

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



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Application No. 09-08-020
(Filed August 31, 2009)

Application of San Diego Gas & Electric Company (U 902-M), Southern California Edison Company (U 338-E), Southern California Gas Company (U 904-G) and Pacific Gas and Electric Company (U 39-M) for Authority to Establish a Wildfire Expense Balancing Account to Record for Future Recovery Wildfire-Related Costs

STATUS REPORT OF THE MUSSEY GRADE ROAD ALLIANCE

Diane Conklin, Spokesperson
Mussey Grade Road Alliance
P.O. Box 683
Ramona, CA 92065
Telephone: (760) 787-0794
Facsimile: (760) 788- 5479
Email: dj0conklin@earthlink.net

June 13, 2010

STATUS REPORT OF THE MUSSEY GRADE ROAD ALLIANCE

Pursuant to Paragraphs 2 and 3 of the December 21, 2009 Ruling (ACR)¹ of the Assigned Commissioner Timothy Alan Simon and Administrative Law Judge (ALJ) Maribeth A. Bushey, the Mussey Grade Road Alliance (Alliance) submits the following Status Report, filed separately from the Joint Status Report previously filed on June 11, 2010 by other parties to this proceeding.²

As noted in the five Joint Status Reports previously submitted in this proceeding,³ the parties have met and conferred not once but repeatedly since the December ruling was issued. The Alliance has participated in each of the meetings, which included meetings on January 27th, February 11th, February 22nd, May 13th, and, most recently, on May 24th of this year. ALJ Janet Econome facilitated these meetings. The scheduled meeting set for June 1 was cancelled with the consent of all parties.

A Joint Status Report filed on May 28th included the proposal to file an updated status report as well as recommendations for procedural next steps on or before June 14, 2010.⁴ The Joint Status Report filed on June 11th proposes that the assigned ALJ

¹ RULING OF THE ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE DIRECTING APPLICANTS TO AMEND APPLICATION AND ALL PARTIES TO MEET AND CONFER, December 21, 2009, pp. 9-10; Paragraph 2 reads as follows: “The parties must meet and confer on potential amendments and, ideally, bring forward a consensus proposal.” Paragraph 3 reads as follows: “The parties shall file and serve a status report no later than 45 days after the date of this ruling.” <http://docs.cpuc.ca.gov/efile/RULINGS/111549.pdf> Five previous status reports have been filed. See Footnote 3.

² JOINT STATUS REPORT OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), SAN DIEGO GAS & ELECTRIC COMPANY (902-M), SOUTHERN CALIFORNIA GAS COMPANY (U 904-G), PACIFIC GAS AND ELECTIC COMPANY (U 39-M), DIVISION OF RATEPAYER ADVOCATES, DISABILITY RIGHTS ADVOCATES, CONSUMER PROTECTION AND SAFETY DIVISION, AND THE UTILITY REFORM NETWORK, filed June 11, 2010. (June 11th Joint Status Report)

³ Joint Status Reports were filed by the parties in A. 09-08-020 on: February 4th, March 26th, May 3rd, May 28th and June 11th, 2010. The Alliance signed onto all Joint Status Reports with the exception of the June 11th Joint Status Report.

⁴ JOINT STATUS REPORT OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), SAN DIEGO GAS & ELECTRIC COMPANY (902-M), SOUTHERN CALIFORNIA GAS COMPANY (U 904-G), PACIFIC GAS AND ELECTIC COMPANY (U 39-M), DIVISION OF RATEPAYER ADVOCATES, DISABILITY RIGHTS ADVOCATES, CONSUMER PROTECTION AND SAFETY DIVISION, MUSSEY GRADE ROAD ALLIANCE, THE UTILITY REFORM NETWORK AND RUTH

schedule a prehearing conference (PHC) at her earliest convenience and that the parties remain interested in pursuing settlement discussions. The Joint Status Report also states that pursuant to Rule 12.1 of the California Public Utilities Commission Rules of Practice and Procedure, a prehearing conference must precede the submission of a motion to adopt a proposed settlement and cites the first sentence of paragraph (a) of that rule.⁵

The Joint Status Report goes on to state that, “Moreover, a PHC is necessary, whether or not a settlement is ultimately reached. Therefore the Joint Parties propose that a PHC be scheduled forthwith.”⁶

The Alliance files this separate Status Report because we vigorously disagree with the strategy laid out in the Joint Status Report of a proposed dual use of the proposed prehearing conference to satisfy both Rules 12.1 and Rule 7.2.⁷ We disagree because there has been no prehearing conference as required in this proceeding;⁸ no substantially amended application as required by the December 21, 2009 ruling;⁹ and to the best of the Alliance knowledge there is to date no settlement.

