



**FILED**

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

Application of San Diego Gas & Electric Company for Review of its Proactive De-Energization Measures and Approval of Proposed Tariff Revisions (U902E).

Application 08-12-021  
(Filed December 22, 2008)

**ADMINISTRATIVE LAW JUDGE'S RULING  
GRANTING IN PART AND DENYING IN PART THE MOTION  
FILED BY SAN DIEGO GAS & ELECTRIC COMPANY  
REGARDING EX PARTE COMMUNICATIONS**

In response to the motion filed by San Diego Gas & Electric Company, this ruling lifts the ban on *ex parte* communications in this proceeding, subject to the restrictions and reporting requirements described in the body of this ruling.

**Background and Summary of SDG&E's Motion**

On June 3, 2011, the assigned Administrative Law Judge (ALJ) issued a ruling that prohibited all *ex parte* communications in the instant proceeding (Application (A.) 08-12-021). The reason for the prohibition was as follows:

[Southern California Edison Company] has a legitimate concern about [the Consumer Protection and Safety Division] raising the wind-speed issue in both the instant proceeding and I.09-01-018. This instant proceeding is a ratsetting proceeding in which *ex parte* communications are permitted. In contrast, I.09-01-018 is an adjudicatory proceeding in which *ex parte* communications are prohibited by Rule 8.2(b) of the Commission's Rules of Practice and Procedure. This ruling finds that it is proper to consider the wind-speed issue in both proceedings, as this issue is relevant to the issues being considered in both proceedings. However, to ensure that no party has an unfair advantage due to the different

treatment of *ex parte* communications in the instant proceeding compared to I.09-01-018, *ex parte* communications will henceforth be prohibited in the instant proceeding. The ban on *ex parte* communications will end when there is a final decision on [Disability Rights Advocates'] petition to modify D.09-09-030. (Ruling dated June 3, 2011, at 4 - 5. Footnote omitted.)

On July 28, 2011, San Diego Gas & Electric Company (SDG&E) filed a motion to lift the ban on *ex parte* communications in the instant proceeding or, alternatively, permit certain *ex parte* communications described below. SDG&E states that it periodically briefs Commission decisionmakers about SDG&E's fire-safety initiatives, particularly with respect to the autumn fire season in Southern California. SDG&E also anticipates that if a fire were to occur, Commission decisionmakers may ask SDG&E for current information about the fire. SDG&E is concerned that the ban on *ex parte* communications in this proceeding could prevent the previously described communications.

SDG&E does not believe it is in the public interest to disrupt the exchange of information between SDG&E and Commission decisionmakers with respect to fire-safety matters. Therefore, SDG&E requests that the ban on *ex parte* communications in this proceeding be lifted. Alternatively, SDG&E requests the following exception to the existing prohibition on *ex parte* communications:

SDG&E shall be permitted to provide information through all appropriate means of communication, whether oral or written, to the Commissioners or its staff, related to SDG&E's fire-protection and -prevention initiatives as such initiatives may be constituted, implemented and/or conducted during the 2011 fire season, provided that such information shall also be provided to the parties in this proceeding [Application 08-12-021] pursuant to the terms of Rule 8.3 of the Commission's Rules of Practice and Procedure.

SDG&E believes that its proposed exception would prevent the potential prejudice to parties in the Malibu Fire Investigation (Investigation (I.) 09-01-018) that the ALJ's ruling issued on June 3, 2011, intended to address, while still permitting the Commission to receive information vital to the conduct of the Commission's duties with respect to public safety.

### **Response to SDG&E's Motion**

On August 12, 2011, a group of communications providers filed a joint response to SDG&E's motion.<sup>1</sup> There were no other responses to SDG&E's motion. The communications providers support SDG&E's motion with one caveat. If the Commission does not lift the ban on *ex parte* communications, the communications providers support a modified version of SDG&E's alternate proposal that would allow all parties (not just SDG&E) to provide information to Commission decisionmakers about fire-safety initiatives.

### **Discussion**

SDG&E's unopposed motion to lift the ban on *ex parte* communications in this proceeding is granted. However, as allowed by Rule 8.3(d) of the Commission's Rules of Practice and Procedure (Rule), *ex parte* communications in this proceeding shall be subject to the restrictions and reporting requirements set forth in Rules 8.3 and 8.4. These rules state, in relevant part, as follows:

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<sup>1</sup> The joint response was filed by AT&T California (U1001C); AT&T Communications of California, Inc. (U5002-C); TCG San Francisco (U5454C); TCG Los Angeles, Inc. (U5462C); TCG San Diego (U5389C); AT&T Mobility LLC; the California Cable & Telecommunications Association; CoxCom, Inc.; Cox California Telcom LLC; CTIA-The Wireless Association®; T-Mobile; and Time Warner Cable.

