Decision **ALTERNATE PROPOSED DECISION OF COMMISSIONER SIMON** (Mailed 10/15/2012)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U902M), Southern California Edison Company (U338E), Southern California Gas Company (U904G) and Pacific Gas and Electric Company (U39M) for Authority to Establish a Wildfire Expense Balancing Account to Record for Future Recovery Wildfire-Related Costs.	Application 09-08-020 (Filed August 31, 2009)

DECISION APPROVING APPLICATION IN PART AND DENYING IT IN PART

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DECISION APPROVING APPLICATION IN PART AND DENYING IT IN PART

1. Summary

This decision authorizes San Diego Gas & Electric Company and Southern California Gas Company to record in a balancing account 90% of uninsured payments that are in excess of $10 million per wildfire where: (i) those payments are made in inverse condemnation; and (ii) there has been a finding by a court or this Commission that the utility was not at fault. These utilities' requests to record other wildfire costs in a Wildfire Expense Balancing Account are denied. This proceeding is closed.

2. Background

On August 31, 2009, San Diego Gas & Electric Company (SDG&E), Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and Southern California Gas Company (SoCal Gas), filed their initial application requesting Commission authorization to establish a balancing account to allow each utility to recover from ratepayers "all amounts paid by the utility arising from wildfires." Protests were filed by the Consumer Protection and Safety Division (CPSD), Disability Rights Advocates (DisabRA), the Division of Ratepayer Advocates (DRA), Protestor Ruth Henricks (Henricks), Mussey Grade Road Alliance (Alliance), and The Utility Reform Network (TURN).

On December 21, 2009, the assigned Commissioner and assigned Administrative Law Judge (ALJ) issued a ruling finding that the application required amendment before hearings could be scheduled and directing the parties to meet and confer. The ruling specifically listed the major issues that required amendment:

1. The limitless potential for ratepayers to fund third-party claims, including fire suppression and environmental damage, all but invite governmental entities and everyone else to submit claims to utilities;
2. Utilities have no incentive to defend against third-party claims, and ratepayers are without a practical means to protect their interests; and
3. The presumption of recovery of third-party claims undermines financial incentives for prudent risk management and safety regulation compliance.

On August 10, 2010, the applicants filed their amended application. Protests were again filed by CPSD, DisabRA, the DRA, Henricks, the Alliance, and TURN.

On September 14, 2010, a prehearing conference was convened at which the scope of this proceeding was contested as well as the need for a Phase II. A tentative schedule was set with the plan that the scoping memo would reflect the final schedule.

The assigned Commissioner and ALJ then issued a ruling directing applicants to show cause why the amended application should not be dismissed, which was subsequently suspended by the assigned Commissioner to allow the parties to continue settlement discussions.

On September 29, 2011, the assigned Commissioner issued his scoping memo determining that the scope of this proceeding included all factual and legal issues necessary to determine whether the applicants have met their burden of justifying the proposed ratemaking mechanism as required by Public Utilities Code § 454, and that the proposed rates will be just and reasonable as required by § 451. The scoping memo also determined that evidentiary hearings were necessary and appointed the assigned ALJ as the presiding officer.

On November 9, 2011, PG&E and Edison moved to withdraw as applicants, but to continue their Wildfire Expense Memorandum Accounts (WEMA) related to this proceeding. PG&E and Edison explained that after filing this application they also sought Commission authorization to establish a WEMA via an advice letter, which was granted in Resolution E-4311, and in which the Commission authorized the applicants to begin recording certain categories of wildfire costs in their respective memorandum accounts, effective date of July 29, 2010. The Commission, however, conditioned any recovery of amounts properly recorded in the memorandum accounts on its determination on the merits of this application. While seeking to withdraw from the application, PG&E and Edison requested that any ruling granting their motion to withdraw provide for the continuation of their memorandum accounts.

