Decision 10-10-004 October 14, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

DECISION AUTHORIZING SAN DIEGO GAS & ELECTRIC COMPANY TO RECOVER COSTS RECORDED IN THE CATASTROPHIC EVENT MEMORANDUM ACCOUNT RELATED TO THE 2007 SOUTHERN CALIFORNIA FIRES

1. Summary

This decision authorizes the San Diego Gas & Electric Company to recover costs recorded in the Catastrophic Event Memorandum Account related to seven 2007 Southern California fires. As authorized, the revised revenue requirement of $25.44 million represents a 21% reduction from San Diego Gas & Electric Company's original Catastrophic Event Memorandum Account request. The amount authorized results from our adoption of a settlement entered into by the parties in the proceeding.

2. Background and Procedural History

On March 6, 2009, the San Diego Gas & Electric Company (SDG&E) filed an application under its Catastrophic Event Memorandum Account (CEMA) for authorization to recover incremental disaster-related expenses and capital costs

incurred in responding to seven 2007 Southern California fires (the 2007 Fires).[1] SDG&E's application sought $6.8 million in Operation and Maintenance (O&M) Costs and $43 million in Capital Costs, resulting in a cumulative revenue requirement of $32.2 million.[2]

The Division of Ratepayer Advocates of the California Public Utilities Commission (DRA) filed a protest to SDG&E's application on April 13, 2009. DRA correctly notes that SDG&E was a respondent in Investigation (I.) 08-11-006 and I.08-11-007, two investigations related to the Witch, Rice and Guejito fires. DRA argued that "[u]nderstanding 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… ." DRA therefore requested that this proceeding be held in abeyance pending resolution of I.08-11-006 and I.08-11-007.

A Prehearing Conference (PHC) was held on June 12, 2009. Over the course of discussions during the PHC, the question of whether or not the costs associated with the fires at issue in I.08-11-006 and I.08-11-007 could be viewed separately from the fire costs at issue in this proceeding was addressed. DRA argued that these costs could indeed be viewed separately and noted that as part of its discovery it had already asked the utility to disaggregate the costs at issue so as to facilitate a separate analysis of the fire costs.[3]

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[1] In order of occurrence, at issue here at are the Witch, McCoy, Guejito, Coronado Hills, Rice, Poomacha, and Ammo fires.

[2] This amount includes interest.

[3] PHC Transcript at 29.

By ruling dated August 17, 2009, DRA was directed to file a report detailing its progress separating the costs of the fires at issue in I.08-11-006 and I.08-11-007 from the fire costs at issue in this proceeding, and to identify any unresolved discovery issues. DRA filed its report on September 23, 2009, and confirmed that it was able to successfully subdivide the O&M and Capital costs claimed by SDG&E for each fire.

At the direction of the Administrative Law Judge (ALJ), on December 22, 2009, SDG&E and DRA filed a report (Joint Report) outlining the parties' positions and developments relevant to the proceeding. Among other things, the Joint Report explains that the Commission's Consumer Protection and Safety Division (CPSD) and SDG&E reached an agreement that resolves both I.08-11-006 and I.08-11-007.[4] The Joint Report also states that the parties in this proceeding reached a preliminary agreement and were working on the exact language of a settlement agreement. SDG&E and DRA (Settling Parties) submitted a Joint Motion Requesting Approval of the Settlement Agreement (Joint Motion) on June 11, 2010.

On June 15, 2010, Ruth Henricks (Henricks) filed a motion for party status in this proceeding. The motion was granted by ALJ Farrar on June 21, 2010. A response in opposition to the Joint Motion (Opposition Motion) was submitted along with Henricks' motion for party status. Henricks' Opposition Motion opposed the Joint Motion on claims that the parties did not have a thorough understanding of the Application and therefore the Commission could not consider the proposed settlement as being in the public interest. Henricks

[4] D.10-04-047, which resolved I.08-11-006 and I.08-11-007, issued on April 26, 2010.

requested a second PHC and the development of a more detailed record of the proceeding. SDG&E responded to Henricks' opposition on August 11, 2010.

3. Discussion

3.1. The Opposition to the Joint Motion for Approval of Settlement Agreement.

Henricks argues that the Commission must be convinced that the parties had a sound and thorough understanding of the Application, and all of the underlying assumptions and data included in the record before it can consider a proposed settlement in this proceeding as being in the public interest. According to Henricks: "this level of understanding of the Application and development of an adequate record is necessary to meet the Commission's requirements for considering and settlement."[5] Henricks relies on a 2008 general rate case decision that states:

> In order for the Commission to consider any possible proposed settlement in this proceeding as being in the public interest, the Commission must be convinced that the parties had a sound and thorough understanding of the application, and all of the underlying assumptions and data included in the record. (D.08-07-045 at 6.)

Henricks asserts that because a Scoping Memo was not issued after the PHC and DRA did not make a statement about its findings from the audit or the discovery process, the required level of understanding was not demonstrated.

In the above decision, based on its review of the prepared testimony, hearings, and briefs, the Commission found that the parties to the settlement had

[5] Opposition Motion at 3, citing SDG&E General Rate Case at 2008 Cal. PUC LEXIS 281, 8 (Cal. PUC 2008).

a sound and thorough understanding of the application and the record. In the current proceeding, the parties produced similar documentation, including written statements prior to the PHC, the transcript from the PHC, and a status report regarding DRA's discovery findings. Thus, while it is true that a Scoping Memo was not issued, it is unlikely that the addition of such a document would increase the parties' level of understanding any more than the actions taken by the parties.

Henricks next argues that there is no rationale offered for the settlement amount, thereby showing that the parties do not completely comprehend the Application. As an initial matter, we do not agree with Henricks' claims that there is no rationale for the settlement amount.[6] Moreover, while vagueness in the wording of the proposed Settlement Agreement could lead to the Commission finding that the Agreement does not meet the requirements of Rule 12.1(d), it does not necessarily indicate of lack of understanding. Contrary to Henricks' claims, the record shows continuous involvement by both SDG&E and DRA in this proceeding that speaks to their understanding of the Application. As noted by SDG&E:

> DRA pursued discovery of SDG&E's Application and performed an audit of SDG&E's expenditures relating to the 2007 wildfires … the Settling Parties thoroughly addressed the merits of the Settlement in the Joint Motion … after about a year of work and consideration of the evidence and legal considerations, the Settling Parties agreed to an arrangement under which SDG&E will not recover its requested

[6] While the Settling Parties do not provide a mathematical calculation they explain that the settlement is reasonable in that it is a fair compromise of strongly held views which will spare the Commission and the parties the time, effort, and costs required to litigate disputed issues.

> O&M of approximately $6.8 million. (SDG&E Reply to Opposition Motion, at 7.)

We conclude that the Settling Parties had a thorough understanding of the Application when they proposed the settlement. Therefore, the second PHC requested by Henricks is unnecessary, and the requested relief is denied.

3.2. The Joint Motion for Approval of Settlement Agreement

3.2.1. The Settlement Agreement

According to its application, SDG&E incurred approximately $112.1 million in total costs associated with the 2007 Fires. SDG&E sought Commission approval for approximately $6.8 million in O&M costs and $43 million in capital costs associated with the 2007 Fires. As a result, SDG&E's CEMA application sought a total revenue requirement of $32.2 million. The Settling Parties agree that the Commission should find that it is reasonable to remove all of the O&M expenses (totaling approximately $6.8 million) from SDG&E's total CEMA revenue requirement request. This reduction results in an authorized total revenue requirement of $25.44 million which represents 79% of SDG&E's originally requested recovery, and 23% of the total costs that SDG&E states it incurred related to the 2007 Fires. DRA recommended revenue requirement reductions based on its review of the available evidence, taking into consideration the opinions of the Commission's Consumer Protection and Safety Division in regards to the Witch, Rice and Guejito fires.[7]

[7] SDG&E disagreed with these opinions and questioned their relevance to this proceeding.