In a nutshell, we believe that the proposal in the Joint Status Report to schedule a prehearing conference to satisfy Rule 12.1 allows the electrical utilities to jump the

HENDRICKS, filed May 28, 2010, p. 2: “The parties are currently considering next steps. The parties propose to file recommendations for procedural next steps on or before June 14, 2010.”

⁵ June 11th Joint Status Report; p. 2, footnote 1: “*See* CPUC Rules of Practice & Procedure 12.1 (“Parties may, by written motion any time after the first prehearing conference and within 30 days after the last day of hearing, propose settlements on the resolution of any material issue of law or fact or on a mutually agreeable outcome to the proceeding.”) (emphasis added); State of California, Public Utilities Commission Rules of Practice and Procedure, Rule 12.1 (a).

⁶ *Ibid.* at p. 2.

⁷ See CPUC Rules of Practice and Procedure 7.2 “**Prehearing Conferences**, In any proceeding in which it is preliminarily determined that a hearing is needed, the assigned Commissioner shall set a prehearing conference as soon as practicable after the Commission makes the assignment. The ruling setting the prehearing conference may also set a date for filing and serving prehearing conference statements. Such statements may address the schedule, the issues to be considered, and any other matter specified in the ruling setting the prehearing conference.”

⁸ See Resolution ALJ 176-3240; Ratification of preliminary determination of category adopted; p. 5, <http://docs.cpuc.ca.gov/efile/RESC/106798.pdf>.

⁹ RULING OF THE ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE DIRECTING APPLICANTS TO AMEND APPLICATION AND ALL PARTIES TO MEET AND CONFER, December 21, 2009, p.9, Paragraph 1. <http://docs.cpuc.ca.gov/efile/RULINGS/111549.pdf>

turnstile on the requirement to substantially amend their application in order to move forward as laid out in the Assigned Commissioner and ALJ Ruling.¹⁰

Some history of this proceeding may help to understand the issues involved.

San Diego Gas & Electric, Southern California Gas Company, Southern California Edison Company, and Pacific Gas and Electric Company (collectively IOUs) filed this application on August 31, 2009. Ten days later, on September 10th, the Commission made a preliminary determination that: 1) categorized the proceeding as a rate setting proceeding, and 2) determined that a hearing was required.¹¹ However, no PHC was ever held.

Instead the ACR was issued last December. The ruling states that “Although unusual at this early stage in the proceeding, we find that direction to the applicants is required now to set the stage for an efficient proceeding.” The ruling goes on to say, “As presented, the ratemaking relief requested in the application is extraordinary and gives rise to serious issues of safe utility operations which, as explained below, are not adequately addressed.”¹² The ACR ruled in Paragraph 1 that, “As presented the application and reply fail 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.”¹³ (Emphasis added)

The Alliance is confused by the Joint Status Report proposal to have a prehearing conference now that would serve to fulfill Rule 12.1 when there is no settlement to date. We are also confused by the proposition in the Joint Status Report that a prehearing conference now would also serve to fulfill Rule 7.2 as there is no substantially amended application. We suspect that the proposal for a prehearing conference in the Joint Status

¹⁰ Ibid at p. 9. Paragraph 1 states in part that “...the application must be substantially amended to move forward.”

¹¹ See Resolution ALJ 176-3240; Ratification of preliminary determination of category adopted; p. 5, <http://docs.cpuc.ca.gov/efile/RESC/106798.pdf>.

¹² Op. cit. at p. 6.

¹³ Ibid. at p. 9.

Report, at least on the part of the IOUs, is primarily to satisfy the Rule 12.1 requirement that a settlement be proposed *only after* a prehearing conference has been held. The other purpose for the proposed hearing, stated in the report as “Moreover, a PHC is necessary, whether or not a settlement is ultimately reached,”¹⁴ is, in our view, a consolation prize suggested to sweeten the proposal.

Obviously, there can be no prehearing conference without an amended application because the ruling requires that the application must be substantially amended to move forward.¹⁵ A prehearing conference without a substantially amended application would be contrary to the principle of efficiency stated in the December 21st ruling.¹⁶ The goal of efficiency would not be served if the prehearing conference discussions were carried out without a substantially amended application. The setting of a prehearing conference would also presumably include dates for filing and serving prehearing conference statements, which themselves may address the schedule, the issues to be considered and any other matter specified in a ruling setting the prehearing conference.¹⁷ None of this could be efficiently carried out *without* the substantially amended application in hand ordered by the ACR. It would be, in fact, virtually impossible to hold a meaningful prehearing conference for the purpose of satisfying Rule 7.2 in this proceeding unless the IOUs substantially amend their application at least one month prior to the date the proposed prehearing conference would be held.