On November 14, 2011, the assigned ALJ set a schedule for considering PG&E's and Edison's request, which required PG&E and Edison to supplement their motion on December 2, 2011 with more detail regarding the proposed continuation of the memorandum account, including when and subject to what criteria they would request amortization of any amounts recorded in the account. Parties were then authorized to file and serve responses to the supplemented motion no later than December 16, 2011.

On December 2, 2011, PG&E and Edison supplemented the motion to withdraw and contended that it was premature to determine where and when costs recorded in the memorandum account will be reviewed. PG&E and Edison stated that they could potentially seek recovery of the costs in an annual Energy Resource Recovery Account proceeding, or other reasonableness review process. As for the criteria to be used in evaluating recovery of such recorded costs, PG&E

and Edison argued that the framework and standards for recovery of uninsured third-party claims arising from a wildfire are controversial issues that the Commission need not and should not decide in authorizing the memorandum accounts.

In response, DRA, jointly with CPSD, did not oppose the motions to withdraw but recommended that the memorandum accounts include notification to the Commission when the utility begins recording amounts, and also that the term "wildfire event" be defined.

The Alliance supported granting PG&E and Edison's motion to withdraw from Application 09-08-020, and denying their request to continue recording costs in a memorandum account. The Alliance contended that the utilities throughout the two-year term of this proceeding had not yet demonstrated or proven that a memorandum account was necessary to recover fire-related costs, or why such an account is necessary to allow for cost recovery at a later date. Moreover, the Alliance concluded, the utilities have not demonstrated that a pre-defined process, either a balancing or memorandum account would be beneficial to ratepayers, would improve electrical utility safety with regard to catastrophic wildfires ignited by electrical utility equipment or that any of the utilities would face an imminent financial crisis due to uninsured wildfire costs that could not be addressed by the Commission on a case-by-case basis.

On January 3, 2012, the assigned Commissioner granted the unopposed motion of PG&E and Edison to withdraw from this application, but denied approval of the memorandum account request. The assigned Commissioner found that the draft memorandum account tariffs submitted by PG&E and Edison suggested cost recovery from ratepayers is anticipated, as well as overly broad definitions of costs that may be properly recorded in the account.

Evidentiary hearings for the remaining applicants, SDG&E and SoCalGas were held on January 11, 12, and 13, 2012 before the assigned ALJ. Parties filed and served opening and reply briefs. Opening briefs were filed and served on February 17, 2012, and reply briefs on March 9, 2012.

On April 5, 2012, the assigned Commissioner and assigned ALJ convened a Public Participation Hearing (PPH) in San Diego. When scheduling the PPH, the assigned Commissioner explained that in Resolution E-4311 the Commission authorized WEMA with an effective date of July 29, 2010, and that since then SDG&E had been recording uninsured costs arising from the 2007 San Diego County wildfires in this memorandum account. The assigned Commissioner scheduled the PPH to allow the public to comment on whether the uninsured 2007 fire costs should be included in the Wildfire Expense Balancing Account (WEBA) mechanism.

Approximately 800 persons attended the hearings and over 100 presented comment for the record. Some commenters offered general praise for SDG&E as a corporate citizen, but a majority of the commenters opposed the Commission including the 2007 costs in the WEBA as well as the general concept of a WEBA. The record was submitted for Commission consideration on April 5, 2012, at the conclusion of the PPH.

3. Positions of the Parties

3.1. SDG&E and SoCalGas

The remaining applicants request that the Commission make permanent the currently-authorized WEMA into which they will record uninsured wildfire costs in excess of $10 million. They also seek approval of WEBA into which balances in excess of $10 million in the memorandum account will be transferred. After such a transfer, the utility could then seek recovery of the amount by filing

a request with the Commission showing that the amounts so recorded did not result from "acts or omissions intentionally engaged in or directed by an officer with the intent to cause harm" or who "willfully and deliberately" disregarded probable dangerous consequences of intentional acts or omissions.[1] So long as the wildfire costs were not incurred by deliberate officer action, the costs would be recovered from ratepayers via the proposed WEBA.

