Decision **PROPOSED DECISION OF COMMISSIONER SIMON**
(Mailed 4/29/2008)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of San Diego Gas & Electric Company (U902E) to Adopt, Amend, or Repeal a Regulation Pursuant to Public Utilities Code Section 1708.5.	Petition 07-11-007 (Filed November 6, 2007)

DECISION DENYING PETITION FOR RULEMAKING

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DECISION DENYING PETITION FOR RULEMAKING

1. Summary

This decision denies without prejudice the petition to initiate a rulemaking proceeding that was filed by San Diego Gas & Electric Company (SDG&E) pursuant to Pub. Util. Code § 1708.5.[1] The main purpose of SDG&E's proposed rulemaking proceeding is to consider whether new regulations are necessary to reduce the wildfire hazards of overhead electric lines in response to recent wildfires in Southern California. This decision finds that the proposed rulemaking is premature because the Commission's Consumer Protection and Safety Division (CPSD) and the California Department of Forestry and Fire (Cal Fire) have not yet completed their investigations of recent wildfires ignited by overhead electric lines. The Commission will respond appropriately to the recent wildfires after the investigations are complete and the causes of the wildfires, including the role of overhead electric lines, are better understood.

The Petition is also denied without prejudice because SDG&E did not provide specific text for proposed regulations that would be the subject of the rulemaking as required by Rule 6.3(b) of the Commission's Rules of Practice and Procedure. Because SDG&E did not provide any concrete proposals to consider, this decision concludes that it is better to await the results of the investigations so that the appropriate response to the recent wildfires can be formulated.

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[1] The symbol "§"is used hereafter to designate sections of the California Public Utilities Code.

2. Background

In October 2007, fierce Santa Ana winds swept across Southern California, igniting several wildfires. The largest was the Witch Creek fire in San Diego County, which burned 197,990 acres, killed two people, injured 40 firefighters, and destroyed 1,650 structures. Other wildfires burned more than 73,000 acres and destroyed hundreds of structures.[2]

On November 16, 2007, Cal Fire issued a news release that stated the Witch, Guejito, and Rice Fires had been caused by powerlines.[3] Because powerlines were involved, CPSD swiftly began an investigation to determine the exact causes of the wildfires ignited by powerlines. CPSD expects to complete its investigation by July 31, 2008. Cal Fire is also investigating the wildfires. CPSD intends to incorporate into its investigation the results of Cal Fire's investigation. Consequently, CPSD will not be able to finish its investigation until after Cal Fire's investigation is complete.

3. SDG&E's Petition

The catastrophic wildfires in October 2007 prompted SDG&E to file Petition (P.) 07-11-007 on November 6, 2007, pursuant to § 1708.5 and Rule 6.3 of the Commission's Rules of Practice and Procedure (Rules). The Petition asks the Commission to open a rulemaking proceeding to consider the following matters:

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[2] These other wildfires included the Castaic fire (58,400 acres burned), Rice fire (9,480 acres), Malibu fire (4,500 acres), Grass Valley fire (1,250 acres), Cajon fire (250 acres), and the San Pasqual fire (several hundreds acres burned).

[3] The Cal Fire news release is contained in the Response of the Center for Biological Diversity and the Sierra Club, Attachment 2.

- **Operations** -- Whether overhead electric lines in rural areas should be operated differently when extreme fire conditions are present;
- **Facilities** -- Whether some overhead electric lines in rural areas should be placed underground; whether steel poles should be used in rural, fire-prone areas as opposed to wood; and whether the design of overhead electric lines should be changed to reduce wildfire hazards, such as shortening line span lengths;
- **Vegetation Management** -- Whether all rights-of-way for overhead electric lines in rural, fire-prone areas should be cleared of vegetation for a certain minimum width;
- **Interface Among Agencies** -- How to best coordinate the efforts of agencies, municipalities, local jurisdictions, and utilities to ensure efficient and effective disaster management practices; and
- **Disaster Management Plan** -- Whether a statewide disaster management plan is needed and how to fund the plan.

SDG&E's Petition does not propose specific regulations. Rather, the Petition identifies in broad terms the issues that should be explored. The proposed rulemaking would focus on General Order (GO) 95 because it governs many aspects of the construction, operation, and maintenance of overhead electric lines. It would also encompass any other General Orders, decisions, rules, or regulations that may be affected by the above-listed matters, as well as the adoption of entirely new regulations.