While the Alliance agrees with the Joint Status Report that a prehearing conference should “be scheduled forthwith” the Alliance does not agree that the prehearing conference can function efficiently and effectively to fulfill Rule 7.2 without the IOUs submitting timely a substantially amended application to satisfy the December ruling.

¹⁴ June 11th Joint Status Report; p. 2.

¹⁵ RULING OF THE ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE DIRECTING APPLICANTS TO AMEND APPLICATION AND ALL PARTIES TO MEET AND CONFER, December 21, 2009, p.9. <http://docs.cpuc.ca.gov/efile/RULINGS/111549.pdf>

¹⁶ Ibid. at p.6: “Although unusual at this early stage in the proceeding, we find that direction to the applicants is required now to set the stage for an efficient proceeding. As presented, the ratemaking relief requested in the application is extraordinary and gives rise to serious issues of safe utility operations which, as explained below, are not adequately addressed.” (Emphasis added)

<http://docs.cpuc.ca.gov/efile/RULINGS/111549.pdf>

¹⁷ See Rule 7.2 of the CPUC Rules of Practice and Procedure

Therefore, the Alliance respectfully requests that the Commission set a date for the required prehearing conference and require the IOUs to submit a substantially amended application 30 days prior to the date of the prehearing conference. We further respectfully request that the prehearing conference be held in San Diego, which was ground zero for fires ignited by power lines in 2007.

Respectfully submitted this 13th day of June 2010,

By: /S/ **Diane Conklin**

Diane Conklin
Spokesperson
Mussey Grade Road Alliance
P.O. Box 683
Ramona, CA 92065
(760) 787 – 0794 T
(760) 788 – 5479 F
dj0conklin@earthlink.net

CERTIFICATE OF SERVICE

I hereby certify that pursuant to the California Public Utilities Commission's Rules of Practice and Procedure, I have served a true copy of the **STATUS REPORT OF THE MUSSEY GRADE ROAD ALLIANCE** to all parties on the service list for Application A.09-08-020 via electronic mail.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 13th day of June, 2010 at Ramona, California,

/s/ Diane Conklin

Diane Conklin, Spokesperson
Mussey Grade Road Alliance
P.O. Box 683
Ramona, CA 92065

Parties

MICHAEL R. THORP
SEMPRA ENERGY
555 WEST FIFTH STREET, STE. 1400
LOS ANGELES, CA 90013-1011
FOR: SOUTHERN CALIFORNIA GAS COMPANY /
SAN DIEGO GAS & ELECTRIC COMPANY

ROBERT F. LEMOINE
ATTORNEY
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770
FOR: SOUTHERN CALIFORNIA EDISON COMPANY

DIANE CONKLIN
MUSSEY GRADE ROAD ALLIANCE
PO BOX 683
RAMONA, CA 92065
FOR: MUSSEY GRADE ROAD ALLIANCE

F. JACKSON STODDARD
CALIF PUBLIC UTILITIES COMMISSION
EXECUTIVE DIVISION
ROOM 5125
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
FOR: DRA

NICHOLAS SHER
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 4007
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
FOR: CPSD

LISE H. JORDAN, ESQ.
DIRECTOR AND COUNSEL, RATES
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A
SAN FRANCISCO, CA 94105
FOR: PACIFIC GAS & ELECTRIC COMPANY

MELISSA KASNITZ
DISABILITY RIGHTS ADVOCATES
2001 CENTER STREET, THIRD FLOOR
BERKELEY, CA 94704-1204
FOR: DISABILITY RIGHTS ADVOCATES

MRW & ASSOCIATES, LLC
 EMAIL ONLY
 EMAIL ONLY, CA 00000

HENRY WEISSMANN
 ATTORNEY AT LAW
 MUNGER, TOLLES & OLSON LLP
 355 S. GRAND AVE., SUITE 3500
 LOS ANGELES, CA 90071-1560

NORMAN A. PEDERSEN, ESQ.
 HANNA & MORTON LLP
 444 S. FLOWER STREET, SUITE 1500
 LOS ANGELES, CA 90071-2916

WALTER N. PRINCE
 19025 PARTHENIA STREET, SUITE 200
 NORTHRIDGE, CA 91324

CASE ADMINISTRATION
 LAW DEPARTMENT
 SOUTHERN CALIFORNIA EDISON COMPANY
 2244 WALNUT GROVE AVE., ROOM 370
 ROSEMEAD, CA 91770