SDG&E and SoCalGas ask the Commission to allow them to recover wildfire costs in rates because wildfire risk come with their obligation to serve, recovery of such costs is consistent with Commission treatment of the costs created by natural disasters, and the doctrine of inverse condemnation presupposes that costs allocated to the public entity will be shared by all users served by that entity. The applicants also argue that certainty of rate recovery for wildfire costs is necessary for utilities to maintain their financial strength.

SDG&E and SoCalGas dismiss intervenors' claims that the proposed memorandum account and balancing account mechanism for recovering uninsured wildfire costs from customers should include a reasonableness review and argue that wildfires are not the subject of deliberate action by the utility and thus a post-event evaluation of the decision-making process, such as that contemplated by a reasonableness review, is not compatible with fact pattern of wildfires.

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[1] *Id*. at 11 – 12. The applicants offer a construct of Category A, B, and C to describe the limited range of costs that would be excluded from ratepayer recovery pursuant to the proposed balancing account. This construct creates unnecessary complexity and obscures the narrow and extreme fact patterns under which wildfire cost recovery would be precluded under the applicants' proposal. We, therefore, simply describe the excluded costs as being caused by deliberate actions of a corporate officer.

The applicants similarly discount the effect on safe utility operations by certain recovery of wildfire costs. The applicants contend that they take their obligation to provide safe and reliable service "very seriously" and the proposed wildfire cost recovery mechanism will not change this commitment.[2]

SDG&E and SoCalGas also dispute the intervenors' arguments that assigning all litigation costs to ratepayers will create an incentive for the utilities to litigate third party claims regardless of merit. The utilities argued that ratepayer funding for litigation would not cause them to pursue frivolous claims, and that their proposed program is similar to that approved by the Commission for insurance recovery in hazardous waste clean-up cases.

3.2. Consumer Advocates

Four consumer advocate entities – the Center for Accessible Technology, DRA, CPSD, and TURN – filed a joint brief in opposition to the proposed wildfire cost recovery mechanism. The consumer advocates argued that despite numerous procedural opportunities, the utilities have not provided a clear rationale for the extraordinary ratemaking relief contemplated by the proposed mechanism, nor have the utilities demonstrated that existing ratemaking mechanisms are inadequate to address uninsured wildfire costs.

Specifically, the consumer advocates argued that that the applicants have requested a balancing account mechanism through which virtually all wildfire costs would be allocated directly to ratepayers via a formula that provides little, if any, meaningful opportunity for ratepayers or the Commission to review the reasonableness of the costs. The consumer advocates explained that the

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[2] SDG&E and SoCalGas Opening Brief at 47.

applicants have failed to justify the reasonableness of their proposal to shift liability for wildfire costs caused by utility negligence or recklessness from shareholders to ratepayers, with predictable deleterious impacts on utility operations and safety protocol.

The consumer advocates next demonstrated that the remaining applicants have not shown that existing ratemaking mechanisms are insufficient to address potential wildfire liability exceeding insurance limits. The advocates point to applicants' testimony that a special memorandum account could be requested to address a specific wildfire, and that the existing Z-factor mechanism offers a similar means to recover excess wildfire costs. The consumer advocates cited to applicants' testimony admitting that the exact costs they have recorded in the memorandum account related to this proceeding are also being simultaneously recorded in the Z-factor memorandum account. The consumer advocates concluded that the applicants' admissions of existing alternatives to the proposed WEBA showed that the new balancing account is not needed.

The consumer advocates went on to show that the proposed ratemaking mechanism would constitute bad public policy because it would unreasonably limit the Commission's authority to review wildfire costs and the utility's standards for system safety, as well shifting excessive risk to the ratepayers. The consumer advocates stated that the proposed balancing account would have the effect of indemnifying utility shareholders from their own failures to comply with safety regulations and to take all aggressive actions to prevent wildfires.

