



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Application of San Diego Gas & Electric
Company (U 902 E) for Authorization to
Recover Costs Related to the 2007 Southern
California Wildfires Recorded in the
Wildfire Expense Memorandum Account
(WEMA)

Application 15-09-010
(Filed September 25, 2015)

**MOTION FOR LIMITED PARTY STATUS OF COX COMMUNICATIONS, INC.
IN PHASE I**

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I. Introduction

Pursuant to Rules 1.4 and Rule 11.1(b) of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Cox Communications California, LLC and Cox California Telecom, LLC (U-5684-C) (together, “Cox”) respectfully moves for limited party status in Phase I of the above-captioned proceeding. Cox seeks limited party status so that it may file a Motion to Strike certain false and defamatory statements that San Diego Gas & Electric Company (“SDG&E”) included in its briefs in this proceeding stating that Cox’s actions indisputably caused the Guejito Fire and that Cox never inspected its facilities.¹ These false statements are not just injurious to Cox’s business reputation, they are also unfair to the Commission’s decision-making process and to SDG&E ratepayers. To the extent that SDG&E seeks to shift some of its WEMA costs to California ratepayers based on these false statements, those efforts must be rejected. The Commission must have an accurate record on which to base

¹ Cox is not currently a party to this proceeding but, as required by Rule 11.1(b), this motion “is accompanied by a motion, pursuant to Rule 1.4, to become a party.” Because the statements that are the subject of this motion were only recently discovered, this motion is timely filed. Cox did not learn of SDG&E’s statements in its briefs until May 2017. *See* accompanying motion to strike, Declaration of Randy W. Gimple (“Gimple Decl.”) ¶ 6 (attached as Appendix 2 to concurrently filed Motion to Strike). Rule 11.1(b) does not set a deadline for filing a motion to strike and Cox brought the motion promptly after (i) learning about the false statements SDG&E was making in this proceeding and (ii) attempting to resolve the issue with SDG&E informally. *See id.* ¶¶ 7, 9-11 (attaching relevant correspondence with SDG&E).

its decision. Cox should be permitted to participate as a limited Party in Phase I of A.15-09-010 and file the Motion to Strike, the outlines of which are described herein.²

II. Background

The Application by SDG&E to recover in rates approximately \$379 million of costs related to the 2007 Southern California wildfires that have been recorded in its Wildfire Expense Memorandum Account (“WEMA”) presents important issues to the ratepayers of this State. The Commission’s review will examine the reasonableness of SDG&E’s conduct and operations, practices and procedures, as well as the actions and decisions that gave rise to the costs that SDG&E seeks to recover.³

Cox would not ordinarily participate in such a proceeding, but has determined that it must do so in this case in order to assure that a factually accurate record is presented to the Commission. Cox’s participation is also necessary to safeguard its business reputation and to protect other existing and prospective business interests. Cox attempted to resolve these issues informally with SDG&E before filing this motion to strike.⁴ However, notwithstanding Cox’s efforts, SDG&E failed to voluntarily eliminate the false statement from its briefs.⁵

SDG&E’s initial Application, filed in September 2015, states that, “[t]he Guejito Fire is alleged to have started when a Cox Communications lashing wire came into contact with an SDG&E conductor.”⁶ Cox does not take issue with this characterization. Importantly, however,

² Cox reserves its right to seek full party status in Phase II of the WEMA proceeding.

³ *Scoping Memo and Ruling of Assigned Commissioner and Assigned Administrative Law Judge* (“Scoping Memo”) at 4 (issued April 11, 2016).

⁴ See concurrently filed Cox’s motion to strike, Appendix 2 (Gimple Decl. at ¶¶ 7-11, Exhibits C-G).

⁵ *Id.*

⁶ *Application of San Diego Gas & Electric Company (U 902 E) for Authorization to Recover Costs Related to the 2007 Southern California Wildfires Recorded in the Wildfire Expense Memorandum Account* (“Application”) at 2.

the *reason* contact occurred between facilities has never been established and has always been a point of contention between SDG&E and Cox. Specifically, it was never determined whether the lashing wire was broken before the windstorm occurred (as SDG&E contends), or broke when the intact fiber optic line, messenger cable and lashing wire assembly was blown up into the power lines during the extraordinary wind event that caused dozens of fires throughout Southern California (as Cox contends). Indeed, in its public statement accompanying its settlement with the Commission of its investigation into the fire, Cox stated that “We believe that our line was properly maintained and intact prior to the Santa Ana winds in 2007.”⁷ Cox continues to maintain that its facilities were properly installed, maintained, and inspected.

We were, thus, surprised to learn of SDG&E’s contentions in its Phase I Opening Brief (filed on March 24, 2017), that Cox “never inspected” its attachments and the accompanying allegation that “[t]here is no dispute that the Guejito Fire was caused by the fact that Cox’s lashing wire broke and was blown upwards into SDG&E’s conductors, creating arcs and starting the fire.”⁸

To the contrary, Cox very much disputes these statements about the cause of the fire. As surprising as the statements themselves are, SDG&E’s reliance on the preliminary reports from the I.08-11-007 proceeding (“Guejito OII”) as the basis for making them is even more surprising.⁹ Just 18 months ago, SDG&E urged the Commission *to not use* those materials because they were not reliable. As SDG&E told the Commission in its response to protests to

⁷ See Onell R. Soto, *SDG&E, Cox Settle Wildfire Case*, The San Diego Union Tribune (Oct. 3, 2009) (available at <http://www.sandiegouniontribune.com/sdut-san-diego-gas-amp-electric-and-cox-2009oct30-story.html>).

⁸ See SDG&E Opening Brief (filed March 24, 2017)(“SDG&E Br.”) at 3 and 59 (emphasis added). See also Appendix 1 to accompanying motion to strike for a complete list of brief excerpts to be stricken.

⁹ See, e.g., *id.* at 8.

the Application, the “allegations contained in the CPSD¹⁰ Report are merely allegations and have never been proven or adopted by the Commission.”¹¹ SDG&E further noted that the parties in the Guejito OII – including itself and Cox – proffered evidence that controverted the CPSD Report. This conflicting evidence in the record has never been weighed by the trier of fact, however, because the case settled before the hearing.¹² Thus, in cautioning the Commission to avoid relying on the record of the earlier investigation proceedings, SDG&E noted that the “testimony and evidence developed in the OIIs were never tested through cross-examination, nor were objections made or resolved with respect to that testimony and evidence.”¹³

It is, thus, outrageous (not to mention hypocritical and self-serving) for SDG&E to cite this evidence – which it previously discredited – to deflect blame from itself onto Cox in order to recover its WEMA expenses. As SDG&E well knows (and as is explained below), the record from the Guejito OII demonstrates that SDG&E’s theory (that the lashing wire broke first) is undermined by the investigator’s sworn testimony. At a minimum, SDG&E’s false statements that Cox never inspected its facilities, and that it is undisputed or has been conclusively established that Cox’s broken lashing wire caused the Guejito Fire should be stricken from the record.

III. Standard for Party Status

¹⁰ The CPUC’s Consumer Protection and Safety Division is the predecessor organization to today’s Safety and Enforcement Division.

¹¹ SDG&E Reply to Protests (filed Nov. 9, 2015) at 7. Although the Hearing Officer found that exhibits from the underlying investigations “could be relevant to this proceeding” and ordered their submission as “supporting documents” in the Commission’s E-File system, notably she also ruled that “[n]one of these exhibits will be admitted to the evidentiary record of this proceeding without further steps by the parties.” Scoping Memo at 10. Cox maintains that SDG&E’s arguments regarding the unreliability of the record in I.08-11-007 remain persuasive.

¹² SDG&E Reply to Protests at 6-7.

¹³ *Id.* at 7.

Rule 1.4(a)(4) provides that “[a] person may become a party to a proceeding by filing a motion to become a Party.” Rule 1.4(b) requires that “[a] person seeking party status by motion pursuant to subsection (a)(3) or (a)(4) of this rule shall:

(1) fully disclose the persons or entities in whose behalf the filing, appearance or motion is made, and the interest of such persons or entities in the proceeding; and

(2) state the factual and legal contentions that the person intends to make and show that the contentions will be reasonably pertinent to the issues already presented.

As described above, Cox’s proposed participation as a party in this proceeding clearly satisfies the requirements of Rule 1.4. Indeed, Cox’s interest in correcting the spurious statements made by SDG&E in this proceeding goes beyond just protecting its own reputation and the interest of its owners, which would be grounds enough for granting Cox’s Motion. To the extent that SDG&E seeks to rely on these false statements as a basis to recoup through rates its WEMA costs, Cox’s presentation is clearly relevant to the Commission’s analysis – especially since there is no other party in this proceeding offering Cox’s perspective.¹⁴

Moreover Rule 1.4(c) of the Commission’s Rules of Practice and Procedure allows the Commission “where circumstances warrant . . . [to] limit the degree to which a party may participate in the proceeding” In this case Cox is requesting party status late in Phase I of the docket and does not wish to adversely impact the schedule in the docket by seeking more fulsome participation rights. Nevertheless, as explained above, Cox believes that its participation is critical to ensuring that the Commission has an accurate record on which to base

¹⁴ SDG&E Reply Brief at 62 (“The fact of the matter is that *no party in this case* has argued (or supported with evidence) that “the two sets of facilities” (SDG&E’s and Cox’s) made contact with one another under the stress of wind.”) (emphasis added) (citations omitted).

its decision and that Cox's business reparation is protected. The Commission has granted limited party status under similar circumstances.¹⁵

THEREFORE, Cox respectfully requests that it be granted party status in this proceeding.

Respectfully submitted this 5th day of July 2017.

/s/

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¹⁵ See, e.g., A.06-08-010, ALJ rulings of November 12, 2008 granting limited party status to Independent Energy Producers, and November 26, 2008, granting limited party status to Geothermal Energy Association (granting limited party status "at this late stage of [a] proceeding"); see also I.14-05-012, Email Ruling of November 15, 2016 allowing Suddenlink to file in the proceeding without acquiring permanent party status.

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**[PROPOSED] ADMINISTRATIVE LAW JUDGE’S RULING ON COX’S MOTION FOR
LIMITED PARTY STATUS IN PHASE I**

On July 5, 2017, Cox Communications California, LLC and Cox California Telcom, LLC (U-5684-C) (together, “Cox”) respectfully moved for limited party status in Phase I of A-15-09-010. Cox has a direct and significant interest in this proceeding, and its intervention will not unduly broaden the issues under consideration.

Therefore, **IT IS RULED** that, good cause appearing,

1. The request of Cox for limited party status in Phase I of Application 15-09-010 is granted.
2. Cox shall serve all parties of record and any other entities designated for service with any pleadings it files in this proceeding.

Dated _____, 2017 at San Francisco, California.

Administrative Law Judge