DEANA NG
 SOUTHERN CALIFORNIA EDISON CO.
 2244 WALNUT GROVE AVE.
 ROSEMEAD, CA 91770

ERIC J. ISKEN
 SOUTHERN CALIFORNIA EDISON COMPANY
 2244 WALNUT GROVE AVENUE
 ROSEMEAD, CA 91770

JOSEPH W. MITCHELL, PH. D.
 M-BAR TECHNOLOGIES AND CONSULTING, LLC
 19412 KIMBALL VALLEY RD
 RAMONA, CA 92065

MARIA C. SEVERSON
 COUNSEL
 AGUIRRE MORRIS & SEVERSON
 444 W. C STREET, SUITE 210
 SAN DIEGO, CA 92101

MICHAEL J. AGUIRRE
 AGUIRRE MORRIS & SEVERSON LLP
 444 WEST C STREET, SUITE 210
 SAN DIEGO, CA 92101
 FOR: RUTH HENRICKS

CENTRAL FILES
 SAN DIEGO GAS AND ELECTRIC COMPANY
 8330 CENTURY PARK COURT, CP31-E
 SAN DIEGO, CA 92123

CHUCK MANZUK
 SAN DIEGO GAS AND ELECTRIC COMPANY
 CP32D
 8330 CENTURY PARK CT
 SAN DIEGO, CA 92123

NINA SUETAKE
 THE UTILITY REFORM NETWORK
 115 SANSOME STREET, SUITE 900
 SAN FRANCISCO, CA 94104
 FOR: THE UTILITY REFORM NETWORK

BRUCE T. SMITH
 CASE MANAGER
 PACIFIC GAS AND ELECTRIC COMPANY
 77 BEALE STREET, B9A
 SAN FRANCISCO, CA 94105

WENDY LEI
 RATE CASE COORDINATOR
 PACIFIC GAS AND ELECTRIC COMPANY
 77 BEALE STREET, MAIL CODE B9A
 SAN FRANCISCO, CA 94105

JOSEPH M. MALKIN
 ORRICK HERRINGTON & SUTCLIFFE LLP
 THE ORRICK BUILDING
 405 HOWARD STREET
 SAN FRANCISCO, CA 94105-2669
 FOR: SAN DIEGO GAS & ELECTRIC COMPANY

HILARY CORRIGAN
 CALIFORNIA ENERGY MARKETS
 425 DIVISADERO ST., SUITE 303
 SAN FRANCISCO, CA 94117-2242

CASE ADMINISTRATION
 PACIFIC GAS & ELECTRIC COMPANY
 77 BEALE STREET, MC B9A
 SAN FRANCISCO, CA 94177

State Service

RAYMOND G. FUGERE
 CALIF PUBLIC UTILITIES COMMISSION
 SAFETY & RELIABILITY BRANCH
 320 WEST 4TH STREET SUITE 500

DONALD J. LAFRENE
 CALIF PUBLIC UTILITIES COMMISSION
 ENERGY DIVISION
 AREA 4-A

LOS ANGELES, CA 90013

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

DONNA-FAY BOWER
CALIF PUBLIC UTILITIES COMMISSION
ENERGY COST OF SERVICE & NATURAL GAS BRA
ROOM 4205
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
FOR: DRA

JULIE HALLIGAN
CALIF PUBLIC UTILITIES COMMISSION
CONSUMER PROTECTION AND SAFETY DIVISION
ROOM 2203
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

MARIBETH A. BUSHEY
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 5018
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

SCOTT LOGAN
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY PLANNING & POLICY BRANCH
ROOM 4209
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

ROBIN HARRINGTON
STAFF COUNSEL
CAL. DEPT OF FORESTRY AND FIRE PROTECTION
PO BOX 944246
SACRAMENTO, CA 94244-2460
FOR: CALIFORNIA DEPARTMENT OF FORESTRY
AND FIRE PROTECTION.

CLAIRE FRANK
DEPUTY CHIEF - CIVIL COST RECOVERY
OFFICE OF THE STATE FIRE MARSHAL
PO BOX 944246
SACRAMENTO, CA 95762
FOR: OFFICE OF THE STATE FIRE MARSHAL