation and settlement costs to the WEMA, therefore allowing it to recover reasonable costs tracked in the WEMA does not constitute a windfall or violate the Commission's policy against retroactive ratemaking as a matter of law. Based on the information available without development of an evidentiary record, the application should not be dismissed at this time.

The Joint Intervenors arguments regarding moral hazard and fairness are premised on the claim that SDG&E equipment started the 2007 Wildfires. They define a moral hazard as a "well-known economic principle that comes into play when an entity lacks incentive to safeguard against risk because it is protected

from the consequences of its action.”¹ Joint Intervenors assert that it is unfair to recover the costs tracked in the WEMA from San Diego County residents and small businesses that suffered during the 2007 Wildfires. Similar to the windfall argument, the moral hazard and fairness arguments do not warrant dismissal prior to development of an evidentiary record. In addition, these arguments are primarily policy arguments and thus cannot support dismissal as a matter of law.

As a result, this proceeding will continue according to the procedural schedule set forth in the Scoping Memo. This will allow development of an evidentiary record, which may include both written testimony and evidentiary hearings, prior to any decision on SDG&E’s application. The arguments in the briefs may be reconsidered after development of an evidentiary record.

IT IS SO RULED.

Dated August 11, 2016, at San Francisco, California.

/s/ DOROTHY DUDA for
Jeanne M. McKinney
Administrative Law Judge

¹ Joint Intervenors’ Opening Brief at 12.