

Dissenting Opinion of Commissioner Timothy Alan Simon

The decision adopted today denies, without prejudice, SDG&E's Application to adopt an Emergency Power Shut-Off Plan ("EPSO"), and provides guidance to the parties on a go-forward basis in the event SDG&E submits a revised EPSO Plan for Commission approval. In my view, however, the decision erroneously concludes that it is better to close this proceeding and not impose any deadlines for the parties to address the concerns raised in this proceeding. In so doing, the Commission has squandered a valuable opportunity to encourage the parties to engage in a pro-active process, according to specific guidance from the Commission. It is clear that the role that power lines may play in wildfires will continue to be highly contentious issue. Thus, I would have required the parties to report back to this Commission regarding the success of collaborative process, with the goal of having a fully fleshed out EPSO Plan, supported by most stakeholders, that the Commission could take action on before the next fire season. As such, I am compelled to file this dissenting opinion.

The strong differences of opinion that have surfaced in this proceeding regarding the criteria under which power should be shut off, and the mitigation measures that should be associated with a shut off, reflect the myriad of factual details and stakeholder interests that must be considered. It is clear that fire prevention requires that stakeholders must commit to working cooperatively to develop any future shut-off plan that is submitted for Commission review and approval. In light of the common goal of implementing reasonable fire prevention measures in time for the 2009 Southern California fire season that will protect residents and communities in high-fire areas at a reasonable cost and risk to society, I felt it was important that we direct SDG&E to initiate, within 30 days of this decision, a collaborative process with other parties and stakeholders to consider certain issues that would have been set forth in a ruling. This would have built upon the existing record, and thus leveraged the extensive resources that many parties had already invested in this proceeding.

Some of the issues that I would have directed the parties to discuss include the following:

- a) whether agreement can be reached on a fixed set of criteria that should be utilized to implement a power shut off;
- b) whether the development and submittal of a joint fire prevention program should include advisory committees to provide input regarding operational issues and customer support issues;

- c) the design and conduct of a cost-benefit study;
- d) the appropriate mitigation measures for a shut-off plan; and
- e) any other issues that could facilitate the development of a shut-off plan that reflects widespread stakeholder input, such as:
 - 1) Whether SDG&E should notify and consult with the California Department of Forestry and Fire Protection (Cal Fire), the Southern Region, San Diego Unit, and Monte Vista local fire agencies, and the San Diego County Office of Emergency Services (OES) at least twelve (12) hours before shutting off power as provided in Step 6 of its EPSO Notification Process— Public Safety Agencies;
 - 2) Whether, and without intending to shift liability, the manner of notification and consultation should be consistent with those protocols currently in existence under the state, local, and regional emergency preparedness plans promulgated by California Department of Forestry & Fire Protection (Cal Fire), California Emergency Management Agency (Cal EMA), and the San Diego County Office of Emergency Services.¹ For example, Cal Fire has implemented a Cooperative Fire Protection Program that is designed to foster cooperative efforts “via contracts and agreements between state, federal and local agencies.”² The Cal EMA has a Preparedness Branch that “is committed to providing the highest level of service possible to all levels of government, non-governmental organizations, and the public...”³ The County of San Diego Office of Emergency Services “coordinates the overall county response to disasters,” is “responsible for alerting and notifying appropriate agencies

¹ See, e.g., Multi-Jurisdictional Hazard Mitigation Plan San Diego County, California, dated March 2004 and prepared for San Diego County Office of Emergency Services and Unified Disaster Council; Cal EMA Preparedness Branch; and Cal Fire’s Cooperative Emergency Response, discussed *infra*.

² See <http://www.fire.ca.gov/>.

³ See <http://www.calema.ca.gov/>.

when disaster strikes,” and has completed the preparation of its disaster plan for the region’s eighteen (18) incorporated cities;⁴

- 3) Whether SDG&E should (i) notify affected customers of a forecasted power shut-off event at least twelve (12) hours in advance of the shut-off event, and (ii) notify affected customers a second time at least six (6) hours before the forecasted power shut-off event;
- 4) Whether SDG&E should also consider what additional notifications should be provided to school districts in the affected area(s);
- 5) Whether, in determining the duration of a power shut off, SDG&E should consider that, in R. 07-04-015,⁵ the Commission referenced industry design standards for communications facilities that include a goal of having eight hours of emergency backup power at critical sites.⁶ In R. 07-04-015, one of the issues that we considered was backup power on the telecommunications network and the role that batteries have played as a backup-power source. After reviewing the various industry guidelines and cable and wireless systems, the Final Analysis Report found that the industry standards for backup power contained a design objective of 8 hours, and that this design objective was a useful standard for emergency planning;⁷ and
- 6) Whether there may be instances where a power shut off may need to continue beyond this backup power design standard if

⁴ See <http://www.sdcounty.ca.gov/oes/em/resources/mitigation/>. Participating jurisdictions in the Multi-Jurisdictional Hazard Mitigation Plan for San Diego County include Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, and Vista.