SDG&E does not seek retroactive relief in its Petition. SDG&E also asks that any issues regarding its culpability in the October 2007 wildfires be excluded from the rulemaking and addressed, if at all, in a utility-specific investigation.

SDG&E believes the rulemaking will dissuade other State and local jurisdictions from adopting a patchwork of inconsistent requirements. To encourage a collaborative approach, SDG&E recommends that other agencies be

invited to participate in facilitated workshops where proposals of statewide applicability would be submitted and considered.

Notice of P.07-11-007 appeared in the Daily Calendar on November 14, 2007. The Petition was also served on Cal Fire; the California Independent System Operator (Cal ISO); the Governor's Office of Emergency Services; all municipal and county governments within the service territories of SDG&E and Southern California Gas Company (an affiliate of SDG&E); and the service lists for Rulemaking (R.) 01-10-001 (re: revisions to GOs 95 and 128), R.05-02-023 (re: revisions to GO 95), and Application 06-08-010 (re: Sunrise Powerlink Transmission Project).

Timely responses were filed by the California Cable Television Association (CCTA); Cal ISO; the Center for Biological Diversity and the Sierra Club (CBD/SC); CPSD; the Commission's Division of Ratepayer Advocates (DRA); the Mussey Grade Road Alliance (MGRA); Pacific Gas and Electric Company (PG&E); Southern California Edison Company (SCE); and William Adams.

4. Responses to the Petition

4.1. Cal ISO

Cal ISO is willing to participate in the proposed rulemaking and states that it may be able to assist in matters regarding how to coordinate disaster management efforts among governmental bodies and utilities.

4.2. CBD/SC, MGRA, and William Adams

CBD/SC, MGRA, and William Adams recommend that the Commission conduct a thorough investigation of the causes and consequences of wildfires ignited by overhead electric lines, particularly the catastrophic wildfires of October 2007. CBD/SC believes the investigation should include large wildfires

that were ignited by SDG&E's overhead electric lines in 2003 to assess whether adequate steps were taken to prevent the October 2007 wildfires.

MGRA and CBD/SC urge the Commission to delay the Sunrise Powerlink Transmission Project (STP) and other new transmission lines until the Commission completes its investigation. They contend it would be reckless to build new lines without incorporating the lessons learned from prior fires. They also believe it would be cheaper to integrate new safety features into the design and construction of new transmission lines instead of retrofitting these features after the lines are built. It is also possible that new safety features may be so expensive as to render the STP and other new transmission lines uneconomic.

4.3. PG&E and SCE

PG&E and SCE support the Petition. Both concur with SDG&E's proposal to convene Commission-sponsored workshops to develop regulations and to invite other governmental bodies to participate. On the other hand, PG&E and SCE strongly oppose the suggestion by CBD/SC and MGRA to delay the construction of transmission lines until new safety features that might be developed in this proceeding can be incorporated into the design of the lines.

SCE asks that the scope of the rulemaking include the cost of proposed regulations and their effect on the reliability of utility service. In addition, SCE sees a need for Commission guidance regarding the fair allocation of cost among utilities in situations where two or more utilities share facilities (such as joint poles) that are affected by regulations adopted in the rulemaking.

4.4. CCTA, CPSD, and DRA

SDG&E concedes that its Petition does not include "proposed wording" for new or amended regulations as required by Rule 6.3(b).[4] CCTA, CPSD, and DRA argue that because the Petition does not comply with Rule 6.3(b), the Commission must reject it.

CCTA also argues that the Petition does not comply with the Commission's rules for revising GO 95. In particular, Ordering Paragraph 8 of Decision (D.) 05-01-030 requires that prior to filing a petition to revise GO 95, a petitioner must first meet-and-confer with CPSD. SDG&E never did so.

CCTA maintains that the Commission has previously revised GO 95 to incorporate the lessons learned from prior disasters and, therefore, has already addressed most of the issues raised by SDG&E.[5] There is no need to revisit these issues, according to CCTA, until SDG&E is able to provide concrete proposals.

CPSD believes that a rulemaking is premature because the causes of the October 2007 wildfires are still being investigated by CPSD and Cal Fire. Furthermore, CPSD contends that SDG&E has authority under GO 95 and § 451 to take steps to reduce wildfire hazards, which obviates any need for a rulemaking while CPSD conducts its investigation.

5. Discussion

We take very seriously our obligation to protect public safety on matters within the scope of our jurisdiction. There is perhaps no better example of our commitment to protecting the public than GO 95. This GO is over 500 pages long and contains comprehensive guidelines for the design, construction, and

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[4] SDG&E Petition, p. 4.

[5] See, for example, D.97-01-044, D.97-10-056, and D.05-01-030.

maintenance of overhead electric lines. These guidelines are specifically intended to provide the public with a high level of protection from the hazards associated with overhead electric lines, including fire-related risks.

The paramount importance we place on public safety can be seen in CPSD's investigation of the October 2007 wildfires. The ultimate objective of the investigation is to identify the root causes of the wildfires so that corrective actions can be taken to prevent future wildfires.

SDG&E urges the Commission to open a rulemaking now and to exclude CPSD's investigation from the scope of the rulemaking. We believe that SDG&E's request is premature. While it is laudable that SDG&E wants to implement solutions quickly in the wake of the catastrophic wildfires of October 2007, SDG&E's approach would place the proverbial cart before the horse. If we were to adopt regulations without knowing exactly how overhead electric lines contributed to the ignition of the October 2007 wildfires, there is a real possibility that the adopted regulations would not address the root causes of the fires, thereby leaving the public at risk. The better approach is for CPSD to first ascertain the causes of the wildfires and then for the Commission to take appropriate actions based on CPSD's investigation.

SDG&E's Petition sidesteps the need to address the causes of the October 2007 wildfires by asserting that California faces a significant and growing risk from wildfires, and that it behooves the Commission to initiate a rulemaking proceeding to consider a wide range of proposals to reduce the wildfire hazards of overhead power lines. We appreciate and share SDG&E's concern about wildfires. We welcome at any time proposals from utilities or other stakeholders to lessen the fire-related risks of overhead electric lines, provided the proposals are sufficiently developed that their need, costs, benefits,

and environmental impacts can be identified and assessed. The proposals in SDG&E's Petition lacked these essential attributes.

Instead of definitive proposals, SDG&E's Petition describes in broad terms the issues that should be considered in a rulemaking proceeding and suggests a process for doing so. The Commission's Rules are designed to avoid unfocused proceedings. Rule 6.3(b) states, in part, as follows:

> A petition [for a rulemaking proceeding] must concisely state the justification for the requested relief, **and if adoption or amendment of a regulation is sought, the petition must include specific proposed wording for that regulation**. (Emphasis added.)

SDG&E's Petition clearly contemplates the adoption of new regulations, but it did not provide the specific wording required by Rule 6.3(b).[6] At its core, the Petition amounts to little more than an outline of possible actions the Commission could take to reduce the wildfire hazards of overhead electric lines.

SDG&E's other topics for the proposed rulemaking are likewise unripe for consideration at this time. These topics are (1) how to better coordinate disaster management among governmental bodies and utilities; and (2) the development and funding of a statewide disaster management plan. These matters are largely outside of the Commission's jurisdiction and expertise. Primary responsibility for statewide disaster planning and management lies with the Governor's Office

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[6] The assigned Administrative Law Judge (ALJ) asked SDG&E to file and serve a document that provides the specific wording required by Rule 6.3(b) or to explain why SDG&E could not comply with Rule 6.3(b). In its response filed on November 29, 2007, SDG&E declined to provide the specific wording required by Rule 6.3(b), stating that it would be "premature for one party to start making recommendations without the benefit of all the facts and opinions from other stakeholders." (SDG&E 11/29/07 Response at p. 2.)

of Emergency Services (OES).[7] SDG&E has not identified any problems with OES's performance, and nor have any of the parties responding to SDG&E's Petition. There is no need for the Commission to delve into statewide disaster planning and management under these circumstances.[8]

