

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U 902-M), Southern California Edison Company (U 338-E), Southern California Gas Company (U 904-G) and Pacific Gas and Electric Company (U 39-M) for Authority to Establish a Wildfire Expense Balancing Account to Record for Future Recovery Wildfire-Related Costs

Application No. 09-08-020
(Filed August 31, 2009)

MOTION TO REQUEST A PUBLIC PARTICPATION HEARING IN SAN DIEGO, CALIFORNIA AND A SCHEDULE REVISION

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MOTION TO REQUEST A PUBLIC PARTICIPATION HEARING IN SAN DIEGO, CALIFORNIA AND A SCHEDULE REVISION

Pursuant to Rule 11.1(a) of the CPUC Rules of Practice and Procedure, the Mussey Grade Road Alliance (Alliance) files this motion requesting the Commission schedule a Public Participation Hearing (PPH) in San Diego, set the PPH at least two weeks prior to the filing of opening briefs in this proceeding in order to allow the results to be used in briefing, and modify the briefing schedule to accommodate the PPH.

Pursuant to Rule 11.1(g), the Alliance requests a ruling on this motion by February 1st in order to afford the least disruption of the schedule and to allow parties to plan their activities accordingly

This motion replaces the oral motion for a PPH made by the Alliance on January 11, 2012 in the evidentiary hearings in this proceeding.¹ This motion also contains new information which came to light in the course of the three days of evidentiary hearings conducted by ALJ Bushey from January 11 to January 13, 2012, and which is relevant to the motion.

HISTORY

This motion is not the first request for a PPH in this proceeding. However, as far as the Alliance is aware, no request has been ruled on to date in this proceeding granting or denying any request for a PPH. At the prehearing conference held September 10, 2010², ALJ Bushey brought up the issue of the PPH, remarking that the suggested procedural schedule put forward by the applicants in WEBA did not include any PPH. She asked for positions of parties on the need and scheduling of public hearings.³

The majority of parties in this proceeding agreed to the need for Public Participation Hearings during the prehearing conference, held on September 10, 2010⁴ Public Participation

¹ A.09-08-020; Evidentiary Hearings; Transcript; Volume 1 (Jan. 11, 2012); p. 2, pp.12-13. (Transcript, V.1)

² A.09-08-020; Pre-hearing Conference, September 10, 2010; Transcript, p. 3.

³ Id; "One thing I see that's actually not on that list is public participation hearings. I don't know if the parties have a position on whether or not we need those and, if so, where they might be held. But that's something that you might address."

⁴ A.09-08-020; Pre-Hearing Conference, September 10, 2010; Transcript.

Hearings were supported by DRA,⁵ CPSD,⁶ TURN,⁷ the Alliance⁸, and Disability Rights Advocates.⁹ No party opposed PPHs. The ALJ told the parties at least twice that a decision regarding PPHs would be taken up in the Scoping Memo¹⁰ Two Scoping Memos have now been issued in this proceeding: one on June 8, 2011 and one on September 29, 2011.¹¹ Neither scoping memo mentioned nor made any determination regarding Public Participation Hearings. The Alliance reiterated its request for Public Participation Hearings in a September 1, 2011 email to parties regarding scheduling discussions concerning the due date of testimony.

The importance of Public Participation Hearings, and the desirability of making PPHs both more highly attended and clarifying how their results will be used by the Commission in its decision-making process was highlighted at a Commission workshop held on September 13, 2011,¹² briefly addressed by Commissioner Timothy Simon, also the Assigned Commissioner for this proceeding and which the Alliance monitored online.

On December 2, 2011, SDG&E served its rebuttal testimony, which for the first time in this proceeding revealed its intent to recover uninsured costs of the 2007 wildfires from the ratepayers of San Diego County.¹³ TURN, CforAT, and the Alliance considered this to be substantive new testimony that constituted an entirely new proposal in this application, and filed a motion to strike portions of this testimony.¹⁴ This motion was subsequently denied.¹⁵

Substantive new information regarding SDG&E's plan to bill San Diego ratepayers for its 2007 wildfire litigation and other costs in excess of its insurance coverage came to light during the course of the evidentiary hearings held from January 11th to January 13th, 2012. Specifically, should

⁵ Id; p. 7.

⁶ Id; p. 8.

⁷ Id; p. 9.

⁸ Id; p. 10.

⁹ Id; p. 13.

¹⁰ Id; pp. 80, 92.

¹¹ Scoping Memo and Ruling of the Assigned Commissioner, June 8, 2011; Assigned Commissioner Amended Scoping Memo and Ruling, September 29, 2011

¹² NOTICE OF WORKSHOP ON PUBLIC PARTICIPATION, SEPTEMBER 13TH 2011, 1:30 pm to 4:30 pm, California Public Utilities Commission Auditorium, State Office Building, 505 Van Ness Avenue San Francisco, CA 94102

¹³ A.09-08-020; SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA GAS COMPANY REBUTTAL TESTIMONY; December 2, 2011; p. 15 (Rebuttal Testimony)

¹⁴ A.09-08-020; TURN's, CforAT's, and MGRA's Motion to Strike a Portion of the San Diego Gas & Electric Company and Southern California Gas Company Rebuttal Testimony; December 16, 2011.

¹⁵ A.09-08-020; ASSIGNED COMMISSIONER'S RULING GRANTING MOTIONS TO WITHDRAW; pp. 5-6.

