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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U902M), Southern California Edison Company (U338E), Southern California Gas Company (U904G) and Pacific Gas and Electric Company (U39M) for Authority to Establish a Wildfire Expense Balancing Account to Record for Future Recovery Wildfire-Related Costs.

Application 09-08-020
(Filed August 31, 2009)

**RULING OF THE ASSIGNED COMMISSIONER AND
ADMINISTRATIVE LAW JUDGE REQUIRING APPLICANTS
TO SHOW CAUSE WHY APPLICATION SHOULD NOT BE DISMISSED**

1. Background

On August 31, 2009, San Diego Gas & Electric Company (SDG&E), Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and Southern California Gas Company (SoCal Gas), filed their initial application requesting Commission authorization to establish a balancing account to allow each utility to recover from ratepayers "all amounts paid by the utility arising from wildfires."

On December 21, 2009, we issued a ruling finding that the application required amendment before hearings could be scheduled and directing the parties to meet and confer. We specifically listed the major issues that required amendment:

1. The limitless potential for ratepayers to fund third-party claims, including fire suppression and environmental

- damage, all but invite governmental entities and everyone else to submit claims to utilities;
2. Utilities have no incentive to defend against third-party claims, and ratepayers are without a practical means to protect their interests;
 3. The presumption of recovery of third-party claims undermines financial incentives for prudent risk management and safety regulation compliance.

On August 10, 2010, the applicants filed their amended application.

Today's ruling is directed at the amended application.

2. Comparison of Initial and Amended Applications

Set out below is a table comparing the major points of the two applications. As the table illustrates, the amended application is not materially different from the initial application. Accordingly, we have no basis on which to change our determination from December 21, 2009, that no purpose would be served by setting hearings for this application and that the matter should be submitted for resolution by the Commission.

Type of Expense	Initial Application	Amended Application
Payments to third parties for damage or loss claims associated with wildfires	All included in balancing account	First \$10 million recovered through GRC, thereafter through balancing account up to \$1.2 billion, then 5% to shareholders and 95% to ratepayers
Outside legal expenses associated with any third-party claim, including governmental claims	Included in balancing account	Included in balancing account
Payments to government authorities for fire suppression and environmental damage	Included in balancing account	Included in balancing account
Changes in wildfire insurance costs from last general rate case	Included in balancing account	Included in separate balancing account
Interest at rate up to and including cost of capital	Included for balancing account	Limited to commercial paper rate for one year balances,

		beyond that cost of capital
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New limitations on what can be recorded in the balancing account include an exclusion for “acts or omissions intentionally engaged in by a corporate officer with intent to cause harm” and 5% of any amounts over \$1.2 billion but less than \$2 billion. The utilities also agree to absorb the first \$5 million of costs that exceed insurance coverage. All third-party recoveries go first to off-setting any amounts absorbed by the utility, and then 90% is credited to the balancing account with the utility retaining the other 10%. The applicants also requested that shareholders be compensated through general rates for the risk of loss they will retain through the balancing account limitations and exclusions.

On September 14, 2010, a prehearing conference was convened at which the scope of this proceeding was contested as well as the need for a Phase II. A tentative schedule was set with the plan that the scoping memo would reflect the final schedule.

On January 24, 2011, the Consumer Protection and Safety Division, Disability Rights Advocates, the Division of Ratepayer Advocates, Protestor Ruth Henricks, Mussey Grade Road Alliance, and The Utility Reform Network submitted their joint motion to revise the proposed procedural schedule that was tentatively discussed at the prehearing conference. The moving parties stated that resource constraints and the long delay in issuing the scoping memo necessitated a revised final schedule. Applicants opposed the request.

2.1. Discussion

As illustrated above, the amended application does not differ materially from the initial application. When considering the initial application, we first noted that a balancing account is extraordinary rate relief that must be

carefully justified by factual circumstances manifestly beyond the control of management.¹ We then concluded that going forward with the proceeding it was not warranted unless and until the applicants addressed certain issues. Those issues were: (1) limitless ratepayer liability for third-party claims, (2) lack of incentive for utilities to defend such claims, and (3) undermining utility incentives for prudent risk management and safety regulation compliance.²

As the summary above illustrates, the amended application does little to address these fundamental issues. The relief requested is unprecedented; no other public utilities have balancing account protection for any type of third party liability. In fact, applicants have only memorandum account protection for declared disaster events that damage utility facilities. As set forth in the December 2009 ruling, extraordinary relief requires a compelling showing of extraordinary facts. Increasing liability insurance costs is an issue to be addressed in each applicant's next general rate case as is retained risk or self insurance.

Therefore, we conclude that the record should be closed and the matter submitted for a Commission decision dismissing the application.

We will allow applicants to file and serve a brief to show cause why this application should not be dismissed no later than March 15, 2011. Other parties may file and serve responses no later than March 22, 2011.

Therefore, **IT IS RULED** that:

¹ Ruling Directing Applicants to Amend Application and All Parties to Meet and Confer, at 7 (December 21, 2009).

² Ruling Directing Applicants to Amend Application and All Parties to Meet and Confer, at 7 (December 21, 2009).