We decline to adopt CBD/SC's and MGRA's recommendation to postpone new transmission lines, such as STP, until safety features adopted in response to the October 2007 wildfires can be incorporated into the design of new lines. There is no assurance that there will be new regulations; the possibility that there might be does not justify a sweeping injunction against all new transmission lines. Moreover, wildfire issues are being addressed in the STP proceeding, and it makes no sense to address STP wildfire issues in other proceedings as well.[9]

For the preceding reasons, we conclude that SDG&E's Petition should be denied without prejudice. Our denial of the Petition does not signal any diminishment in our resolve to protect Californians from the wildfire-related risks of overhead electric lines. It is our intent that CPSD should conduct a thorough investigation of the October 2007 wildfires, and that CPSD's

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[7] OES is responsible for (i) ensuring the State's readiness to respond to and recover from natural and manmade emergencies, and (ii) assisting local governments in their emergency preparedness, response, and recovery efforts.

[8] These topics have been addressed by the Governor's Blue Ribbon Task Force, which investigated the 2007 fires and has issued a report on ways that federal, state, and local governments can better prevent and fight future fires. The Task Force includes representatives from county and city firefighting officials, Cal Fire, OES, state fire chiefs, and labor unions representing firefighters. The Governor's proposed budget for fiscal year 2008-2009 includes funding for many of the Task Force's recommendations.

[9] This decision in no way prejudges the outcome of the STP proceeding or any other proceeding regarding proposed transmission lines.

investigation should take into account Cal Fire's investigation. We anticipate that CPSD's investigation will play an important role in formulating an appropriate response to the October 2007 wildfires, including the determination of what measures should be adopted to reduce the wildfire hazards of overhead electric lines in fire prone wildlands and other particular circumstances.

CPSD is currently in the midst of its investigation of the October 2007 wildfires. The purpose of CPSD's investigation is to make an independent determination of the causes of wildfires that were ignited, either directly or indirectly, by the operations, practices, or facilities of investor-owned utilities, or by some other causes. Cal Fire is conducting its own investigation of the October 2007 wildfires.

The scope of CPSD's investigation shall include whether and how the overhead electric lines of investor-owned utilities (IOUs) contributed to the ignition of the October 2007 wildfires; whether the overhead lines involved in the wildfires were designed, constructed, and maintained properly; whether trees were trimmed properly; and whether any of the wildfires was an unavoidable consequence of extreme weather. The IOUs shall cooperate promptly and fully with CPSD's investigation. We also expect other individuals and entities from whom CPSD seeks information to cooperate. CPSD shall take any and all appropriate steps to secure needed information if its investigation is hindered in any fashion.

Once its investigation is complete, CPSD shall prepare a comprehensive report that addresses the wildfires investigated by CPSD. The report should describe CPSD's investigation, explain in detail the cause of each wildfire, and provide recommendations for preventing a recurrence of future wildfires from the same causes identified in CPSD's report. The report may also address any

other matters that CPSD deems appropriate. CPSD shall submit its report to the Executive Director no later than July 31, 2008, and concurrently file the report at the Commission's Docket Office and serve the report on the service list for this proceeding.

Finally, CPSD's investigation and report should address the results of Cal Fire's separate investigation. Thus, the completion date for CPSD's report is dependent on when Cal Fire finishes its investigation. If Cal Fire is delayed in finishing its investigation, CPSD may ask the Executive Director pursuant to Rule 16.6 for an extension of time to submit its report.

6. Comments on the Proposed Decision

The proposed decision of the assigned Commissioner was issued for comment pursuant to § 1708.5(a)(2) and Rule 14.3. Section 1708.5(a)(2) allows for an extension of the six-month period to act on SDG&E's Petition in order to provide an opportunity for public review and comment of the proposed order. Comments were filed on May 19, 2008, by CCTA, CPSD, and SDG&E. Reply comments were filed on May 27, 2008, by CPSD, SCE, and SDG&E. CCTA and CPSD support the proposed decision, while SDG&E does not. SCE supports the proposed decision in part and opposes it in part. The final decision adopted by the Commission has been revised, as appropriate, to reflect these comments.

In its comments, SDG&E suggests that the Commission open a rulemaking proceeding and then hold the proceeding in abeyance until CPSD's report is completed or July 31, 2008, whichever comes first. SCE supports SDG&E's suggestion. For the reasons stated previously in today's decision, we conclude that the better course of action is to wait for CPSD's report so that we may address the wildfire hazards of overhead electric lines in an efficient, deliberate and informed manner.