TURN also filed a separate brief supporting a balancing account that allowed utilities to recover up to 95% of any increase in insurance costs.

3.3. Mussey Grade Road Alliance

The Alliance is a community-based organization started in 1999 and dedicated to the preservation and protection of historic Mussey Grade Road and environs in Ramona, California.[3] The Alliance stated that power line fire safety is its primary focus at the Commission due to the experience of the Mussey Grade Road community in the wildland fire catastrophe in San Diego County during 2003. The Alliance stated that the Mussey Grade Road area was devastated in the 2003 Cedar Fire during which two-thirds of existing homes were destroyed in the southern portion of the five-mile road south of Dos Picos Park Road and long-term damage inflicted on historic oaks lining the road, and that the Mussey Grade Road area was again threatened by the Witch Fire, a catastrophic wildland fire in 2007.

The Alliance presented a well-qualified expert witness on fire history data and power line firestorms. In its testimony and briefs, the Alliance explained that power line firestorms – clusters of fires caused by extreme winds downing power lines and the most likely cause of catastrophic human and economic loss – should not be expected to occur very often, and certainly not frequently enough to merit the establishment of a special cost recovery mechanism such as the proposed balancing account. The Alliance did not dispute SDG&E's assertion that a utility has little control over how large a fire becomes once it has started, but emphasized that that the ignition of power line fires is something that is under the utility's control and that therefore that their actions have a significant effect on the probability and frequency of fires. Moreover, while the

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[3] For more information see http://www.musseygraderoad.org.

exact source of ignition may not have an effect on the extent of a fire, the timing of the ignition does – and power line fires tend to ignite under high wind conditions that stress utility infrastructure and thus increase the expected number of fire starts in a given area. The Alliance recommended preventing these catastrophic firestorms by adopting high engineering standards for power lines.

The Alliance explained that one of the key decisions SDG&E made was the engineering standard for wind loading to apply to the design and maintenance of its lines. The minimum wind loading allowable by the Commission is specified in General Order 95, and specifies the engineering design standard for distribution infrastructure in terms of wind pressure, readily convertible to wind speed by standard calculations, but also requires adjustments for local conditions. The Alliance stated that SDG&E has decided to design to the minimum standard of a distribution system built to withstand at least 56 mph gusts throughout San Diego County. The Alliance noted that standard engineering practice in the United States, when there is the potential that an engineering failure can result in widespread public harm (certainly true in the case of wildfires), systems are required to be designed to withstand conditions expected no more often than 1700 years, with conditions that initiated the 2007 wildfires might be expected to occur every at an interval estimated to be 20 and 200 years. The Alliance concluded that SDG&E's engineering standards may not be sufficient to prevent power line firestorms from occurring every few decades.

The Alliance next pointed out that the proposed balancing account would remove the only significant financial incentive that utilities have to improve wildfire safety. The Alliance explained that the Commission's policies insulating utilities from the financial consequences of increased insurance premiums had

already removed any financial incentive to reduce the risk of wildfires created by those increasing costs. The Alliance explained that where a business or person is responsible for paying insurance costs such as premiums, co-payments, and deductibles, reducing these costs is a strong incentive for behavior that reduces the risk of losses. However, the Alliance contended, the Commission's existing ratemaking mechanisms allow utilities to recover all insurance costs from ratepayers and, consequently, eliminates these incentives. The Alliance cited to a recent paper by leading academic insurance experts showing that programs that assure the coverage of losses without risk-based pricing can create moral hazard by raising the frequency of adverse events by lessening incentives for risk-reducing effort.[4] The Alliance offered a specific example of a study in Michigan and Illinois which showed that switching from a government-run assurance program to private insurance for fuel tank accidents reduced the number of fuel tank leaks by 20%, saving Michigan taxpayers $400 million. The Alliance concluded that the Commission's policy of allowing California utilities to recover all insurance costs from ratepayers has eliminated insurance cost as a factor when the utility selects and negotiates insurance contracts or when it evaluates measures to reduce risk, thus removing this important tool for reducing moral hazard and improving safety. The Alliance argued that the balancing account proposal would remove the sole remaining financial incentive imposed on a utility to reduce wildfire losses.

The Alliance analyzed executive decision-making regarding wildfire risk and found that utility executives have many responsibilities to their shareholders

[4] *See* Hearing Exhibit 15 at 32, and papers cited therein.

and customers and safety is one of these concerns, but these decision-making executives are primarily rewarded for the financial performance of their companies. When an executive must make the decision whether to allocate a given set of resources to improving the financial outlook of the company or whether to allocate the same resources to enhance safety measures, the executive does so with the knowledge of near-certain rewards for enhanced profits, and the low probability of consequences for safety problems that might or might not show up some day. The Alliance contended that the Commission must adopt policies that counter this disincentive towards the priority of safety.

The Alliance recommended requiring the utilities to study and quantify the risk of power line fires to provide more sophisticated analysis to insurance carriers as a means to reduce costs. The Alliance stated that catastrophe modeling techniques could reduce insurance costs as well as guide utilities in selecting cost effective safety measures. The Alliance also opposed including 2007 fire costs in the proposed balancing account

3.4. AT&T and California Cable and Telecommunications Association (CCTA)

These parties opposed the proposed inclusion of all legal and litigation costs in the balancing account for recovery from ratepayers without Commission reasonableness review. AT&T and CCTA explained that the proposed mechanism would have ratepayers at risk for nearly all attorneys' fees incurred by the utilities in pursuing claims against third parties, regardless of whether the claims were successful or even meritorious. AT&T and CCTA observed that the remaining applicants bear the burden of proving that the relief requested is just and reasonable, and that the applicants have not shown that utilities need additional incentives to pursue wildfire-related claims against third parties.

3.5. Ruth Henricks (Henricks)

Henricks challenged the remaining applicants' assertion of an insurance market failure, and argued that SDG&E's role in the 2007 fires caused the increase in insurance premiums. Henricks also opposed including the 2007 fire costs in the proposed balancing account.

4. Discussion

Pursuant to Public Utilities Code Section 451 each public utility in California must:

> 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.

The duty to furnish and maintain safe equipment and facilities is paramount for all California public utilities.

When initially considering this application, the assigned Commissioner and ALJ took the unusual step of issuing a ruling finding that the application presented significant issues which were not addressed and requiring that the applicants amend the application. As set forth above, specific issues were identified as requiring additional information:

> The issues raised in the protests are substantial and require that the application be amended prior to setting the procedural schedule for this proceeding. Specifically, the limitless potential for third-party claims, including fire suppression and environmental damage, all but invite governmental entities and everyone else affected by a wildfire to submit wildfire claims to utilities. The utilities, in turn, would have no financial motivation to defend such claims, and ratepayers, who ultimately must bear the cost of claims, are without any practical means of defense in the proposed scheme. Financial incentives for prudent risk management

> and safety regulation compliance are substantially undermined by the presumption of recovery from ratepayers. These issues and others raised in the protests must be addressed to provide an adequate information basis on which to set further proceedings in this docket. The applicants' reply, however, is limited to vague assertions and opposition to evidentiary hearings. Accordingly, at this point, the record does not include sufficient information on which to set further proceedings.[5]

To further assist the applicants when amending the application, the assigned Commissioner and ALJ, however, went on and explained their conceptual view of the essential elements of prudent wildfire risk management:

> To guide the utilities in amending the application, we offer our perspective on the essential components of a prudent wildfire risk management program. Fundamentally, the risk management program must be comprehensive; that is, all facets of risk reduction and liability funding must be considered. The current proposal appears to be solely aimed at providing a certain source of funding for any and all potential liability. Creating powerful financial and operational incentives for continuously reducing wildfire risk must be the primary focus of a wildfire risk management program. Identifying and mitigating wildfire risk requires immediate and serious utility management attention due not only to the potential financial imposition on the utility and ratepayers but also due to the human, economic, and environmental harm caused by wildfires. Utility management and employees must have demonstrable incentives to reduce the risk of wildfires.
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> Risk reduction efforts, however, often require new or redeployed resources, and can encompass multiple aspects of utility operations. Consequently, the parties should identify

[5] Assigned Commissioner and ALJ Ruling at 7, (December 21, 2009).

