

Decision 09-08-030 August 20, 2009

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)

**DECISION GRANTING THE MOTION FOR A
TEMPORARY RESTRAINING ORDER REGARDING
SAN DIEGO GAS & ELECTRIC COMPANY'S POWER SHUT-OFF PLAN**

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1. Summary of Decision

This decision enjoins San Diego Gas & Electric Company (SDG&E) from implementing its Emergency Power Shut-Off Plan (Plan) until the Commission issues a decision on the merits of SDG&E's Plan. The Commission will consider a proposed decision and alternate proposed decision regarding SDG&E's Plan at its regular business meeting on September 10, 2009.

This decision is being issued in response to the motion for a temporary restraining order (TRO) that was jointly filed by the Valley Center Municipal Water District, Ramona Municipal Water District, Padre Dam Municipal Water District, Rainbow Municipal Water District, Fallbrook Public Utilities District, Yuima Municipal Water District, the San Diego County Superintendent of Schools, Disability Rights Advocates, and Utility Consumers' Action Network (collectively, "the Moving Parties"). The injunction adopted by today's decision does not alter SDG&E's statutory authority and duty to reasonably exercise management discretion to meet its public utility obligations while operating its system safely at all times.

Finally, today's decision reverses the ruling issued by the assigned Administrative Law Judge on August 6, 2009, which denied the Moving Parties' motion for a TRO.

2. Background

In Application 08-12-021, SDG&E asks the Commission to review its Emergency Power Shut-Off Plan (referred to hereafter as the "Power Shut-Off Plan" or "Plan"). Under its proposed Power Shut-Off Plan, SDG&E will turn off electricity to certain regions during periods of high fire danger in order to

prevent its overhead power lines from contributing to the ignition and spread of wildfires. SDG&E seeks to implement its Plan on September 1, 2009, in time for the 2009 autumn fire season in Southern California. SDG&E recognizes that shutting off power will adversely affect its customers, and SDG&E has proposed several measures to mitigate the adverse impacts.¹

There are approximately 56,830 electric customers (meters) and 124,457 residents in the areas subject to the Power Shut-Off Plan in 2009. SDG&E estimates that power shut-off events will affect approximately 18,600 residents, on average, and will last from 12 to 72 hours.

The assigned Commissioner's Ruling and Scoping Memo dated February 26, 2009, anticipated that a proposed decision regarding SDG&E's Power Shut-Off Plan would be ready for consideration at the Commission meeting on August 20, 2009. However, due to unavoidable delays, the assigned Commissioner's proposed decision and an alternate proposed decision prepared by the assigned Administrative Law Judge (ALJ) will be considered at the Commission meeting on September 10, 2009.

¹ The mitigation measures include evacuation centers; free transport to medical facilities for customers who rely on life support equipment; \$250 debit cards for customers participating in the California Alternative Rates for Energy Program and/or the Medical Baseline Program; a pool of portable generators for use by the School Districts, Water Districts, and evacuation centers; and pre-wiring sites to accommodate the aforementioned portable generators.

Following the delay in the issuance of the proposed decision and alternate proposed decision, there were several newspaper articles² that reported SDG&E intends to implement its Power Shut-Off Plan on September 1, 2009, prior to the Commission's consideration of the Plan on September 10, 2009.

All the Moving Parties are opposed to SDG&E's Power Shut-Off Plan. They contend that SDG&E's Plan to turn off electricity during hot, dry, and windy weather conditions, when the risk of catastrophic fire from any source is at its height, poses a serious threat to public safety.

On August 5, 2009, the Moving Parties filed a motion for a temporary restraining order (TRO) to enjoin SDG&E from implementing its Power Shut-Off Plan prior to the issuance of a Commission decision regarding the Plan. The Moving Parties assert that shutting off power for 12 to 72 hours could cause irreparable harm to San Diego County residents, schoolchildren, businesses, and Water Districts because:

- If a wildfire occurs in an area where power is shut off, people in the area may not be able to receive information about the wildfire, including evacuation notices, because their telephones, televisions, and computers might not work. This could jeopardize the lives of those in the path of the wildfire.
- Residents in the path of a rapidly advancing wildfire may not be able to evacuate quickly in the absence of functioning household lights, garage door openers, street lights, traffic signals, and gas station pumps. People with

² Onell R. Soto, *PUC Delays Its Ruling On Cutoff Plan, SDG&E Declares Power Shutdown In Effect Sept. 1*, UNION TRIBUNE, July 22, 2009. This newspaper article is attached to the Moving Parties' motion as Exhibit A.

disabilities could be trapped in their homes because their garage door openers would not work.