SDG&E's comments also urge the Commission to open a rulemaking immediately so the Commission may adopt measures in time to reduce wildfire hazards during the 2008 fire season. While we appreciate and share SDG&E's eagerness to protect the public, SDG&E has not always envisioned a swift proceeding. Elsewhere in its comments, SDG&E acknowledges that "the process that SDG&E outlined…for structuring the OIR envisioned a **fairly lengthy proceeding** to ensure a thorough review of the proposals and issues that are raised in the OIR.[10]" Regardless of SDG&E's shifting positions, we intend to proceed with all due speed in formulating an appropriate response to the recent wildfires after CPSD's and Cal Fire's investigations are complete and the role of overhead electric lines in causing wildfires is better understood.

Finally, SDG&E observes in its comments that Rule 6.3(f) states "The Commission will not entertain a petition for rulemaking on an issue that the Commission has acted on or decided not to act on within the preceding 12 months." SDG&E is concerned that this not prohibit SDG&E or other parties from reinstating a request for a rulemaking if, after receipt of the CPSD report, less than one year as elapsed. Today's decision denies SDG&E's Petition without prejudice. We expect that once CPSD's report has been submitted, requests for a rulemaking, either internally generated at the Commission or by a petition for rulemaking, would be appropriate to consider.

7. Assignment of the Proceeding

Timothy Alan Simon is the assigned Commissioner for P.07-11-007 and Timothy Kenney is the assigned ALJ.

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[10] SDG&E's comments, p. 4. Emphasis added.

Findings of Fact

1. SDG&E filed a petition pursuant to § 1708.5 to institute a rulemaking to consider (i) new regulations to reduce the wildfire hazards of overhead electric lines, (ii) ways to better coordinate the efforts of governmental bodies and utilities in disaster preparedness, response, and recovery, and (iii) whether to adopt and fund a statewide disaster management plant.

2. CPSD and Cal Fire are currently investigating the role of IOUs' overhead electric lines in the October 2007 wildfires. The results of these investigations will likely be very useful in formulating an appropriate response to the October 2007 wildfires, including the determination of what measures should be adopted to reduce the wildfire hazards of overhead electric lines.

3. SDG&E's Petition did not include the specific text for any new or revised regulations as required by Rule 6.3(b).

4. OES is responsible for (i) ensuring the State's readiness to respond to and recover from natural disasters, and (ii) assisting local governments in their emergency preparedness, response, and recovery efforts. No party has identified any problems with OES's performance. It would be an unproductive use of the Commission's resources to delve into statewide disaster planning and management under these circumstances.

Conclusions of Law

1. P.07-11-007 should be denied without prejudice because: (i) SDG&E's Petition does not comply with Rule 6.3(b); (ii) the proposed rulemaking is premature because CPSD has not yet completed its investigation of the October 2007 wildfires; and (iii) there is no need at this time for the Commission to delve into statewide disaster planning and management as proposed in the Petition.

2. CPSD should submit to the Executive Director and file and serve a report containing its findings and conclusions regarding the role of the IOUs' overhead electric lines in the October 2007 wildfires. The report should also (i) address the results of Cal Fire's separate investigation of the October 2007 wildfires, and (ii) provide recommendations for preventing a recurrence of future wildfires from the same causes identified in CPSD's report.

3. The IOUs should cooperate fully and promptly with CPSD's investigation.

4. The following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Petition (P.) 07-11-007 filed by San Diego Gas & Electric Company is denied without prejudice.

2. The Commission's Consumer Protection and Safety Division (CPSD) shall submit to the Executive Director and file and serve by July 31, 2008, a comprehensive report of its investigation of the causes of the October 2007 wildfires that were ignited by overhead electric lines of investor-owned utilities (IOUs). The report shall describe CPSD's investigation, explain the cause of each wildfire investigated, and provide recommendations for preventing a recurrence of future wildfires from the same causes identified in CPSD's report.

3. IOUs shall cooperate fully and promptly with CPSD's investigation.
4. P.07-11-007 is closed.

This order is effective today.

Dated _____, at San Francisco, California.