1. In our December 21, 2009, ruling we determined that as presented, the application failed to address significant issues identified in the protests which are essential to the relief requested, and that the application must be substantially amended to move forward.

2. The applicants filed an amended application on August 10, 2010, which was not materially different from the original application with regard to the issues identified in the December 21, 2009, ruling.

3. The applicants have apparently failed to remedy the deficiencies in the original application such that the amended application should be dismissed.

4. The applicants may show cause why this application should not be dismissed by filing and serving briefs no later than March 15, 2011, and other parties may file and serve responses no later March 22, 2011.

Dated February 18, 2011, at San Francisco, California.

/s/ TIMOTHY ALAN SIMON

Timothy Alan Simon
Commissioner

/s/ MARIBETH A. BUSHEY

Maribeth A. Bushey
Administrative Law Judge

INFORMATION REGARDING SERVICE

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Dated February 18, 2011, at San Francisco, California.

/s/ ANTONINA V. SWANSEN

Antonina V. Swansen

N O T I C E

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***** PARTIES *****

***** SERVICE LIST *****

**Last Updated on 11-FEB-2011 by: JVG
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Michael J. Aguirre
MARIA C. SEVERSON
AGUIRRE MORRIS & SEVERSON LLP
444 WEST C STREET, SUITE 210
SAN DIEGO CA 92101
(619) 876-5364
maguirre@amslawyers.com
For: Ruth Henricks

David J. Miller
Senior Attorney - Legal Dept
AT&T SERVICES, INC.
525 MARKET STREET, ROOM 2018
SAN FRANCISCO CA 94105
(415) 778-1393
DavidJMiller@att.com
For: Pacific Bell Telephone Company, dba: AT&T California

Jerome F. Candelaria
Attorney At Law
CALIFORNIA CABLE & TELECOMMUNICATIONS
1001 K STREET, 2ND FLOOR
SACRAMENTO CA 95814-3832
(916) 446-7732
jerome@calcable.org
For: CCTA

Daniel F. Bamberg
CITY OF SAN DIEGO
1200 3RD AVENUE
SAN DIEGO CA 92101
(619) 533-5800
dbamberg@sandiego.gov
For: City of San Diego

William A. Johnson, Jr.
COUNTY OF SAN DIEGO
1600 PACIFIC HWY., NO. 355
SAN DIEGO CA 92101-2469
(619) 531-5801
William.Johnson@sdcountry.gov
For: County of San Diego

Melissa Kasnitz
KARLA GILBRIDE
DISABILITY RIGHTS ADVOCATES
2001 CENTER STREET, THIRD FLOOR
BERKELEY CA 94704-1204
(510) 665-8644
pucservice@dralegal.org
For: Disability Rights Advocates

Diane Conklin
MUSSEY GRADE ROAD ALLIANCE
PO BOX 683
RAMONA CA 92065
(760) 787-0794
dj0conklin@earthlink.net
For: Mussey Grade Road Alliance

Thomas J. Long
OFFICE OF THE CITY ATTORNEY
CITY HALL, ROOM 234
SAN FRANCISCO CA 94102
(415) 554-6548
thomas.long@sfgov.org
For: City & County of San Francisco

Lise H. Jordan, Esq.
MICHELLE L. WILSON
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A. RM 3151
SAN FRANCISCO CA 94105
(415) 973-6965
lhj2@pge.com
For: Pacific Gas & Electric Company

Marion Peleo
Legal Division
RM. 4107
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2130
map@cpuc.ca.gov
For: DRA

Michael R. Thorp
W. DAVIS SMITH/ RON VAN DER LEEDEN
SEMPRA ENERGY
555 WEST FIFTH STREET, STE. 1400
LOS ANGELES CA 90013-1011
(213) 244-2981
MThorp@SempraUtilities.com
For: Southern California Gas Company / San Diego Gas & Electric Company

Robert F. Lemoine
J. ERIC ISKEN
Attorney At Law
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE. / PO BOX 800
ROSEMEAD CA 91770
(626) 302-4182
Robert.F.Lemoine@sce.com
For: Southern California Edison Company

Nicholas Sher
Legal Division
RM. 4007
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-4232
nms@cpuc.ca.gov
For: CPSD

Nina Suetake
THE UTILITY REFORM NETWORK
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 929-8876 X 308
nsuetake@turn.org
For: The Utility Reform Network

***** STATE EMPLOYEE *****

Donna-Fay Bower
Division of Ratepayer Advocates
RM. 4205
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1420
dfb@cpuc.ca.gov
For: DRA

Maribeth A. Bushey
Administrative Law Judge Division
RM. 5018
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-3362
mab@cpuc.ca.gov

Robin Harrington
CAL.DEPT OF FORESTRY AND FIRE PROTECTION
PO BOX 944246
SACRAMENTO CA 94244-2460
(916) 653-0922
robin.harrington@fire.ca.gov

Shivani Ballesteros
CPUC
EMAIL ONLY
EMAIL ONLY CA 00000-0000
sb3@cpuc.ca.gov

Raymond G. Fugere
Consumer Protection & Safety Division
RM. 500
320 West 4th Street Suite 500
Los Angeles CA 90013
(213) 576-7015
rgf@cpuc.ca.gov

Julie Halligan
Consumer Protection & Safety Division
RM. 2203
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1587
jmh@cpuc.ca.gov

Kenneth L. Koss
Executive Division
RM. 5214
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1463
klk@cpuc.ca.gov

Donald J. Lafrenz
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1063
dlf@cpuc.ca.gov

Elaine Chan Lau
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5621
ec2@cpuc.ca.gov

Scott Logan
Division of Ratepayer Advocates
RM. 4209
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1418
sjl@cpuc.ca.gov

For: California Department of Forestry and Fire Protection.

Clare Frank
Deputy Chief - Civil Cost Recovery
OFFICE OF THE STATE FIRE MARSHAL
PO BOX 944246
SACRAMENTO CA 94244-2460
(916) 653-5968
clare.frank@fire.ca.gov
For: Office of the State Fire Marshal

Melodie Durham
Office Of The State Fire Marshal
WILDLAND FIRE PREVENTION
1131 S STREET
SACRAMENTO CA 95811
(916) 708-1472
Melodie.Durham@fire.ca.gov

***** INFORMATION ONLY *****

Maria C. Severson
Counsel
AGUIRRE MORRIS & SEVERSON
444 W. C STREET, SUITE 210
SAN DIEGO CA 92101
(619) 876-5364
mseverson@amslawyers.com

Lesla Lehtonen
Vp, Legal & Regulatory Affairs
CALIF. CABLE & TELECOMMUNICATIONS ASSN.
1001 K STREET, 2ND FLOOR
SACRAMENTO CA 95814-3832
(916) 446-7732
Lesla@calcable.org

Hilary Corrigan
CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST., SUITE 303
SAN FRANCISCO CA 94117-2242
(415) 963-4439
cem@newsdata.com

Norman A. Pedersen, Esq.
HANNA & MORTON LLP
444 S. FLOWER STREET, SUITE 1500
LOS ANGELES CA 90071-2916
(213) 430-2510
npedersen@hanmor.com

William Marcus
JBS ENERGY
311 D STREET, SUITE A
W. SACRAMENTO CA 95605
(916) 372-0534
bill@jbsenergy.com

Joseph W. Mitchell, Ph. D.
M-BAR TECHNOLOGIES AND CONSULTING, LLC
EMAIL ONLY
EMAIL ONLY CA 00000
(760) 703-7521
jwmitchell@mbartek.com

MRW & ASSOCIATES, LLC
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 834-1999
mrw@mrwassoc.com

Henry Weissmann
ROBYN KALI BACON
Attorney At Law
MUNGER, TOLLES & OLSON LLP
355 S. GRAND AVE., SUITE 3500
LOS ANGELES CA 90071-1560
(213) 683-9150
henry.weissmann@mto.com

Joseph M. Malkin
ERICH F. LICHTBLAU
ORRICK HERRINGTON & SUTCLIFFE LLP
THE ORRICK BUILDING
405 HOWARD STREET
SAN FRANCISCO CA 94105-2669
(415) 773-5505
JMalkin@Orrick.com
For: San Diego Gas & Electric Company

Case Administration
PACIFIC GAS & ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO CA 94177
RegRelCPUCcases@pge.com

Bruce T. Smith
Case Manager
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B9A
SAN FRANCISCO CA 94105
(415) 973-2616

Nicolas Klein
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO CA 94105
NXXKI@pge.com

Walter N. Prince
19025 PARTHENIA STREET, SUITE 200
NORTHRIDGE CA 91324
(818) 993-6300
execwnp@socal.rr.com

Chuck Manzuk
SAN DIEGO GAS AND ELECTRIC COMPANY
8330 CENTURY PARK CT, CP32D
SAN DIEGO CA 92123
(858) 636-5548
CManzuk@SempraUtilities.com

Central Files
SDG&E AND SOCALGAS
8330 CENTURY PARK COURT, CP31-E
SAN DIEGO CA 92123-1550
(858) 654-1148
CentralFiles@SempraUtilities.com

Deana M. Ng
SOUTHERN CALIFORNIA EDISON CO.
2244 WALNUT GROVE AVE.
ROSEMEAD CA 91770
(626) 302-4182
deana.ng@sce.com

Case Administration
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE. / PO BOX 800
ROSEMEAD CA 91770
(626) 302-3101
case.admin@sce.com

J. Eric Isken
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-3141
j.eric.isken@sce.com

Jacque Lopez
VERIZON CALIFORNIA INC.
2535 W. HILLCREST DR., MC CAM21LB
NEWBURY PARK CA 91320
(805) 499-6179
jacque.lopez@verizon.com

bts1@pge.com

Jesus G. Roman, Esq.
Assist Gen Counsel - West Region
VERIZON CALIFORNIA INC.
2535 W. HILLCREST DR., MC CAM21LB
NEWBURY PARK CA 91320
(805) 499-6832
jesus.g.roman@verizon.com