- The ability to fight fires could be compromised because the electric water pumps that supply much of the water to the areas affected by the Power Shut-Off Plan would not work.
- The health of people who depend on medical life support equipment, such as ventilators, would be jeopardized. Medically sensitive customers who are transported to a hospital because of an extended loss of power to their homes would be subjected to the risk of injury or deterioration in their conditions.
- Customers would have to spend time, money, and effort to prepare for the possibility of power shut-off events starting on September 1, 2009, even though the Commission might deny SDG&E's application at its meeting on September 10, 2009.

On August 6, 2009, the assigned ALJ issued a ruling that denied the motion for a TRO. As explained in more detail below, the ALJ's ruling was subject to ratification or reversal by the full Commission at its next meeting on August 20, 2009.

Responses to the motion were filed on August 17, 2009, by the following parties: (1) SDG&E, (2) the Mussey Grade Road Alliance; (3) the California Cable & Telecommunications Association, Time Warner Cable, CoxCom, Inc. and Cox California Telcom, LLC, and AT&T; and (4) the Commission's Consumer Protection and Safety Division jointly with the Commission's Division of Ratepayer Advocates (together, "CPSD/DRA"). Replies were filed on August 18, 2009, by SDG&E and the Moving Parties. SDG&E opposes the motion for a TRO. All other parties responding to the motion support it.

An oral argument regarding the TRO was held before a quorum of Commissioners on August 20, 2009, prior to the Commission's regular business meeting that same day.

For the reasons set forth below, today's decision enjoins SDG&E from implementing the proposed Power Shut-Off Plan prior to a Commission decision on the merits, which may or may not authorize the Plan.

3. Discussion

The Commission's authority to provide injunctive relief is firmly rooted in the California Constitution, the Public Utilities Code, and case law:

The Commission is not an ordinary administrative agency, but a constitutional body with broad legislative and judicial powers. The California Constitution, Article XII, Sections 1-6, grants the Commission plenary power over the regulation of public utilities. The Commission has broad authority to regulate public utilities, including the power to fix rates, hold hearings, and establish its own rules and procedures.... [T]he California Supreme Court recognized that the Commission has equitable jurisdiction, which permits it to issue injunctions: "The commission often exercises equitable jurisdiction as an incident to its express duties and authority. For example, the Commission may issue injunctions in aid of jurisdiction specifically conferred upon it. [Citations omitted.]"³

³ D.01-01-046, pp. 12-13. See also D.01-07-033, pp. 11-12, and *Consumer Lobby Against Monopolies v. Public Utilities Commission* (1979) 25 Cal.3d 891, 905.

An individual assigned Commissioner or assigned ALJ may issue a ruling that grants or denies a motion for a TRO, subject to ratification or reversal by the full Commission at its next scheduled meeting.⁴

The Commission uses the same standard as California courts to decide if a TRO should be issued. Under this standard, the moving party must show all of the following: (1) irreparable injury to the moving party without the TRO; (2) no harm to the public interest; (3) no substantial harm to other interested parties; and (4) a likelihood of prevailing on the merits. Where a movant makes a strong showing on one of the factors, less of a showing is necessary on the other factors.⁵

The Moving Parties have demonstrated that SDG&E's Power Shut-Off Plan would impose substantial costs, burdens, and risks on the people and communities in the areas where power is shut off. Consequently, allowing SDG&E to implement its Plan, without Commission review and authorization, would constitute a major departure from the status quo.

Based on our review of the Moving Parties' motion for a TRO, the responses and replies to the motion, and the oral argument held on August 20, 2009, we conclude that injunctive relief is warranted in order to preserve the status quo until we issue a decision on SDG&E's Power Shut-Off Plan. While we will have this matter before us and anticipate acting at our meeting on September 10, 2009, today's decision will remain in effect until we act on the merits of SDG&E's Application.

⁴ D.01-01-046, p. 13; D.05-04-040, p. 2; California Constitution, Article XII, Section 2; and Pub. Util. Code § 310.

⁵ D.94-04-082, 54 CPUC 2d 244, 259; and D.98-12-075, 84 CPUC 2d 155, 169.

We find that the Moving Parties have demonstrated that allowing SDG&E to turn off electricity under its Power Shut-Off Plan could result in substantial and irreparable harm to the Moving Parties and their constituents. Conversely, we have no reason to believe that the status quo poses an imminent danger to public safety. SDG&E has, for the most part, operated its electric system safely for decades without its Power Shut-Off Plan, and we trust that SDG&E can continue to do so until we issue a decision on its Plan. For the same reason, we find that preserving the status quo until a decision is issued on SDG&E's Power Shut-Off Plan is unlikely to harm the public interest or cause substantial harm to other interested parties.

