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

SAN DIEGO GAS & ELECTRIC COMPANY'S (U 902 E) REPLY COMMENTS ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGES TSEN AND GOLDBERG

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I. INTRODUCTION

As discussed in San Diego Gas & Electric Company's ("SDG&E") September 11, 2017 Comments ("Opening Comments"), the August 22, 2017 Proposed Decision Denying Application issued by Administrative Law Judges Tsen and Goldberg ("PD") reached the wrong conclusions in this matter because it committed legal and factual errors. Foremost among its legal errors, the PD completely ignored SDG&E's arguments regarding the significance of inverse condemnation to this case. Thus, the Commission should issue a hold to carefully consider the legal arguments and substantial evidence presented, which shows that SDG&E's Application should be granted.

The Comments submitted by the Office of Ratepayer Advocates ("ORA"), the Mussey Grade Road Alliance ("MGRA"), Protect Our Communities Foundation ("POC") and the San Diego Consumers' Action Network ("SDCAN") are premised on their agreement with the outcome reached in the PD. While the PD should not be adopted for the reasons set forth in SDG&E's Opening Comments, the modifications proposed by MGRA, POC and SDCAN should not be adopted under any circumstance because they depend upon faulty arguments, mischaracterizations of the record, or are contrary to the requirements of Rule 14.3(c). SDG&E does not take issue with the corrections proposed by ORA. Lastly, SDG&E respectfully submits that the Commission should grant party status to Southern California Edison Company and Pacific Gas & Electric Company and should take their Joint Comments into consideration as it reviews the PD.

II. REPLY COMMENTS

MGRA openly acknowledges that the purpose of its Comments is "to help the Final Decision be robust against appeal or challenge."[1] That purpose directly conflicts with Rule 14.3(c), which requires that comments "focus on factual, legal or technical errors in the proposed or alternate decision" and which specifies that comments "which fail to do so should be accorded no weight." Moreover, the PD correctly did not adopt MGRA's arguments regarding the reasonableness of SDG&E's conduct prior to the Witch Fire ignition.

First, MGRA claims that prior powerline-related fires put SDG&E on notice that such fires could occur and should have factored into SDG&E's decisionmaking with respect to de-energizing TL 637.[2] Most egregiously, MGRA claims "SDG&E was on notice that not only could multiple catastrophic fires occur simultaneously, as they did in 2003, but that under the proper conditions power lines could be a source of these catastrophic fires."[3] This statement contradicts the testimony of MGRA's own witness, Dr. Joseph Mitchell, who testified "[i]n my study of power line fire history in California, I have not seen any other similar incident where a weather event was associated with multiple power line fires."[4] MGRA's Comments also directly contradict Dr. Mitchell's testimony from a prior case in which he sought to convince the Commission that a balancing account for wildfire expenses was unnecessary because events like the 2007 Wildfires are anomalous:

> The only major incident of this type in California consisting of multiple near simultaneous ignitions of major wildland fires by electrical equipment and recorded in CAL FIRE record is the October 2007 firestorm, which has been described in much detail in other proceedings. This is doubtless one reason that the California Public Utilities Commission and utilities were taken by surprise by the October 2007 fires – *there was not sufficient*

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1 MGRA Comments, p. 3.
2 MGRA Comments, pp. 4-5.
3 MGRA Comments, p. 5.
4 Exhibit ("Exh.") MGRA-01 (Mitchell Direct), p. 9.

> *historical precedent to warn that planning to prevent multiple fire ignitions was necessary*."[5]

Further, Dr. Mitchell did *not* testify in this case that SDG&E should have de-energized TL 637 prior to the Witch Fire ignition on October 21, 2007.[6] Dr. Mitchell avoided offering any opinion as to what SDG&E should have done differently based on its knowledge of prior wildfires in its service territory.[7] It is inappropriate for MGRA to introduce new factual theories which require expert testimony in Comments such as these. As Mr. Weim testified, none of the prior fires cited by MGRA "could have been used to predict that the Witch, Rice and Guejito Fires would ignite where, when and under the circumstances they did."[8]

Second, MGRA argues that SDG&E should have anticipated the wind speeds that prevailed in late October 2007 based on prior wind studies, and that SDG&E thus should have used a higher wind loading standard for Tie Line 637.[9] SDG&E demonstrated that it complied with requirements in General Order ("GO") 95 with respect to TL 637, and that its design standards were consistent with industry practice.[10] SDG&E further showed that there was no evidence that increasing the strength of the poles or conductors would have necessarily avoided any of the fires in this case, and that Dr. Mitchell had offered no analysis (beyond a bare, uninformed statement) to the contrary.[11]

Third, MGRA contends that SDG&E had prior knowledge of the type of phase-to-phase fault that is believed to have led to the Witch Fire ignition, and it should have applied that knowledge to the faults on TL 637.[12] This contention constitutes an impermissible hindsight criticism. In real time

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5 Exh. SDGE-24, p. 6 (emphasis added).
6 Exh. MGRA-01 (Mitchell Direct).
7 *See, e.g.*, SDG&E Phase 1 Opening Br., p. 32.
8 Exh. SDGE-12 (Weim Rebuttal), pp. 25-26.
9 MGRA Comments, pp. 5-6.
10 *See, e.g.*, SDG&E Phase 1 Opening Br., pp. 28-30; SDG&E Phase 1 Reply Br., pp. 33-34.
11 *Id*.
12 MGRA Comments, pp. 6-7.

on October 21, 2007, SDG&E had no knowledge (or reason to know) that conductors on TL 637 were contacting one another or that arcing was occurring.[13] In addition, TL 637 was not linked to any fire ignitions from its installation in 1959 until 2007, and as Mr. Yari noted, conductor to conductor contact is "relatively rare."[14]

Like MGRA, POC's Comments run afoul of Rule 14.3(c) because they seek to bolster the PD and do not identify factual, legal or technical errors. Moreover, POC's arguments deserve no weight on the merits. First, POC spends two pages reciting the arguments advanced in the testimony of its witness, Dr. Matthew Rahn.[15] The PD did not base any of its findings on Dr. Rahn's testimony (nor should it have), and POC's recitation of those arguments here violates Rule 14.3(c), particularly since POC has not even requested that the Commission base any findings on Dr. Rahn's testimony.

Next, POC claims that the Commission should revisit the "Threshold Issues" that the parties briefed in May 2016, per the Scoping Memo and Ruling of Assigned Commissioner and Assigned Administrative Law Judge, dated April 11, 2016 ("Scoping Memo").[16] This argument misconstrues the purpose of the Threshold Issues briefing, which was to determine whether, as a matter of law and policy, SDG&E's Application should be dismissed outright, without further development of the record.[17] The August 11, 2016 Ruling Confirming Procedural Schedule Following Briefs on Threshold Issues ("Threshold Issues Ruling") found that the none of the Threshold Issues "warrant[ed] dismissal of the case prior to testimony and evidentiary hearings."[18] Since the Threshold Issues Ruling allowed this case to proceed, it makes no sense for the Commission to revise the PD to take into account arguments that were designed (but failed) to convince the Commission

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13 Exh. SDGE-11-A (Yari Amended Rebuttal), pp. 6-10.
14 Exh. SDGE-11-A (Yari Amended Rebuttal), pp. 5-8.
15 POC Comments, pp. 3-5.
16 POC Comments, pp. 5-8.
17 Scoping Memo, p. 6.
18 Threshold Issues Ruling, pp. 1-3.

that this case should be summarily dismissed prior to the development of the record. For instance, POC argued in its Threshold Briefing that the case should not proceed because recovery would constitute a windfall to SDG&E – an argument that did not prevail in leading to dismissal – and POC wrongly contends that this windfall argument should be adopted, even though the PD has denied the Application.[19] Similarly misguided, POC suggests that the Commission should reconsider its fairness argument, but it is transparent that POC's sole purpose in raising this argument is to prejudice the Commission through citations to comments made at the Public Participation Hearing, which took place before evidentiary hearings were held and the record of SDG&E's reasonableness had been completed.[20]

Several of SDCAN's proposed revisions should be rejected. SDCAN's "third proposed revision" – which seeks to correct the statement in Finding of Fact 4 regarding the relative size of the Witch and Guejito Fires – should not be made. The combined Witch and Guejito Fires comprised the second largest fire to occur in California in 2007; the Zaca Fire in Santa Barbara County in 2007 was larger.[21] SDG&E also opposes SDCAN's "second proposed revision," in which it seeks to receive recognition for its contribution to the record. SDCAN's prepared testimony was stricken from the record.[22] SDCAN's "fifth proposed revision" – relating to post-fire repairs to the powerlines involved in the Guejito Fire ignition – should also not be made.[23] The substantial evidence shows that all repairs of the relevant SDG&E powerlines took place after November 2, 2007, the date of the Nolte Survey.[24]

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19 POC Comments, p. 6.
20 POC Comments, pp. 6-8.
21 *See* "2007 Wildfire Activity Statistics," California Department of Forestry and Fire Prevention, p. 10. Available at http://www.fire.ca.gov/downloads/redbooks/2007_BW.pdf.
22 Tr. 288:18-295:27.
23 *See* SDCAN Comments, p. 2
24 Tr. 687:11-27; *see also* SDG&E Phase 1 Reply Br., pp. 67-68.

Respectfully submitted,

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