⁵ Rulemaking on the Commission’s Own Motion into Reliability Standards for Telecommunications Emergency Backup Power Systems and Emergency Notification Systems Pursuant to Assembly Bill 2393.

⁶ *Decision Addressing Standards for Telecommunications Backup Power Systems and Emergency Notification Systems Pursuant to Assembly Bill 2393*, D.08-09-014, p. 36.

⁷ *Id.* at 32-37.

extreme weather conditions persist, or if safety checks associated with power restoration are still being completed.

Stakeholder Input Into A Shut Off Plan

My original proposed decision authorized SDG&E's EPSO as a Pilot Program, and created a single "De-Energizing Safety Oversight Committee" to review the effectiveness of the program.⁸ In comments on the proposed decision, SDG&E instead recommended the formation of two committees – one comprised of fire and public service agencies, another comprised of school districts, water districts, telecommunication providers, and industrial, commercial and residential customers.⁹ While my revised PD did not approve SDG&E's EPSO, I would have urged the parties to consider the best processes to engage all stakeholders in the development and review of any shut off plan, including the use of one or more "advisory committees."¹⁰

Tier 1 Advice Letter Regarding Hardening of Power Lines

Both the decision adopted today and my proposed decision noted that SDG&E is currently engaged in a program designed to upgrade (i.e. "harden") the lines that are subject to a power shut-off. In order to provide the requisite incentive to encourage SDG&E to advance its hardening plan, I would have required SDG&E to submit a Tier 1 Advice Letter by November 1, 2009, containing a schedule for the upgrading of the lines in the high-fire areas and indicating the following: for each transmission line, the

⁸ The proposed decision ordered the formation of a De-Energizing Safety Oversight Committee ("Oversight Committee") to (i) assess whether the criteria used to shut off power under a pilot power shut-off program are effective in preventing fires; (ii) resolve concerns raised in this proceeding by the School Districts (e.g., maintaining access to communications during power shut-off events and maintaining per-pupil funding if students stay home due to a shut-off event), Water Districts, telecommunications providers, and customers in the areas that are the subject of the shut off program; and (iii) provide recommendations for best practices for de-energizing relative to specific rural conditions in SDG&E's service territory. The Oversight Committee was ordered to file a report containing its findings and recommendations by January 29, 2010.

⁹ SDG&E's Comments on the Proposed Decision of Commissioner Simon, pp. 7-8.

¹⁰ If the parties recommend the use of advisory committees, the parties should identify the process by which they should be formed.

D.09-09-030

A.08-12-021

substation at each end; for distribution lines, the terminal substation; and for all lines, the date the upgrading will be completed and whether or not the line will be removed from consideration for future power shut-offs. SDG&E would also have been asked to indicate the location of existing and future recloser devices and the estimated date of installation of future recloser devices. The Commission should and must remain vigilant in encouraging utilities to engage in programs that have the goal of fire prevention. Requiring SDG&E to file an advice letter with hardening and reclosure information would have gone a long way in providing affected customers disclosures and guidance on meeting these emergency preparedness needs.

Conclusion

There is no dispute that preemptive fire prevention supports an important public safety goal. I regret that my fellow commissioners have adopted a decision that lacks the continuum needed to address the safety goal in time for the next fire season. California relies upon this agency to provide bold leadership that promotes the health, safety, and welfare of its residents.

Unfortunately, closing this proceeding is counterproductive to the promotion of public safety that California residents expect from this Commission. Too often, a closed proceeding discourages parties from working together in a meaningful way, allows the focus on these vital matters to wane. Even though the decision we adopt today requires SDG&E to initiate a collaborative process within 30 days of its decision, there is no fixed deadline for the parties to report back to the Commission. Thus, I am concerned that the process will drag on indefinitely. Such a result would be contrary to the duty imposed on this Commission by the Legislature to promote public safety by actively regulating entities that are subject to this Commission's jurisdiction.



Timothy Alan Simon
Commissioner