



FILED

12-21-09

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)

RULING OF THE ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE DIRECTING APPLICANTS TO AMEND APPLICATION AND ALL PARTIES TO MEET AND CONFER

1. 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 this 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." "Wildfires" are defined to include any uncontrolled fire over one acre in size.

Specifically, the applicants seek permission to create a balancing account in which to record and subsequently recover from ratepayers the following wildfire costs:

1. Payments to third parties for damage or loss claims associated with wildfires.
2. Outside legal expenses associated with any third-party claim, including governmental claims.
3. Payments to government authorities for fire suppression costs.

4. Payments to government authorities for environmental damage.
5. Payments to government authorities for “claims arising from a wildfire.”
6. Changes in wildfire insurance premium amounts from the amount assumed in the last general rate case.
7. Interest on the account at a rate up to and including the utility’s cost of capital.

The utilities seek Commission support for legislation to allow financing a large recorded account balance with debt secured by a dedicated rate component. The utilities also request that the Commission create a rebuttable presumption that the amounts so recorded would be recovered from ratepayers absent a demonstration that the utility intentionally caused the harm which resulted in the expense.

In support of their application, the utilities presented testimony showing the increases in wildfire insurance premiums and deductibles they have experienced since their last general rate case:

Utility	2009			2010		
	Liability Limits	Deductible	Premium	Liability Limits	Deductible	Premium
SDG&E/ SoCal Gas	\$1,200 million	\$ 1 million	\$13.6 million	\$800 million general liability; \$399 million wildfire liability	\$35 million for wildfires	\$55.2 million
PG&E	\$1,095 million	\$10 million	\$8.8 million	\$950 million	\$18.75 million	\$17 million
Edison	\$650 million	\$2 million	\$7.0 million	\$550 million general liability; \$500 million wildfire	\$10 million wildfire; \$2 million general liability	\$16 million

2. Protests to the Applications

Disability Rights Advocates protested the application as (1) a threat to the safety of all Californians, but particularly of disabled persons, and (2) a financial imposition that will disproportionately impact disabled persons.

Disability Rights Advocates explained that “wildfires, like all other emergencies, pose particular hazards for people with disabilities, who are more likely to need assistance in evacuating their homes but who are especially likely to be cut off from the telecommunications networks that would enable them to summon assistance.” Due to the heightened vulnerability of its constituents, Disability Rights Advocates questioned what incentive the applicants would have to maintain or ideally improve the safety of their operations, if the Commission granted the application and allowed all wildfire costs to be recovered from ratepayers.

Disability Rights Advocates also explained that disabled persons may experience “disastrous consequences” such as disconnection for inability to pay due to the disproportionate financial effects of the proposed balancing account. Disability Rights Advocates stated that customers with disabilities have relatively low incomes and have trouble paying current rates. These customers are also relatively heavy energy users due to spending more time in their homes and the need for adaptive medical, mobility, and telecommunications devices which rely on electricity.

Disability Rights Advocates, however, is “sympathetic” towards the increased wildfire insurance premiums being imposed on the utilities, and recommends that the Commission and utilities diligently investigate all reasonable alternatives to reduce or eliminate these increases.

On October 5, 2009, the Commission's Consumer Protection and Safety Division (CPSD) filed its protest to the application. CPSD advised that the Commission should reject or require substantial modification to application. CPSD explained that the utilities, "if fully insured by ratepayers" for all wildfire losses, will have no incentive to maintain their systems in a safe and reliable state. CPSD concluded that the applicants' requested relief would create a "perverse incentive" that would result in deterioration of the safety and reliability of applicants' systems because applicants would incur no consequences for lack of "proper and full compliance with Commission Rules and General Orders."

The Division of Ratepayer Advocates (DRA) protested the application and also focused on the potential for decreased safety and proposed limitless ratepayer liability. DRA strongly opposed as contrary to public policy the applicants' proposal that ratepayers pay claims that arise from the utilities' negligence, gross negligence, violation of general order, or state or federal law. DRA recommended that these types of claims remain the responsibility of the culpable utility.

DRA next explained that utilities are now susceptible to unfounded claims of wildfire liability due to perceived capacity to pay claims. Currently, insurance carriers, which will ultimately pay any successful claims, have both the incentive and the means to aggressively defend against frivolous claims. In contrast, the utilities' proposal to make ratepayers bear all costs would leave ratepayers defenseless.

Following a similar rationale, DRA stated that the proposed balancing account would undermine the current incentives to the utilities to safely maintain their infrastructure.

DRA also raised two ratemaking issues. DRA opposed including costs properly allocated to transmission in the balancing account because these costs should be recovered through transmission rates set by the Federal Energy Regulatory Commission. DRA next opposed allowing litigation costs in the balancing account as litigation costs are reflected in revenue requirement on a forecasted basis. Allowing recovery again through the balancing account would amount to double recovery.