**Rule 8.3(c)**: In any ratesetting proceeding, ex parte communications are subject to the reporting requirements set forth in Rule 8.4. In addition, the following restrictions apply:

- (1) All-party meetings: Oral ex parte communications are permitted at any time with a Commissioner provided that the Commissioner involved (i) invites all parties to attend the meeting or sets up a conference call in which all parties may participate, and (ii) gives notice of this meeting or call as soon as possible, but no less than three days before the meeting or call.
- (2) Individual oral communications: If a decisionmaker grants an ex parte communication meeting or call to any interested person individually, all other parties shall be granted an individual meeting of a substantially equal period of time with that decisionmaker. The interested person requesting the initial individual meeting shall notify the parties that its request has been granted, and shall file a certificate of service of this notification, at least three days before the meeting or call.
- (3) Written ex parte communications are permitted at any time provided that the interested person making the communication serves copies of the communication on all parties on the same day the communication is sent to a decisionmaker.

**Rule 8.3(d)**: Notwithstanding Rule 8.5, *unless otherwise directed by the assigned Administrative Law Judge with the approval of the assigned Commissioner*, the provisions of subsections (b) and (c) of this rule, and any reporting requirements under Rule 8.4, shall cease to apply, and ex parte communications shall be permitted, in any proceeding in which (1) no timely answer, response, protest, or request for hearing is filed, (2) all such responsive pleadings are withdrawn, or (3) a scoping memo has issued determining that a hearing is not needed in the proceeding. (Emphasis added.)

**Rule 8.4:** Ex parte communications that are subject to these reporting requirements shall be reported by the interested person, regardless of whether the communication was initiated by the interested person. Notice of ex parte communications shall be filed within three working days of the communication. The notice may address multiple ex parte communications in the same proceeding, provided that notice of each communication identified therein is timely. The notice shall include the following information:

- (a) The date, time, and location of the communication, and whether it was oral, written, or a combination;
- (b) The identities of each decisionmaker (or Commissioner's personal advisor) involved, the person initiating the communication, and any persons present during such communication;
- (c) A description of the interested person's, but not the decisionmaker's (or Commissioner's personal advisor's), communication and its content, to which description shall be attached a copy of any written, audiovisual, or other material used for or during the communication.

In addition to the above restrictions and reporting requirements, parties are reminded that there are overlapping substantive issues between the instant ratesetting proceeding and I.09-01-018. *Ex parte* communications are prohibited in adjudicatory proceedings such as I.09-01-018 pursuant to Pub. Util. Code § 1701.2(b) and Rule 8.3(b). Those parties who are participating in both the adjudicatory proceeding I.09-01-018 and the instant ratesetting proceeding A.08-12-021 may not discuss any overlapping substantive issue with decisionmakers, regardless of the proceeding that is ostensibly being discussed.

The primary substantive issue that is being litigated in both I.09-01-018 and A.08-12-021, and therefore subject to the continuing ban on *ex parte* communications, is the proper interpretation of General Order (GO) 95 with

respect to the wind speed that utility poles and attachments must withstand. This issue is complex and involves many details. The most salient aspect of this issue concerns wood utility poles classified as Grade A. The Consumer Protection and Safety Division argues in both proceedings that GO 95 requires Grade A wood utility poles to withstand wind gusts of at least 92 miles per hour (mph), while Southern California Edison Company argues in both proceedings that GO 95 requires Grade A wood utility poles to withstand wind gusts of 56 mph. Other overlapping substantive issues may be identified from time to time by the ALJ.

This ruling was issued after consulting with the assigned Commissioner.

**IT IS RULED** that:

1. The ban on all *ex parte* communications in Application (A.) 08-12-021 is lifted. *Ex parte* communications in A.08-12-021 are subject to the restrictions and reporting requirements set forth in Rules 8.3 and 8.4 of the Commission's Rules of Practice and Procedure.
2. Those parties who are participating in both the adjudicatory proceeding Investigation 09-01-018 and the ratesetting proceeding Application 08-12-021 may not engage in *ex parte* communications with decisionmakers regarding any substantive issue that overlaps the two proceedings, regardless of the proceeding that is ostensibly the subject of the *ex parte* communication.
3. San Diego Gas & Electric Company's motion is granted in part and denied in part, as set forth in the body of this ruling.

A.08-12-021 TIM/li

Dated November 28, 2011, at San Francisco, California.

/s/ TIMOTHY KENNEY

Timothy Kenney  
Administrative Law Judge