> which issues may be best considered in a proceeding with a wide scope, such as a general rate case. Creating limitations on liability through contracts, tariffs, or other means is a well-known technique for businesses such as public utilities to limit their potential financial exposure. The full range of insurance products must be analyzed and a package assembled that is a prudent mix of purchased liability insurance and utility continuing liability. The current application shows increasing retained liability in the form of deductibles or other retained obligations. Self-insurance is another approach that has been suggested for the utilities to consider. This approach, where a utility would set aside a sum as a protection against a potential loss, is more accurately described as risk retention because no external insurance is involved. Extensive analysis of wildfire probability and potential liability would be critical to demonstrate the soundness of this approach to risk management, and to quantify any funding amount to be included in regulated revenue requirement. Any self-insurance proposal must also properly align utility financial and operational incentives to reduce the need to call upon self-insurance or risk retention funds. Finally, although we have discussed traditional utility approaches to risk management, we do not intend to exclude innovative approaches. So long as our central goals of risk reduction and revenue requirement limitation are achieved, we are open to considering other approaches.

Thus the remaining applicants were instructed that the initial application failed to meet the Commission's requirements and that substantial revisions were necessary. The issues to be addressed included the potential for limitless costs to be assigned to ratepayers as well as proper incentives for risk management and safety regulation compliance.

The assigned Commissioner, when determining the scope of this proceeding, reiterated that the burden was on the applicants to demonstrate that

they had addressed all factual and legal issues necessary to justify the proposed balancing account, and that the proposed rates would be just and reasonable.

For the most part, the remaining applicants have not succeeded in remedying the defects in their proposal. However, with regard to payments made in inverse condemnation where the utility is not at fault, they have made a sufficient showing that it is reasonable for ratepayers to pay a portion of those costs. As stated in the remaining applicants Updated Amended and Restated Testimony:

> Even if a utility is in full compliance with the Commission's safety regulations and there is no proof of negligence, when utility equipment or facilities start a fire, the utility faces the prospect of inverse condemnation claims for all the ensuing damages. For a major wildfire, those claims can easily total billions of dollars. As discussed above, the magnitude of the damage caused by wildfires depends on factors such as weather conditions, population density, geography, and local fire-fighting resources, all of which are beyond the control of any utility. In this way, inverse condemnation has the potential to dramatically increase claims regardless of whatever precautionary measures the Utilities take.[6]

If a court decides that a claim may be brought in inverse condemnation, then the plaintiff need not prove that the utility was at fault. This makes it easier for a plaintiff to prevail. However, just because a claim may be brought in inverse condemnation does not mean that the utility was not at fault, only that the plaintiff does not have to prove fault.

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[6] Amended Testimony at 18.

As noted above, financial incentives for prudent risk management and safety regulation compliance are substantially undermined by a presumption of recovery from ratepayers. This would be true, even if only claims brought in inverse condemnation may be recovered through the WEBA. On the other hand, if the utility is found not to have been at fault for a fire, a presumption of recovery from ratepayers of payments made under that circumstance should not undermine proper risk management or safety regulation compliance. Indeed, in that situation, the payment of damages would be a cost of providing service that could potentially be recoverable from ratepayers where the amount of uninsured payments is large enough. The remaining applicants suggested a $10 million threshold per wildfire for determining the point above which payments can begin to be recovered from ratepayers, and we believe that is a reasonable figure.