WEBA be approved by the Commission, SDG&E testimony under cross examination revealed that:

- The costs currently paid out for the 2007 fires and for which SDG&E will seek recovery under WEBA are **\$62 million**.¹⁶
- SDG&E's current projection for costs it will seek from ratepayers for the 2007 fires under WEBA is **\$463.9 million**.¹⁷
- SDG&E has stated to its shareholders that it considers recovery of excess 2007 fire costs a "probable outcome".¹⁸

During the evidentiary hearings, the question of a Public Participation Hearing was also addressed.¹⁹ The Alliance requested that a PPH be included in this proceeding,²⁰ and requested that the ruling be made during the hearings.²¹ The response by ALJ Bushey indicated her belief that "there had been other requests for public participation hearings in this proceeding and that these had been denied."²² However, in its review of the record for this proceeding, the Alliance has found no indication that any ruling has ever been made regarding Public Participation Hearings. Additionally, CforAT expressed a desire for clarification of PPH scheduling,²³ and Ruth Henricks expressed support for a PPH,²⁴ while TURN requested that the schedule be changed so that results from a PPH could be included in briefing.²⁵

DISCUSSION

The matter of public participation hearings in this proceeding has never been ruled on by the Commission even though public participation hearings have been requested. Because the potential

¹⁶ Transcript, V2, pp. 275-277.

¹⁷ Id.

¹⁸ Id; p. 362.

¹⁹ Due to the fact that Southern California Edison and Pacific Gas & Electric are no longer part of the WEBA application, pursuant to Assigned Commissioner's Ruling, January 19, 2011, SDG&E is the only utility remaining in the A. 09-08-020 process. Consequently the request for a single PPH in San Diego is appropriate at this time.

²⁰ Transcript, V1, p. 2.

²¹ Transcript, V1, pp. 12-13.

²² Id.

²³ Transcript, V3, p. 580.

²⁴ Id; pp. 580-581.

²⁵ Id. p. 581.

costs to SDG&E ratepayers amount to hundreds of millions of dollars, the issue of the participation of the public in this application is urgent and crucial.

It is safe to assume that the public does not know about WEBA or understand its implications. Without public participation hearings, the public may never know until it is too late what they may be required to pay if this mechanism is approved. Without public participation hearings the Commission will remain ignorant of the views of the public. The lack of such a hearing would be even more egregious in light of the fact that San Diegans have suffered through major fires ignited by SDG&E in 2007, the very uninsured fire losses that the utility hopes to recoup through its customers.

It would be unfair for the Commission to take up this application for decision without affording those who would bear the burden of some half billion potential dollars of wildland fire costs incurred by SDG&E to be able to tell the Commission what they think of this proposal. It would be unfair because the Commission, which obviously supports the idea of public participation hearings and has instituted a workshop process to make those hearings more effective, would be ignoring this important tool in its toolbox that would benefit ordinary people. Denying a public participation hearing in this proceeding, with so much at stake, would signal to the public that the Commission does not really support the people on the ground who pay the bills and suffer the consequences of Commission decisions, despite the Commission's rhetoric to the contrary.²⁶

The inclusion of a PPH in this proceeding, while it may have some impact on the present schedule, is without a doubt necessary for the people of San Diego to understand just what financial burden will be placed on them should WEBA be approved. In this time of high unemployment and shrinking home values in San Diego County, the people who will pay for fires ignited by SDG&E must be able to communicate to the CPUC their opinions of what they are being requested to pay.

Over the last two months we have gone from a situation where we believed that under WEBA ratepayers were faced with an abstract potential threat for theoretical amounts of money – to

²⁶ NOTICE OF WORKSHOP ON PUBLIC PARTICIPATION, SEPTEMBER 13TH 2011, 1:30 pm to 4:30 pm, California Public Utilities Commission Auditorium, State Office Building, 505 Van Ness Avenue San Francisco, CA 94102; "CPUC values and welcomes input from all interested parties, in order to make better informed decisions that reflect the views of the public it serves. As such, one of its goals is to increase public participation."; p. 2.

a concrete situation where there has been a predicted “probable outcome” by SDG&E that the ratepayers will be asked to very soon spend up to \$500 million on the utility’s uninsured legal and other costs. This has all the appearances of “bait and switch”, and if this is an unfair characterization then SDG&E has only itself to blame – nothing has prevented it from being explicit regarding its intentions for 2007 fire costs from the time that its original application was filed in 2009. If it wishes to correct any misimpressions (if indeed they are misimpressions) then it should welcome public scrutiny in the form of a Public Participation Hearing and accept the delay that this may cause.

Likewise, the Commission risks being tarred with charges of collusion if it “greases the skids” for the rapid disposition of this proceeding without public comment after such recent dramatic revelations on the part of SDG&E. After the disaster in San Bruno, the Commission can ill-afford to give such an impression if it wishes to regain the public’s trust.

An alternative to the actions requested in this motion would be denial of this application on the grounds that SDG&E’s intent to collect ratepayer money for uninsured costs of the 2007 catastrophic wildland fires ignited by the company was not made explicit in the original or amended applications. This would obviate the need for a PPH, and would be the optimal way to expedite the conclusion of this proceeding.

Respectfully submitted this 17th day of January, 2012,

By: /S/ **Diane Conklin**

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