



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Application of San Diego Gas & Electric Company (U 902 M) for Authorization to Recover Costs Related to the 2007 Southern California Fires Recorded in the Catastrophic Event Memorandum Account (CEMA)

A.09-03-011
(Filed March 6, 2009)

PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES

Pursuant to Rule 2.6 of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) submits its Protest to the Application of San Diego Gas & Electric Company for Authorization to Recover Costs Related to the 2007 Southern California Fires Recorded in the Catastrophic Event Memorandum Account (CEMA) (Application).¹

In the Application, SDG&E requests that the Commission find recoverable \$6.8 million in Operation and Maintenance (O&M) and \$43.0 million in capital that SDG&E asserts are incremental.² SDG&E also seeks a cumulative authorized revenue requirement of \$32.2 million, including interest.³

I. IDENTIFIED ISSUES

- A. This proceeding should be held in abeyance until the Commission resolves the OIs regarding the Witch, Rice and Guejito Fires [I.08-11-006; I.08-11-007].**

According to California Public Utilities Code section 454.9(b):

“The costs, including capital costs, recorded in the accounts set forth in subdivision (a) shall be recoverable in rates

¹ SDG&E filed this Application on March 6, 2009.

² Application at 4.

³ Application at 5.

following a request by the affected utility, *a commission finding of their reasonableness*, and approval by the commission.”⁴

The code thus states the fundamental reasonableness analysis that the Commission must conduct in order to find recorded costs for CEMA-eligible events recoverable in rates. The Witch, Rice and Guejito Fires are included in SDG&E’s definition of the “2007 Fires” for which CEMA-coverage is sought.⁵ Indeed, the Witch and Guejito Fires are described as the “largest” by SDG&E.⁶

As a context to this Application, DRA notes that SDG&E is currently a respondent to two Order Instituting Investigations (OIs) regarding the Witch, Rice and Guejito Fires.⁷ The preliminary scoping memos of the OIs reveal that issues related to the instant CEMA Application are being considered in those proceedings.

In I.08-11-006, the preliminary scoping memo states as follows:

“This proceeding shall seek to:

- (1) determine whether SDG&E was in violation of any provision of the Public Utilities Code, general orders, other rules, or requirements, regarding its facilities linked to the Witch Fire;
- (2) determine whether SDG&E was in violation of any provision of the Public Utilities Code, general orders, other rules, or requirements, regarding tree inspection and trimming policies and the facilities linked to the Rice Fire;
- (3) determine whether SDG&E failed to cooperate, and/or is continuing to fail to cooperate, with the CPSD investigation concerning the Witch and/or Rice Fires.

SDG&E appears to be in violation of applicable law, as CPSD has made a prima facie showing regarding violations.”⁸

⁴ Cal. Pub. Util. Code § 454.9(b) (*emphasis added*).

⁵ Application at 3.

⁶ Application at 3.

⁷ I.08-11-006, I.08-11-007.

⁸ I.08-11-006 at 4.

In I.08-11-007, the preliminary scoping memo states as follows:

“This proceeding shall seek to:

(1) determine whether any of the utility facilities linked to the Guejito Fire were in violation of any provision of the Public Utilities Code, general orders, other rules, or requirements;

...

(4) determine whether SDG&E failed to cooperate, and/or is continuing to fail to cooperate, with the CPSD investigation concerning the Guejito Fire[.]

Both Cox and SDG&E appear to be in violation of applicable law, as CPSD has made a prima facie showing regarding the violations of both Cox and SDG&E.”²

Understanding the nature of the linkage between SDG&E’s practices and facilities and the ignition of the Witch, Rice, and Guejito Fires is a critical prerequisite to any meaningful CEMA reasonableness analysis of this Application. If SDG&E were found in violation of any rules or requirements regarding the facilities linked to the 2007 Fires, this clearly factors into the reasonableness analysis involved in potentially awarding the CEMA-coverage requested by SDG&E.

The fundamental issues that are being considered by the OIIs are also subject to an *ex parte* contact ban. The close interconnectedness between the issues to be resolved in the OIIs and this Application presents a danger regarding the conflicting *ex parte* rules that would be in place. Allowing this rate-setting CEMA case to move forward, while the OIIs are active, would allow for the possibility of permissible contacts regarding this proceeding to devolve into impermissible contacts related to the OIIs. It is essential to protect the integrity of the regulatory process and prevent that possibility.

As a basic matter of judicial economy and efficiency, the issues raised in the OIIs should be resolved before this Application can move forward. Thus, this proceeding

² I.08-11-007 at 3-4.

should be held in abeyance until the Commission resolves the OIIs regarding the Witch, Rice and Guejito Fires.

B. DRA will audit this Application in a manner consistent with prior CEMA applications.

As stated above, I.08-11-006 and I.08-11-007 must be resolved before DRA can conduct a meaningful analysis of this Application. Guided partially by the outcomes of I.08-11-006 and I.08-11-007, DRA would audit this Application by:

- Reviewing the sufficiency of the disaster declarations to ensure that they comply with Commission precedent;
- Reviewing the recorded and/or requested costs to determine whether they were related to CEMA-eligible events;
- Reviewing the recorded and/or requested costs to determine whether they were incurred in territories with competent disaster declarations, in a manner consistent with Commission precedent;
- Reviewing the allocation of costs between the Federal Energy Regulatory Commission and the California Public Utilities Commission;
- Examining the appropriateness of including certain categories of costs, such as straight-time/overtime labor, in the CEMA;
- Reviewing the accounting to determine whether the recorded and/or requested costs were to restore utility services to customers; to repair, replace, or restore damaged utility facilities; and/or were in compliance with governmental agency orders in connection with events declared disasters by competent state or federal authorities;
- Reviewing SDG&E's decision-making regarding the fires, including decisions regarding insurance;
- Reviewing the accounting (for both capital and expenses) in order to determine the reasonableness of the recorded costs;
- Investigating any other issues that may arise in connection with this matter.

II. PROCEDURAL MATTERS

DRA agrees with SDG&E that the CEMA component of the 2007 Fires is appropriately classified as rate-setting.

At this time, DRA expects that evidentiary hearings will eventually be necessary. The primary issues to be considered are those discussed in Section I, although additional issues may arise during discovery.

III. PROPOSED SCHEDULE

As stated above, DRA believes that this proceeding should be held in abeyance until I.08-11-006 and I.08-11-007 are resolved. Given that the OII proceedings were initiated in November of 2008, and are operating under a statutory 12-month deadline, DRA believes that its abeyance proposal would still allow for this Application to be resolved within the time allotted for rate-setting matters. DRA notes that the Commission has the authority to extend the 18-month deadline.¹⁰

IV. CONCLUSION

In conclusion, this proceeding should be held in abeyance until the Commission resolves the OIIs regarding the Witch, Rice and Guejito Fires.

Respectfully submitted,

/s/ EDWARD MOLDAVSKY

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¹⁰ Cal. Pub. Util. Code § 1701.5.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES**” in **A.09-03-011** by using the following service:

E-Mail Service: sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on April 13, 2009 at San Francisco, California.

/s/ IMELDA C. EUSEBIO
Imelda C. Eusebio

N O T I C E

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