Also as noted above:

> [t]he limitless potential for third-party claims, including fire suppression and environmental damage, all but invite governmental entities and everyone else affected by a wildfire to submit wildfire claims to utilities. The utilities, in turn, would have no financial motivation to defend such claims, and ratepayers, who ultimately must bear the cost of claims, are without any practical means of defense in the proposed scheme.

This would be especially true if third parties are able to bring claims in inverse condemnation. Accordingly, it is important to provide an incentive for the utilities to defend against invalid or excessive claims. To provide that incentive, we will authorize the remaining applicants to recover from ratepayers only 90% of those uninsured payments in excess of $10 million that are made in inverse condemnation where the utility is not at fault.

In order to implement this authorization, we need to consider how the utilities will make a showing that they are not at fault, how monies should flow from the WEMA to the WEBA, and how authorized sums should be recovered from ratepayers. In order to obtain an accurate accounting of how much money is at issue, we will authorize the remaining applicants to record into their WEMAs uninsured payments that are made in inverse condemnation, whether as a result of a court judgment or a settlement. However, in order for any sum to be recoverable from ratepayers, there must also be a finding that the utility was not at fault. We will require that such a finding be made before any amounts are moved from the WEMA to the WEBA. It is possible that such a finding might be made by a court or jury hearing a particular case in inverse condemnation, although a judgment might be rendered without such a finding. Where the court system makes no such finding or where there is a settlement, the Commission will have to determine whether the utility was at fault. Where there is a large wildfire, it is likely that this Commission will institute an investigation that results in a finding as to whether the utility was at fault. However, if none of the foregoing happens, the utility may request, in an appropriate proceeding, that the Commission make a finding that the utility was not at fault. Once there has been such a determination that the utility was not at fault, the utility may then transfer into the WEBA 90% of those payments for which such a finding has been made, except for the first $10 million of such payments per wildfire. This is similar to Commission's D.94-05-020 that authorized a 90/10 sharing mechanism between the ratepayers and shareholders.[7] Although not a precedent, that

[7] In Application 91-04-044, et al., the Commission adopts a new procedure for recovery of hazardous waste cleanup program expenses.

decision offers a reasonable compromise among the interested parties. Recovery of any amounts recorded in the WEBA from ratepayers will require an express authorization from the Commission in an appropriate proceeding.

5. Pre-July 29, 2010 Wildfire costs

Effective July 29, 2010, Resolution E-4311 authorized each utility to establish a memorandum account to record wildfire costs while this application was pending. The utilities were not authorized to recoup costs for fires that occurred before this effective date through their WEMAs.

SDG&E's presentation included the admission that it currently has available an alternative ratemaking opportunity to seek Commission authorization to recover uninsured third-party liability for wildfire costs from ratepayers, namely, the Z-factor memorandum account and application. In fact, SDG&E has recorded its uninsured 2007 wildfire costs in both the Z-factor memorandum account and the memorandum account established for this proposed balancing account. Therefore, we conclude that SDG&E should remove these 2007 wildfire costs from its WEMA, and instead, if it wishes to seek recovery, do so through the Z-factor.

6. Comments on Alternate Proposed Decision

The proposed alternate of Commissioner Simon in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on ___________, and reply comments were filed on ______________ by _______________.

7. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

Findings of Fact

1. The assigned Commissioner and ALJ rulings identified serious deficiencies in the initial application.

2. In their amended application, the remaining applicants for the most part did not meaningfully address the deficiencies identified in the initial application.

3. The amended application continues to provide for potentially unlimited uninsured wildfire costs to be passed on to ratepayers.

4. The amended application does not create incentives to reduce the risk of wildfires.

5. There is a risk that a utility will be required to pay damages in inverse condemnation for a wildfire for which it is not at fault.

