

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



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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

Application No. 15-09-010
(Filed September 25, 2015)

**REPLY COMMENTS OF THE MUSSEY GRADE ROAD ALLIANCE
REGARDING THE PROPOSED WEMA PHASE 1 DECISION**

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1. INTRODUCTION

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the Mussey Grade Road Alliance (MGRA or Alliance) files these Reply Comments in response to the Opening Comments issued by parties on the Proposed Decision of Administrative Law Judges’ Tsen and Goldberg.¹ We specifically address the Opening Comments of San Diego Gas and Electric Company (SDG&E).² Opening Comments were also filed jointly by Southern California Edison (SCE) and Pacific Gas and Electric Company (PG&E).³ These comments should be rejected for lack of standing, since SCE and PG&E are not parties to this proceeding. We argue against SCE & PG&E’s motion for party status in a separate filing.⁴

SDG&E makes numerous factual and legal errors in its comments that we address in our Reply Comments. These errors effectively negate SDG&E’s criticism of the Proposed Decision (PD). Specifically, SDG&E’s arguments regarding inverse condemnation are out of scope for this phase of the proceeding and should have been addressed earlier, constituting legal error. Also, SDG&E makes factually inaccurate claims that the PD incorrectly applied Commission standards for prudence and engaged in hindsight analysis.

2. ISSUES

2.1. SDG&E Claims Regarding Inverse Condemnation are Out of Scope

SDG&E commits substantial legal error in its claim that the PD erred by “by failing to allow cost recovery under inverse condemnation or even address the critical legal issue of the relationship

¹ A.15-09-010; DECISION DENYING APPLICATION; PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGES’ TSEN AND GOLDBERG; August 22, 2017 (PD).

² A.15-09-010; SAN DIEGO GAS & ELECTRIC COMPANY’S (U 902 E) COMMENTS ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGES TSEN AND GOLDBERG; September 11, 2017. (SDG&E Comments)

³ A.15-09-010; PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) AND SOUTHERN CALIFORNIA EDISON COMPANY (U338-E); JOINT COMMENTS ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGES TSEN AND GOLDBERG; September 11, 2017.

⁴ A.15-09-010; MUSSEY GRADE ROAD ALLIANCE RESPONSE TO THE MOTION OF SOUTHERN CALIFORNIA EDISON; and MUSSEY GRADE ROAD ALLIANCE RESPONSE TO THE MOTION OF PACIFIC GAS AND ELECTRIC MOTION FOR PARTY STATUS; September 18, 2017.

between inverse condemnation and cost recovery.”⁵ The PD was under no obligation to make a determination on this issue. The issue of inverse condemnation was dealt with appropriately in the Scoping Memo: “In D.14-06-007, the Commission held that for costs to be found reasonable, the utility must prove that they were:

‘prudently incurred by competent management exercising the best practices of the era, and using well-trained, well-informed and conscientious employees who are performing their jobs properly. . . .

[T]he Commission can and must disallow those costs: that is unjust and unreasonable costs must not be recovered in rates from ratepayers.’

This is consistent with the Commission’s obligation under Pub. Util. Code § 451 to ensure that resulting rates will be just and reasonable and that service is provided in a safe manner.”⁶

Thus SDG&E’s argument is not really with this PD, but effectively with D.14-06-007 and Pub. Util. Code § 451. The Scoping Memo went on to identify the scope of the phases of this proceeding:

“The scope of Phase 1 is as follows:

- (1) Whether any of the Threshold Issues serves as a bar to recovery; and
- (2) Whether SDG&E’s operation, engineering and management the facilities alleged to have been involved in the ignition of the fires was reasonable. Each of the three fires should be addressed separately.”⁷

Hence, if SDG&E wanted inverse condemnation to be independently considered as a threshold issue, it should have addressed this in a filing during the Scoping or Threshold phases, before the considerable cost, time and effort that went into the preparation of the Phase 1 record was expended. Furthermore, it would be a violation of due process owed to other parties for this issue to be considered at this time, since we have been bound by Phase 1 scoping in the preparation of our testimony and arguments, and this scope did not include inverse condemnation. For SDG&E to raise this issue now is untimely and their argument should be rejected as out of scope.

⁵ SDG&E Comments; p. 1.

⁶ Scoping Memo; pp. 4-5; citing D.14-06-007, p. 31.

⁷ Scoping Memo; p. 5.

2.2. The Witch Fire was Reasonably Foreseeable and SDG&E Lacked Prudence

SDG&E correctly states on page 6 of its Opening Comments: “To uphold its own standards and to fairly assess the evidence... the Commission must not base its decision on the consequences of the fires but must instead seek to determine whether SDG&E knew or should have known that its facilities would be implicated in the ignition of the Witch, Guejito and Rice Fires.”

