



**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)

A.15-09-010

(Filed September 25, 2015)

**REPLY COMMENTS OF THE UTILITY CONSUMERS' ACTION NETWORK TO THE
PROPOSED DECISION OF ALJ TSEN AND GOLDBERG**

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September 18, 2017

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I. INTRODUCTION

Pursuant to the Commissions' Rules of Practice and Procedure, Rule 14.3, UCAN hereby offers these reply comments to the opening comments filed by SDG&E. Specifically, UCAN responds to SDG&E's disagreement with the PD and SDG&E's hyperbole in their critique of it. Given that UCAN believes that the PD is sound, well-reasoned and supported by substantial evidence, we urge the Commission to adopt the PD.

**II. SDG&E CANNOT CLAIM THE WEATHER CONDITIONS AT TIME OF
THE FIRES WERE UNPRECEDENTED AND THEREFORE EVENTS WERE
BEYOND SDG&E CONTROL**

SDG&E's equipment was the source of the ignition of the Witch, Guejito and Rice wildfires, which resulted in damages that SDG&E is now seeking to recover. Their application asks for \$379 million. SDG&E asserts the evidence from their witnesses show that "these fires

were ignited and spread under extraordinary circumstances beyond SDG&E's control."¹

Through the testimony of SDG&E witnesses they have asserted that the weather conditions at the time that the three wildfires ignited were unprecedented. SDG&E therefore claims that even though their equipment ignited three devastating wildfires, the unprecedented wind and weather conditions were unforeseeable and the management of SDG&E cannot be found to have operated their utility imprudently.

In UCAN's presentation we offered testimony from two different weather experts, Dr. Janice Coen, a Project Scientist with the National Center for Atmospheric Research in Boulder Colorado and Dr. Alexander Gershunov, from UC San Diego, in the Climate, Atmospheric Science and Physical Oceanography Division at the Scripps Institute of Oceanography. UCAN's weather experts questioned the methodologies and validity of SDG&E's wind and weather analysis and concluded that the wind speed conditions faced by SDG&E at the time of the wildfire ignitions for the fires at issue, were not as severe as the company had led the Commission to believe. The PD found UCAN's estimates more reflective of actual wind and weather conditions.

SDG&E in their opening comments complain that the PD ignores reality because the PD concluded that the wind and weather events were "ordinary" despite the numerous contemporaneous reports supporting the conclusion that the 2007 wind event was extreme and unprecedented.² UCAN would like to point out that nowhere in the PD does it claim that the winds for the October 2007 Santa Ana event, covering the ignitions for the fires at issue, were "ordinary". What the PD does find is the following:

While no party disputes the fact that the Santa Ana winds are a known local condition in San Diego County, dispute remains as to whether the winds credited with the ignition and spread of the 2007 Wildfires were unprecedented. If the wind and weather patterns present in October of 2007 were not unprecedented, then a prudent manager would have used the weather information to reasonably manage and operate its facilities.

The parties to this proceeding have put forth extensive arguments and expert witness testimony on the issue of the wind and weather conditions in October 2007. While both SDG&E and UCAN presented highly recognized wind and weather experts, the opinions encompass a variety of the methodologies to estimate the peak wind speeds during the

¹ Exhibit SDG&E - 05, p. 3-4.

² SDG&E opening comments, p. 14

ignition of each of the 2007 Wildfires. While reviewing the experts' showings, we have applied the following principle:

[I]n administrative proceedings before an agency composed of trained specialists and before expert examiners or hearing officers, the burden of evaluating the weight and probity of testimony and evidence covering technical subject matter is primarily that of sifting and evaluating the evidence based upon the agency's expertise. Expert opinion does not bind the Commission. The Commission may form its own conclusions without the aid of expert opinions."³

The presentation of UCAN's and SDG&E's expert witnesses added tremendous value to the record of this proceeding. SDG&E's attempt to explain why the contemporaneous data collected from San Diego County's RAWS and ASOS should be discarded were not persuasive. We find the wind estimates of Dr. Gershunov to be more reflective of the actual wind and weather conditions during the ignitions of the Witch, Guejito and Rice Wildfires in October 2007. We find Dr. Gershunov's utilization of the actual recorded weather data from 2007 to validate his wind speed estimates to be more reliable than (*SDG&E witness*) Dr. Peterka's methodologies. Furthermore, the Commission is not persuaded by SDG&E's use of the SAWTI to try to establish that the wind and weather conditions in San Diego County in October 2007 created the largest wildfire threat since 1984 because of more refined testimony provided by the other parties.

Because we find the methodologies that UCAN's experts utilized in developing its testimony to be more consistent with the actual weather and wind conditions in San Diego County in October 2007, the Commission does not find that the 2007 Wildfires were spread under unprecedented wind and weather conditions. SDG&E fails to show how the wind and weather conditions impacted its operation and management of its facilities involved in the 2007 Wildfires.⁴

In this proceeding the Commission heard from well recognized weather experts with conflicting opinions and conclusions. The primary difference between SDG&E's and UCAN's wind speed estimates was due to the adjustment of the model output based on observations. As Dr. Gershunov noted in hearings, this is what accounts for the difference between SDG&E's and UCAN's wind speed estimates.⁵ In this case the PD found that the methodologies UCAN's experts utilized in developing its testimony to be more consistent with the actual weather and wind conditions in San Diego County in October 2007. The PD's conclusions are supported by substantial and compelling evidence, and they deserve respect.

"Courts generally will defer to the broad discretion vested in administrative agencies when evidence is conflicting, or even when reasonable people might well differ on questions of

³ PD 49-50

⁴ PD, p. 54

⁵ Reporters' Transcript, vol. 6, p. 994-995

credibility of witnesses, or upon inferences to be drawn from the evidence, provided the findings are supported by substantial evidence.”⁶

In this proceeding the Commission evaluated the testimony, listened to the cross examination of the weather experts from both UCAN and SDG&E and concluded that UCAN’s wind estimate for the ignitions for the wildfires at issue in this proceeding more accurately reflect actual wind and weather conditions than what SDG&E’s experts claimed.

Despite SDG&E’s claim to the contrary, the PD does not ignore reality: the wind speeds at the time of the wildfire ignitions were not unprecedented.

III. SDG&E CLAIMS THAT BECAUSE THEY WERE SUBJECT TO INVERSE CONDEMNATION, IT MAKES NO DIFFERENCE HOW THEY OPERATED THEIR UTILITY. UCAN DISAGREES.

SDG&E, in their opening comments, claim that in their wildfire litigation with the 2,500 plaintiffs, SDG&E was subject to inverse condemnation for the damage caused by the Witch, Rice and Guejito wildfires ignited by SDG&E equipment. They argue that due to this fact, regardless of if their management acted prudently or not, they are entitled to cost recovery. For example, SDG&E claims that:

“The PD commits legal error by failing to apply (or even address) the cost spreading element of inverse condemnation to SDG&E’s Application. As noted in its Application, SDG&E incurred the WEMA Costs through settling property damage claims arising from the 2007 Wildfire civil litigation. In that litigation, California courts found (over SDG&E’s objections) that SDG&E was subject to inverse condemnation, a California constitutional claim that requires the payment of just compensation when property has been taken or damaged for public use. Under inverse condemnation, a public utility “may be held strictly liable, *irrespective of fault*, where a public improvement constitutes a substantial cause of the plaintiff’s damages *even if only one of several concurrent causes*.” Most importantly, the “fundamental policy underlying the concept of inverse condemnation is that the costs of a public improvement benefiting the community should be spread among those who benefited rather than allocated to a single member of the community.” As such, where a public entity (such as SDG&E here) is liable for damage caused by a public improvement under inverse condemnation, it must be allowed to spread the costs associated with that recovery.”⁷

⁶ Larson v. State Personnel Board, (1994) 28 Cal. App. 4th 265, 273

⁷ SDG&E opening comments, p. 2

Based on the inverse condemnation doctrine, SDG&E claims they are legally entitled to cost recovery and it does not matter whether they were imprudent or not in the operation of their utility when the wildfires at issue were ignited by SDG&E equipment. In fact, based on the argument advanced by SDG&E, it seems that it does not matter if SDG&E was imprudent, if they were careless or grossly negligent or if they acted intentionally and started the wildfires on purpose. UCAN disagrees, of course it matters. It cannot be the policy of this Commission to reward bad conduct or approve rate increases that are unjust and unreasonable. If this Commission denies SDG&E's application because they find the management of SDG&E imprudently managed their utility that resulted in the wildfire losses, then SDG&E's shareholders will justly bear the responsibility for the costs that resulted from their managements' actions and/or inactions. Unjust and unreasonable costs must not be recovered in rates from ratepayers, and disallowing imprudently incurred costs serves the important purpose of deterring imprudent management actions.

IV. CONCLUSION

In this proceeding Administrative Law Judges Tsen and Goldberg have put forth a well-reasoned proposed decision (PD) that concludes that SDG&E's application in this matter should be denied. UCAN agrees with the PD's conclusions and urges the Commission to adopt the PD as written.

Dated: September 18, 2017

Respectfully submitted,

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