6. Authorizing a utility to recover from ratepayers some of its uninsured wildfire costs where the utility is not at fault should not undermine incentives to reduce the risk of wildfires.

7. Payments of damages for wildfires made in inverse condemnation and where the utility is not at fault can properly be considered a cost of service appropriately considered in setting rates.

8. The remaining applicants proposed a $10 million threshold per wildfire, above which point uninsured payments could be recoverable from ratepayers. This is a reasonable threshold figure, although it should be subject to the other requirements of this decision.

9. To provide an incentive for the utilities to defend against invalid or excessive claims brought in inverse condemnation, the remaining applicants should be authorized to recover from ratepayers only 90% of those uninsured payments that are made in inverse condemnation where the utility is not at fault that exceed the $10 million threshold per wildfire.

10. Where there is a court judgment in inverse condemnation, the court or jury may, or may not, make a finding as to whether the utility was at fault.

11. Where there is no such finding by a court or jury, or where there is a settlement based on inverse condemnation, this Commission will need to make a finding that the utility was not at fault in order for the payment to be recoverable from ratepayers.

12. SDG&E admitted that other ratemaking mechanisms are available under which SDG&E may seek recovery of pre-July 29, 2010, uninsured wildfire costs from ratepayers.

Conclusions of Law

1. Remaining applicants have met some of their burden of justifying the proposed balancing account, and that the rates resulting from recovery of the balancing account would be just and reasonable.

2. The remaining applicants should be authorized to record into their WEMA uninsured payments where those payments are made in inverse condemnation, whether as a result of a court judgment or a settlement.

3. Once there has been a finding by a court or this Commission that the utility was not at fault, the utility may then transfer from the WEMA to the WEBA 90% of those payments that are made in inverse condemnation where the utility is not at fault that exceed the $10 million threshold per wildfire.

4. The balance in the WEBA should only be recovered from ratepayers upon approval by the Commission in an appropriate proceeding.

5. The Commission did not authorize the utilities to record in their WEMAs costs for fires that occurred before July 29, 2010, the effective date of their WEMAs.

6. SDG&E should remove 2007 wildfire costs from its WEMA, and instead, if it wishes to seek recovery, do so through the Z-factor.

7. This application should be approved in part and denied in part.

O R D E R

IT IS ORDERED that:

1. The application by San Diego Gas & Electric Company and Southern California Gas Company for a Wildfire Expense Balancing Account is approved to the extent set forth in the following Ordering Paragraphs, and is otherwise denied.

2. San Diego Gas & Electric Company and Southern California Gas Company are authorized to continue the Wildfire Expense Memorandum Accounts authorized by Commission Resolution E-4311, but may retain in them only those amounts authorized by this decision. .

3. San Diego Gas & Electric Company must remove all 2007 wildfire costs from its Wildfire Expense Memorandum Account.

4. San Diego Gas & Electric Company and Southern California Gas Company are authorized to record into their Wildfire Expense Memorandum Accounts uninsured payments made in inverse condemnation, whether as a result of a court judgment or a settlement.

5. Once there has been a finding by a court or this Commission that the utility was not at fault, the utility may then transfer from the Wildfire Expense Memorandum Account to the Wildfire Expense Balancing Account 90% of those payments that are made in inverse condemnation where the utility is not at fault that exceed the $10 million threshold per wildfire.

6. Any balance in a Wildfire Expense Balancing Account may only be recovered from ratepayers upon approval by the Commission in an appropriate proceeding. If no other proceeding has been designated, San Diego Gas & Electric Company and Southern California Gas Company may file an application for such recovery.

7. Within 30 days of the effective date of today's decision, San Diego Gas & Electric Company and Southern California Gas Company shall each file a Tier 1 Advice Letter to modify their Wildfire Expense Memorandum Accounts to conform to this decision and to establish Wildfire Expense Balancing Accounts consistent with this decision.

8. Application 09-08-020 is closed.

This order is effective today.

Dated ___________________, at San Francisco, California.