SDG&E then goes on to argue that the “the PD improperly holds SDG&E to a perfection standard,”⁸ makes “hindsight” claims,⁹ and dismisses the PD’s determination that SDG&E should have acted to address the faults on TL 637.¹⁰ These arguments are erroneous, incomplete and ignore substantial evidence in the record that SDG&E had considerable prior knowledge that should have led a reasonable company to realize that its system was at high risk of causing a catastrophic fire under high wind conditions, and therefore should have taken the proactive measure of de-energizing TL 637 after the first or second fault.

Some of this evidence is missing from the PD, an omission that MGRA addresses and proposes remedy for in its own Opening Comments on the PD. In addition to factors listed in the PD, other facts that demonstrate that SDG&E “knew or should have known” that it was at high risk of a catastrophic fire on October 21, 2007 include:

- SDG&E had a long record of power line related fires, some of which were large and even catastrophic.¹¹
- One of these fires, the Open fire, occurred less than a year before the Witch fire, due to failure of a transmission line in almost the same location under high-wind Santa Ana conditions, and would have yielded a similar result except for slightly more favorable weather conditions and a heroic firefighting response.¹²
- SDG&E had sponsored meteorological studies in 1981 and 2006-2008 that showed that wind speeds from 68 mph to 121 mph could be reasonably expected in its

⁸ SDG&E Comments; p. 7.

⁹ Id.; p. 8.

¹⁰ Id.; pp. 8-10.

¹¹ MGRA Comments; pp. 4-5.

¹² Id.; MGRA Opening Brief; pp. 14-16.

service area.¹³ Evidence presented by MGRA demonstrates that these studies are directly applicable to the Witch fire ignition area.¹⁴

- Despite having evidence that winds could exceed 56 mph in its service area, SDG&E continued to design, construct, rebuild and maintain its infrastructure to a 56 mph loading standard.¹⁵
- SDG&E engineers know that the risk of failure increases rapidly when structures are loaded beyond their designed limits.¹⁶
- SDG&E had sponsored an academic study that demonstrated that conductor-conductor contact under high wind conditions could result in wildfire ignitions.¹⁷

In our testimony and briefing, MGRA demonstrated and argued that SDG&E was in fact in violation of GO 95 Rule 12.3 and Rule 31.1, because it did not rebuild and maintain its infrastructure taking into account known local conditions – that wind speeds in excess of 56 mph could be anticipated in its service area.¹⁸ The PD did not rule on our evidence or argument, and because we believe that the PD in its current form (with modest corrections by MGRA and other opposing intervenors) amply justifies the denial of SDG&E’s application, we did not raise this as an error in the PD. However, in the event that the PD undergoes any major revision or an Alternative is issued due to SDG&E’s ill-founded and erroneous criticisms, we would urge the Commission to additionally adopt MGRA’s recommended finding that SDG&E was in violation of the GO 95 requirement to reconstruct and maintain its infrastructure to account for known local conditions.

Taken together, this evidence presented by the PD, MGRA, and other intervenors paints a picture of a utility that had abundance of data showing that its infrastructure and the people who depend on it were at critical risk. SDG&E had a number of measures a prudent and reasonable system manager could have performed, which would have prevented the Witch fire:

¹³ MGRA Comments; p. 5.

¹⁴ MGRA Opening Brief; pp. 27-28.

¹⁵ MGRA Comments; pp. 5-6. MGRA Opening Brief; p. 25.

¹⁶ MGRA Comments; p. 6.

¹⁷ MGRA Comments; p. 7.

¹⁸ MGRA Opening Brief; pp. 24-25, 29-31; MGRA Reply Brief; pp. 11-13.

- In response to its meteorological studies, conducted additional studies if necessary to ascertain wind speeds in its service area, and upgrade or rebuild at-risk infrastructure.¹⁹
- In response to the academic study on conductor-conductor contact and wildfire, develop and operationalize procedures to rapidly identify and respond to line slap by de-energizing conductors.²⁰
- Reduced threshold for de-energization to one or two faults under extreme risk conditions as evidenced by the risk factors listed above.²¹

3. CONCLUSION

MGRA concurs with the PD that SDG&E's Application should be denied, and we find SDG&E's objections to be erroneous. MGRA requests that the PD be adopted with the minor corrections made by MGRA and other opposing parties. MGRA is also gratified that the Commission plans to have its voting meeting for this Decision in the San Diego area, and we therefore urge the Commission to deny SDG&E's request for a hold and move forward with consideration of the PD on the scheduled date of September 28, 2017 so that the citizens of San Diego have the opportunity to observe the Commission actively protecting their interests and safety.

Respectfully submitted this 18th day of September, 2017,

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¹⁹ MGRA Opening Brief; p. 41.

²⁰ MGRA Reply Brief; pp. 15-16.

²¹ Id.