The Mussey Grade Road Alliance¹ protested the application, which they describe as: “a joint proposal to allow utilities to collect reimbursement from [ratepayers] to pay damages for fires the utilities themselves cause.” The Alliance urged the Commission to balance risk management measures to minimize overall risks and costs to the public.

The Alliance stated that the proposed “blanket shielding” of utilities from wildfire liability will create financial disincentives for safe operation. Utilities will have no justification for increased safety measures to reduce wildfires if fully insulated by ratepayers from all significant financial consequences of utility facility-ignited wildfires. The Alliance stated that a similar feedback loop existed with insurance premiums and would be upended by the proposed ratepayer recovery. Safe operation is rewarded with lower insurance premiums and losses are penalized with higher premiums. Making a utility indifferent to premium prices creates a disincentive for safe operations.²

¹ The Mussey Grade Road Alliance describes itself as a “non-profit, grass roots, community-based advocacy organization dedicated to the preservation and protection of Mussey Grade Road and environs in Ramona, California.”

² The Alliance also notes that the proposed balancing account treatment for all costs could undermine the insurance industry providing reasonably-priced wildfire insurance products at all.

The Alliance concluded that the utilities should outline serious measures to reduce power line fires as the best course for protecting their financial integrity, and that the Commission should support this goal by retaining appropriate incentives.

3. Applicants' Reply to Protests

On October 15, 2009, the applicants filed a reply to the protests. The applicants stated that they do not need financial incentives to maintain safe and reliable systems because providing such service is their "core mission" and their "reputations" would suffer if they failed to mitigate fire risk. The applicants argue that all future costs of third-party claims should be recoverable from ratepayers because the Commission has historically allowed insurance costs against third-party claims in rates. The applicants further contend that compliance with Commission fire safety regulations is not relevant for cost-recovery purposes and thus it would be unreasonable to preclude utilities from recovering the costs of fires caused by non-compliance.

Procedurally, the applicants opposed the request for evidentiary hearings and stated that the issues raised in this proceeding are largely ones of policy that can be fully addressed with written testimony.

4. Application Requires Amendment

Although unusual at this early stage in the proceeding, we find that direction to the applicants is required now to set the stage for an efficient proceeding. As presented, the ratemaking relief requested in the application is extraordinary and gives rise to serious issues of safe utility operations which, as explained below, are not adequately addressed.

The Commission sets each applicant's revenue requirement using a forecasted test year, with subsequent annual planned adjustments, for a

three-year rate period. Unplanned post-test year adjustments to revenue requirement are unusual and require a compelling demonstration of need. At a minimum, an applicant must demonstrate that the amount at issue is material and not offset by other post-test year cost decreases. A balancing account, as proposed by applicants, is extraordinary and must be carefully justified by factual circumstances manifestly beyond the control of utility management.

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. Essential Elements of 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.

Risk reduction efforts, however, often require new or redeployed resources, and can encompass multiple aspects of utility operations. Consequently, the parties should identify 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.

6. Parties to Meet and Confer

All parties are directed to meet and confer to cooperatively develop ideas for addressing the financial impact of wildfires on the utilities. Proposals should provide utility management sufficient incentive to manage risk, but respect the shareholders' opportunity to earn a reasonable return on their investment.

Alternatives to the proposed balancing account should also be considered. The Commission has adopted a number of mechanisms to assist public utilities when actual circumstances differ substantially from adopted general rate case forecasts. Memorandum accounts are one such mechanism; adjustments to the adopted post-test year ratemaking mechanisms are another.

If the parties would like a mediator to facilitate the meet-and-confer, please so inform the assigned Administrative Law Judge (ALJ), who will ask the Chief ALJ to assign another ALJ to act as a mediator.

At the conclusion of the meet-and-confer efforts but no later than 45 days after the date of this ruling, the parties should file and serve, ideally one joint, status report including proposed next procedural steps.

Therefore, **IT IS RULED** that:

1. As presented, the application and reply fail to address significant issues identified in the protests which are essential to the relief requested, and the application must be substantially amended to move forward.

2. The parties must meet and confer on potential amendments and, ideally, bring forward a consensus proposal.

3. The parties shall file and serve a status report no later than 45 days after the date of this ruling.

Dated December 21, 2009, at San Francisco, California.

/s/ TIMOTHY ALAN SIMON
Timothy Alan Simon
Commissioner

/s/ MARIBETH A. BUSHEY
Maribeth A. Bushey
Administrative Law Judge

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated December 21, 2009, at San Francisco, California.

/s/ JOYCE TOM

Joyce Tom