While one factor for deciding whether to grant a TRO is the likelihood of the Moving Parties prevailing on the merits, we will not by today's decision prejudge our outcome on the merits. Rather, we find the Moving Parties have made a strong showing that it is in the public interest to preserve the status quo in order to prevent irreparable harm.

Today's decision is limited to enjoining SDG&E from implementing its Power Shut-Off Plan prior to the issuance of a Commission decision on the merits of the proposed Plan. In the mean time, SDG&E has both the authority and the obligation under its tariffs⁶ and Pub. Util. Code § 451 and § 399.2(a) to meet its public utility obligations while operating its system safely. These code sections state, in relevant part, as follows:

⁶ See, for example, SDG&E Electric Tariff Rule 14.

§ 451: Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities...as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

399.2(a)(1): It is the policy of this state, and the intent of the Legislature, to reaffirm that each electrical corporation shall continue to operate its electric distribution grid in its service territory and shall do so in a safe, reliable, efficient, and cost-effective manner.

399.2(a)(2): In furtherance of this policy...each electrical corporation shall...be responsible for operating its own electric distribution grid including, but not limited to, owning, controlling, operating, managing, maintaining, planning, engineering, designing, and constructing its own electric distribution grid, emergency response and restoration, service connections, service turnons and turnoffs, and service inquiries relating to the operation of its electric distribution grid, subject to the commission's authority.

Complying with the above laws and existing tariffs is part and parcel of maintaining the status quo. The adopted injunctive relief does not limit SDG&E's obligation to do so. As always, SDG&E's actions are subject to subsequent review by the Commission pursuant to our broad jurisdiction over matters regarding public utility operations and facilities.⁷

⁷ See, generally, Cal. Constitution, Article XII, §§ 3 and 6, and Pub. Util. Code §§ 216, 701, and 768.

4. Comments on the Proposed Decision

The proposed decision addresses a request for temporary injunctive relief. Therefore, pursuant to Pub. Util. Code § 311(g)(2) and Rule 14.6(c)(1) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.⁸

5. Assignment of the Proceeding

Timothy Alan Simon is the assigned Commissioner for A.08-12-021 and Timothy Kenney is the assigned ALJ.

Findings of Fact

1. On August 5, 2006, the Moving Parties filed a motion for a TRO to enjoin SDG&E from implementing its proposed Power Shut-Off Plan, prior to Commission action on SDG&E's Application, until the Commission can issue a decision on the proposed Plan. The motion was denied in a ruling issued by the assigned ALJ on August 6, 2009.

2. The Moving Parties have demonstrated that turning off electricity under SDG&E's Power Shut-Off Plan could cause substantial and irreparable harm to the Moving Parties and their constituents.

3. There is no basis at this time to conclude that maintaining the status quo until the Commission issues a decision on SDG&E's proposed Power Shut-Off Plan poses an imminent threat to public safety.

⁸ § 311(g)(2) states "The 30-day period may be reduced or waived...for an order seeking temporary injunctive relief." Rule 14.6(c)(1) states the Commission may reduce or waive the period for public review and comment on proposed decision "in a matter where temporary injunctive relief is under consideration."

Conclusions of Law

1. The ALJ's ruling issued on August 6, 2009, that denied the Moving Parties' motion for a TRO is subject to ratification or reversal by the Commission.
2. The Moving Parties have demonstrated the need for injunctive relief.
3. The Moving Parties' motion to enjoin SDG&E from implementing its proposed Power Shut-Off Plan prior to a decision by the Commission on the merits of that Plan should be granted. The ALJ's ruling denying the motion should be reversed.
4. The following Order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The motion filed on August 5, 2009, to enjoin San Diego Gas & Electric Company from implementing its Power Shut-Off Plan is granted. This injunction shall remain in effect until the Commission issues a decision regarding the merits of the Power Shut-Off Plan in San Diego Gas & Electric Company's Application 08-12-021.
2. The ruling issued by the assigned Administrative Law Judge on August 6, 2009, that denied the motion for a temporary restraining order is reversed.

3. The proceeding remains open to decide Application 08-12-021.

This Order is effective today.

Dated August 20, 2009, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

TIMOTHY ALAN SIMON

Commissioners

I dissent.

/s/ JOHN A. BOHN

Commissioner

I dissent.

/s/ RACHELLE B. CHONG

Commissioner