

Decision 08-09-025 September 18, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Authorized Cost of Capital for Utility Operations for 2008.

Application 07-05-003
(Filed May 8, 2007)

And Related Matters.

Application 07-05-007
Application 07-05-008

**DECISION RESOLVING A SAN DIEGO GAS & ELECTRIC COMPANY
RULE 13.1 VIOLATION**

Summary

Pursuant to Rule 13.1 of the Commission’s Rules of Practice and Procedure (Rules), energy utilities are required to provide notice of a hearing, not less than five nor more than 30 days before the date of the hearing, to entities or persons who may be affected thereby, by posting notice in public places and by publishing notice in a newspaper or newspapers of general circulation in the area or areas concerned, of the time, date, and place of hearing.

An evidentiary hearing schedule for this Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Pacific Gas and Electric Company (PG&E) consolidated cost of capital proceeding was set at a June 14, 2007 Prehearing Conference. That schedule provided for evidentiary hearings to start on August 28, 2007, for the examination and receipt of exhibits of SDG&E’s policy witness and hearings to continue beginning September 10, 2007, for the examination and receipt of exhibits of all other witnesses.

To comply with the “not less than five . . . days before the date of hearing,” SCE, SDG&E, and PG&E needed to publish their evidentiary hearing notice no later than August 23, 2007, five days prior to the start of the August 28, 2007 evidentiary hearing.

SCE and PG&E complied with Rule 13.1. However, it did not appear that SDG&E complied with the rule because its hearing notice was not published until August 31, 2007, eight days after the August 23, 2007 compliance date and three days after the start of evidentiary hearings, the date its policy witness testified.¹

SDG&E shall forego recovery of its \$18,097 cost of all Phase 1 and Phase 2 notices published in newspapers and in customer billing statements in this proceeding for violating Rule 13.1. This amount shall be credited to SDG&E’s “Rewards and Penalties Balancing Account” so that all electric and gas distribution and transportation customers receive the benefit of such credit effective January 1, 2009, at the time SDG&E implements its rate changes.

1. Rule 13.1 Violation

In its November 26, 2007 comments on the proposed decision that led to Decision (D.) 07-12-049, SDG&E acknowledged that it did not provide a timely Rule 13.1 notice of the start of evidentiary hearings. That decision, which authorized SCE’s, SDG&E’s, and PG&E’s 2008 test year returns on equities, kept

¹ SDG&E’s September 7, 2007 Rule 13.1 compliance fining shows that its hearing notice was published in the San Diego Union-Tribune and North County Times on August 31, 2007.

this consolidated proceeding open to consider, among other matters, whether SDG&E should be subject to a penalty for a Rule 13.1 violation.²

SDG&E's acknowledgment of a Rule 13.1 violation mitigated the need for an evidentiary hearing on whether a violation occurred.

D.98-12-075 set forth five criteria to be considered in assessing a penalty. Those criteria consist of an analysis of: 1) the severity of offense; 2) the conduct of the utility; 3) the financial resources of the utility; 4) the totality of circumstances; and 5) the role of precedent.³

To determine whether SDG&E should be subject to a penalty, SDG&E was requested to submit a declaration explaining the circumstances of how the violation occurred, what actions were implemented to avoid future violations, and the appropriateness of a penalty.⁴ That declaration, which included a penalty proposal, was timely filed by SDG&E's Director of California Regulatory Affairs on June 13, 2008. A supplemental declaration clarifying how its customers would benefit from its penalty proposal and identification of its cost of all Phase 1 and Phase 2 notices published in newspapers and in customer billing statements was filed on July 28, 2008.

1.1. Severity of Offense

The severity of an offense is measured by the extent of physical harm, economic harm, and harm to the regulatory process. No entity, including individuals potentially claiming an interest, or any other active party in the

² D.07-12-049, mimeo., p. 56, Conclusion of Law 41.

³ 84 CPUC2d, 154, at 182-185.

⁴ See May 21, 2008 Administrative Law Judge Ruling.

proceeding has averred that it was harmed or alleged that its interest were prejudiced in any way.

Hence, we find no physical or economic harm. However, we do find SDG&E's violation of Rule 13.1, by publishing notice of an evidentiary hearing after its policy witness testified, to have harmed the regulatory process.

1.2. Conduct

SDG&E's conduct is measured by its action to detect, disclose, rectify, and prevent a violation.

1.2.1. Detect

SDG&E explained that subsequent to the Prehearing Conference, it prepared the Rule 13.1 hearing notice and received endorsement of the text and form of the notice from the Commission's Public Advisor's Office on July 26, 2007. On that same day, SDG&E's regulatory case manager emailed the final document containing the Rule 13.1 hearing notice to its communications department stating that the notice was to be posted and published not sooner than July 28, 2007 and not later than August 23, 2007.

On August 27, 2007, the regulatory case manager informed SDG&E's legal counsel that there would be no timely newspaper notice, informing customers and interested parties of the August 28, 2007 evidentiary hearing due to an inadvertent oversight within SDG&E's communications department. However, notice would be published prior to the remaining hearings scheduled to begin on September 10, 2007.

1.2.2. Disclose

On August 28, 2007, SDG&E's legal counsel informed the presiding Administrative Law Judge (ALJ) of the notice violation and indicated that the notice would be timely published for the remaining hearings set for

September 10 through 14, 2007. This notification to the ALJ was made by SDG&E's legal counsel less than a day after the counsel became aware of the violation.

1.2.3. Rectify

On August 31, 2007, SDG&E rectified the lack of notice on, by publishing notice of the August 28 evidentiary hearing and the September 10, 2007 continuation of that evidentiary hearing. This was after the evidentiary hearings began and 10 days prior to the continuation of the evidentiary hearing.