The Settling Parties agree that the settlement represents a compromise and should not be considered precedent with respect to other CEMA costs not at issue in this proceeding, or any other matters in any way related to the 2007 Fires.

3.2.2. Reasonableness of the Settlement

The Settlement Agreement addresses all the major issues in the proceeding and approves rate recovery of a level of costs acceptable to both SDG&E and DRA. Consistent with D.95-05-042, a settlement must be reasonable before it can be adopted by the Commission.[8] The Settling Parties assert that the settlement is reasonable in that it is a fair compromise of strongly held views which will spare the Commission and the parties the time, effort, and costs required to litigate disputed issues. Moreover, because discovery has been concluded, and DRA has completed its audit of SDG&E's showing, the parties were able to gauge the strengths and weaknesses of SDG&E's request prior to reaching settlement.

3.2.3. Consistency with the Law

A settlement must also be consistent with law in order for the Commission to adopt it.[9] Other than the issues addressed in section 3.1 above, no party claims that a statutory provision or prior Commission decision would be contravened or compromised by the Settlement Agreement.

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[8] D.95-05-042, CPUC2d 779, 788.

[9] D.95-05-042, CPUC2d 779, 788.

3.2.4. The Public Interest

Finally, the public interest and the interests of ratepayers must be considered before the Commission approves a settlement.[10] Consistent with D.88-12-083, the Settlement avoids costly and protracted litigation and therefore reflects sound public policy. In addition, DRA, which represents the interest of all consumers of electricity in SDG&E's service territory, is satisfied that the Settlement Agreement represents a fair outcome. Accordingly, taken as a whole, the Settlement Agreement is in the public interest.

4. Conclusion

We hereby adopt the Settlement Agreement affixed hereto as Attachment A.

5. Categorization and Need for Hearings

In Resolution ALJ 176-3231 dated March 26, 2009, this proceeding was categorized as ratesetting requiring hearings. Because there are no issue of fact in dispute, hearings are not necessary.

6. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Darwin E. Farrar is the assigned ALJ.

7. Comments on the Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were received.

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[10] D.95-05-042, CPUC2d 779, 788.

Findings of Fact

1. The Settling Parties had a thorough understanding of the Application when they proposed the settlement.

2. The record of the proceeding was sufficiently developed.

3. The Settlement Agreement is reasonable.

4. The revised revenue requirement of $25.44 million represents a 21% reduction from SDG&E's original Catastrophic Event Memorandum Account request.

5. The settlement entered into by SDG&E and the DRA would authorize SDG&E to recover costs recorded in the Catastrophic Event Memorandum Account related to seven 2007 Southern California fires.

Conclusions of Law

1. A second Prehearing Conference is not necessary.

2. Further development of the record of the proceeding is not necessary.

3. The Settlement Agreement affixed hereto as Attachment A should be adopted.

4. The Settlement Agreement is consistent with law.

5. The Settlement Agreement is in the public interest.

O R D E R

IT IS ORDERED that:

1. The request for relief in the June 15, 2010, Opposition to the Joint Motion Requesting Approval of the Settlement Agreement is denied.

2. The settlement agreement entered into by the San Diego Gas & Electric Company and the Commission's Division of Ratepayer Advocates (Settlement Agreement) affixed hereto as Attachment A is adopted.

3. The San Diego Gas & Electric Company is authorized to recover costs recorded in the Catastrophic Event Memorandum Account related to seven 2007 Southern California fires in a manner consistent with the Settlement Agreement.

4. San Diego Gas & Electric Company's authorized revenue requirement is $25.44 million.

5. The preliminary determination regarding the need for hearing is changed from yes to no. Hearings are not necessary.

6. Application 09-03-011 is closed.

This order is effective today.

Dated October 14, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

D1010004 Attachment A