1.2.4. Prevent

After SDG&E discovered its lack of notice, its management reemphasized the requirements and importance of Rule 13.1 to all of its departments and personnel involved in the creation, review and processing of SDG&E's hearing notices. To prevent the possibility of a future reoccurrence, the internal notice generation process was reassessed and refined. A revised procedure was documented and implemented to streamline the steps and departments involved in the review of such notices. The responsibility for notices and interface with newspaper media has been more clearly assigned to the regulatory information group.

The regulatory information group will document completion of each step in the process of notice generation, review and publication in accordance with an internal checklist. The checklist is devised to: 1) more clearly identify the hearing schedules set in a proceeding, 2) establish the internal protocol and processing deadlines for the creation, review and submittal steps in the process, and 3) set the final newspaper submittal deadline considering the lead-time required by the various newspapers to ensure timely publication.

1.3. Financial Resources

Financial resources of a violator are considered to determine the size of a penalty that would deter applicants from future violations without becoming excessive. SDG&E's financial statements attached to its application as Appendix E substantiate that it has the financial resources to pay a penalty. Accordingly, a penalty could effectively deter future violations.

1.4. Totality of Circumstances

The totality of the circumstances is measured by the degree of wrongdoing and public interest. The facts of this violation show that SDG&E's violation of Rule 13.1 was unintentional. In addition, the absence of complaints regarding the late notice gives rise to an inference that customers did not experience a significant hardship. This is especially true since the evidentiary hearing was continued to September 10, 2007 and customers received published notice of that continued hearing 10 days prior to its start.

1.5. Role of Precedent

Finally, the precedent that an assessment of a penalty may have on other proceedings is considered. SDG&E contends that a penalty is not necessary to deter such future violations by SDG&E. We concur. However, failure to impose a penalty in this instance may result in other utilities relaxing their customer notification procedures thereby adversely impacting the ability of customers to provide input to the Commission or diminishing public awareness of Commission's proceedings. This is not the only Rule 13.1 notice violation by a

utility within the past year.⁵ Hence, a penalty is warranted and should be imposed.

1.6. Conclusion

The corrective action undertaken by SDG&E demonstrates its commitment to prevent any reoccurrences of noticing errors. For example, SDG&E disclosed its violation as soon as it became aware that its hearing notice was not timely published and revised its Rule 13.1 process. Absent any complaints from its customers or interested parties to this proceeding, we find that the lack of notice did not result in any physical or economic harm.⁶ However, SDG&E offers to forego recovery of its \$18,097 cost of all Phase 1 and Phase 2 notices published in newspapers and in customer billing statements of this proceeding. SDG&E also offers to credit the \$18,097 to its Rewards and Penalties Balancing Account so that electric and gas distribution and transportation customers receive the benefit of such credit effective January 1, 2009.

Based on our application of the criteria adopted by the Commission in D.98-12-075 to the facts in this consolidated application, we find that a penalty is appropriate in this instance to stress the importance of customer notification and avoid further Rule 13.1 customer notification violations. Hence, we accept SDG&E's offer to forego recovery of its cost of publications in this proceeding.

⁵ *Re: San Gabriel Valley Water Company*, D.08-06-022 (2008) mimeo., p. 3; and Ordering Paragraph 14, p. 70, in which San Gabriel Water Company was fined \$1,000 for violating Rule 13.1.

⁶ Although interested parties were provided an opportunity to file comments on SDG&E's signed declaration, none chose to do so.

The size of the penalty being imposed is based on the unique facts and circumstances of SDG&E's violation.

2. Comments on Proposed Decision

The proposed decision of the assigned ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.3. There were no filed comments.

3. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Michael J. Galvin is the assigned ALJ in this proceeding.

Findings of Fact

1. Rule 13.1 requires energy companies to give notice of a hearing, not less than five nor more than 30 days before the date of a hearing, to entities or persons who may be affected thereby, by posting notice in public places and by publishing notice in a newspaper or newspapers of general circulation in the area or areas concerned, of the time, date, and place of hearing.

2. On August 31, 2007, SDG&E published its hearing notice required by Rule 13.1, eight days after the August 23, 2007 compliance date and three days after the date its policy witness testified.

3. SDG&E acknowledged its Rule 13.1 violation.

4. As part of its June 13, 2008 declaration, SDG&E offered to forego recovery of its costs of Phase 1 and Phase 2 notices published in newspapers and in customer billing statements of this proceeding as a penalty for its violation of Rule 13.1.

5. As part of its July 28, 2008 supplemental declaration, SDG&E offered to credit the cost of its Phase 1 and Phase 2 notices published in newspapers and in

customer billing statements of this proceeding to its Rewards and Penalties Balancing Account.

Conclusions of Law

1. SDG&E did not comply with Rule 13.1.
2. SDG&E has taken corrective action to avoid future Rule 13.1 violations.
3. SDG&E's offer to forego recovery of its costs of publication in this proceeding as a penalty should be accepted for its violation of Rule 13.1.

O R D E R

IT IS ORDERED that:

1. San Diego Gas & Electric Company shall forego recovery of its \$18,097 cost of all Phase 1 and Phase 2 notices published in newspapers and in customer billing statements of this proceeding. This amount shall be credited to its Rewards and Penalties Balancing Account so that electric and gas distribution and transportation customers receive the benefit of such credit effective January 1, 2009.
2. Application (A.) 07-05-003, A.07-05-007, and A.07-05-008 are closed.

This order is effective today.

Dated September 18, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners