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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U902M) for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2012.

Application 10-12-005
(Filed December 15, 2010)

And Related Matter.

Application 10-12-006

**RULING OF THE ADMINISTRATIVE LAW JUDGE
REGARDING MOTION TO ENSURE MAXIMUM PUBLIC PARTICIPATION**

1. Summary

This ruling addresses the motion of the Black Economic Council, the National Asian American Coalition, and the Latino Business Chamber of Greater Los Angeles concerning the joint public participation hearings that have been noticed for Southern California Gas Company and for Southern California Edison Company, and which are to be held on June 8, 2011, and June 9, 2011.

Based on the reasons set forth below, the motion of the Joint Parties is denied.

2. Background

On May 5, 2011, the Black Economic Council, the National Asian American Coalition, and the Latino Business Chamber of Greater Los Angeles (Joint Parties) submitted their "Motion to Ensure Maximum Public Participation in a Cost Effective Manner for the Sempra and Edison Public Participation Hearings" (motion) to the Docket Office for filing in the above consolidated proceedings. In

a May 6, 2011 e-mail ruling from the assigned Administrative Law Judge (ALJ), the Joint Parties were directed to re-serve the motion because the motion that was served on May 5, 2011 did not include the e-mail referenced in the motion. The Joint Parties then re-served the motion with the e-mail attachment on May 6, 2011. Other filing deficiencies were then corrected by the Joint Parties, and the motion was then accepted for filing by the Docket Office on May 12, 2011 and given a filing date of May 5, 2011. (*See* Rule 1.14 of the Commission's Rules of Practice and Procedure (Rules)).

The ALJ's e-mail ruling of May 6, 2011 also notified the parties in these consolidated proceedings that the time for responding to the motion would be shortened to six calendar days once the motion was re-served. In a follow-up e-mail ruling on May 12, 2011, the ALJ informed the service list in these consolidated proceedings that due to the filing of a similar motion in the proceeding involving Southern California Edison Company (SCE) in Application (A.) 10-11-015 and a ruling by ALJ Darling in that proceeding allowing responses to be filed by May 13, 2011, that the responses to the motion in these consolidated proceedings would also be due on May 13, 2011.

Responses in opposition to the motion were filed by SCE on May 12, 2011, and by San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) on May 13, 2011.

The motion in these consolidated proceedings, and in A.10-11-015, involves the joint public participation hearings that are to be held for SoCalGas and SCE. In an April 28, 2011 ruling in these consolidated proceedings, the ALJ ruled that two joint public participation hearings would be held for SoCalGas

and SCE on June 8, 2011 in San Bernardino, and on June 9, 2011 in Garden Grove.¹

3. Discussion of the Motion

a. Position of the Parties

The motion of the Joint Parties request that the ALJs in the consolidated proceedings and in A.10-11-015: (1) “prevent the Public Advisors office from final approval or sending of any public participation hearing (PPH) notices in the Sempra and Edison cases until they are reviewed by the consumer party intervenors in each of the cases...;” (2) “expedite a hearing on the matter but will order in advance of the hearing, that the Public Advisor, [SCE]/Sempra public participation notice be made available to the parties at least 48 hours in advance of being sent;” and (3) “If necessary, delay by up to two weeks the proposed schedule of PPHs to ensure maximum public participation, cost effectiveness, and appropriate due process and notice for all intervenors.”

The purpose of the Joint Parties’ motion is “to expedite the process of ensuring maximum public participation at a cost effective rate and to avoid past public participation hearing ... failures.” Originally, the Joint Parties sought to bring this to the Commission’s attention in an e-mail addressed to certain individuals in a May 5, 2011 e-mail, which has been attached to the motion. The motion refers to the e-mail as apparent justification for the motion, and states as follows:

1. The PG&E [Pacific Gas and Electric Company] gas explosion OIR [Order Instituting Rulemaking (R.) 11-02-019] public notice which the Joint Parties claim was grossly inadequate, cost

¹ On April 27, 2011, a similar ruling was issued for SCE in A.10-11-015.

\$20,000 per ratepayer in attendance and possibly \$100,000 per public participant; and

2. That all public notices should be designed to both maximize public attention and understanding of the key issues affecting them, particularly during a period of unprecedented high unemployment.

The Joint Parties state in the May 5, 2011 e-mail that they “believe that neither Sempra nor [SCE] are prepared to provide adequate notice to the public regarding the many upcoming [PPHs], including the joint hearings of SCE and Sempra.” According to the e-mail, this belief of the Joint Parties is “based upon a combination of participation in past public hearings relating to SCE, Sempra, PG&E, and AT&T on rate increases and mergers, and by the very recent San Bruno gas explosion public hearing on April 5th.”

The May 5, 2011 e-mail refers to an April 6, 2011 letter which was sent to certain individuals at the Commission in connection with the three hearings in R.11-02-019. This April 6, 2011 letter, however, was not attached to the Joint Parties’ motion. The May 5, 2011 e-mail refers to the April 6, 2011 letter as the justification for allowing the “Joint Parties and other key consumer intervenors” to “fully review the bill insert notices.” The May 5, 2011 e-mail describes the April 6, 2011 letter as “informing this Commission that the mechanism used by PG&E to alert individuals to the public hearing was a failure costing the ratepayers an estimated \$20,000 per individual attending the hearing as a result of the notice, and more than \$100,000 per each ratepayer who elected to speak.”

The May 5, 2011 e-mail also refers to a survey that that Joint Parties conducted of 190 ratepayers before the April 5, 2011 hearing in R.11-02-019. Based on that survey, the Joint Parties state that “we believe that thousands of ratepayers would attend the SCE and Sempra PPHs if provided with full and adequate content notice.” The e-mail goes on to state that “the notice should

include in bold large print language the aggregate dollar amount of the proposed rate increases and should include a brief paragraph by, for example, [The Utility Reform Network], Greenlining and/or the Joint Parties on the public concerns.”

SDG&E and SoCalGas contend that the Joint Parties’ motion “is groundless and should be summarily rejected.” The response of SDG&E and SoCalGas states that the relief suggested by the motion is inconsistent with the holding in Pacific Gas and Electric Co. v. Public Utilities Commission of California, 475 U.S. 1 (1985) (PG&E v. PUC) because the Joint Parties seek to alter the bill insert language to conform to the agenda of the Joint Parties and other intervenors.

The response of SDG&E and SoCalGas also argue that the motion lacks an understanding of longstanding Commission noticing practices that are set forth in Rule 13.1 and the Rate Case Plan set forth in Decision (D.) 07-07-004. The response also asserts that the Joint Parties failed to substantiate their claim that the bill inserts are biased in favor of the utilities or are worded in a manner that discourages ratepayers from participating. SDG&E and SoCalGas also contend that the Joint Parties have failed to cite any law in support of its request as required by Rule 11.1.

SDG&E and SoCalGas also contend that the Joint Parties’ motion ignores the numerous steps that must be taken in order to comply with the noticing requirement in Rule 13.1 and with the April 28, 2011 ruling. SDG&E and SoCalGas also argue that the steps and the hearing that the Joint Parties’ recommend would be impractical, burdensome, and result in a further delay. SDG&E and SoCalGas also argue that the motion is untimely because the topic of the PPHs was raised and discussed at the January 31, 2011 PHC, and that no party raised any concerns about the wording of the notices for the PPHs.

SCE's response takes the position that "the Joint Parties request is untimely and inconsistent with California statutory law, the Commission's Rate Case Plan, and ALJ Darling's April 27, 2011 Ruling." SCE contends that the idea of holding joint PPHs for SoCalGas and SCE was raised at the January 21, 2011 PHC. Due to SCE's billing cycle, SCE began drafting a notice of the joint PPHs, which was "largely based on the notice language from SCE's 2009 [General Rate Case]." Once the dates of the joint PPHs were set in ALJ Darling's April 27, 2011 ruling, SCE finalized the bill insert with the assistance of the Commission's Public Advisor's office. Since SCE's notice of the PPHs is already on its way to customers, SCE contends that the motion to delay and revisit the bill insert notice is moot, and "would cause mass customer confusion" if different hearing dates are used.

SCE's response also contends that the duties of the Public Advisor are set forth in Public Utilities Code §321(a), and that there is no basis for other "party advocates to have veto rights over the notice language."

b. Discussion

The motion of the Joint Parties should be denied for the following reasons.

First, as pointed out by SDG&E, SoCalGas, and SCE, the idea of holding joint PPHs for SoCalGas and SCE was discussed at the January 31, 2011 joint PHC that was held in these consolidated proceedings and with SCE's A.10-11-015. This is evident from the "Joint Prehearing Conference Agenda - Jan. 31, 2011," that appears in the front of the Reporter's Transcript of the PHC, and the discussion at the PHC which was reported at pages 38 to 48 of that transcript. At the joint PHC, the agenda issue of whether joint PPHs should be held was discussed. During that discussion, several parties discussed whether the holding of a joint PPH for SoCalGas and SCE would increase public

participation. At the separate PHC for these two consolidated proceedings, which immediately followed the January 31, 2011 joint PHC, the joint PPHs for SoCalGas and SCE was also listed as an agenda item, and discussed at pages 68 to 69 of the second volume of the Reporter's Transcript.

Representatives for the Joint Parties appeared at both the joint PHC, and at the PHC for SDG&E and SoCalGas. Although the representatives of the Joint Parties spoke at both PHCs, none of them discussed any of the issues relating to the holding of the joint PPHs. (*See Reporter's Transcript, January 31, 2011, PHC, at 32-33; Reporter's Transcript, January 31, 2011, PHC-2, at 78-79.*)

The issues that the Joint Parties raise in their motion about increasing public participation, and about the process for issuing notices about the holding of the joint PPHs, should have been raised at the January 31, 2011 PHCs. In addition, the March 2, 2011 scoping ruling notified the parties that the joint PPHs would be held sometime in May or June 2011. The locations and dates of the joint PPHs were then noticed in ALJ rulings on April 27, 2011 and April 28, 2011. The Joint Parties, however waited over four months from the time the joint PPHs were first discussed, and over two months from when the scoping ruling was issued, before objecting to the joint PPHs in their May 5, 2011 motion. The Joint Parties' motion is therefore untimely.²

² Although the Joint Parties' motion cites alleged failures in the notice of the hearing that was held in San Bruno in R.11-02-019, the motion is also "based upon a combination of participation in past public hearings relating to SCE, Sempra, PG&E, and AT&T on rate increases and mergers...." Since these other past PPHs occurred prior to the January 31, 2011 PHCs involving these consolidated proceedings, the Joint Parties were in a position to raise their issues back on January 31, 2011, but failed to do so.

The second reason for denying the Joint Parties' motion is that the Commission is tasked with the responsibility for reviewing the content of the notices regarding the PPHs. The authority for this practice are rooted in Pub. Util. Code §§ 321, 454, and 701, and in Rule 13.1. Under § 701, the Commission "may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction." Section 454(c) provides: "The commission shall permit individual public utility customers and subscribers affected by a proposed rate change, and organizations formed to represent their interests, to testify at any hearing on the proposed rate change, except that the presiding officer need not allow repetitive or irrelevant testimony and may conduct the hearing in an efficient manner."

Pursuant to § 321(a), the Public Advisor "shall assist members of the public and ratepayers who desire to testify before or present information to the commission in any hearing or proceeding of the commission," and "shall advise the commission on procedural matters relating to public participation in proceedings of the commission." In addition § 321(b) provides that the Public Advisor "shall publicize the commission's programs for encouraging and supporting participation in the commission's proceedings."

Under longstanding Commission practices, the Public Advisor reviews the draft notices and bill inserts of the planned PPHs. It is clear from § 321 that it is the Public Advisor, and not the party intervenors, who "advise the commission" and "publicize the commission's programs for encouraging and supporting participation in the commission's proceedings." As the utilities point out in their responses, this practice has been incorporated into the Rate Case Plan for the processing of rate proceedings before the Commission. Under the Rate Case

Plan, the ALJ sets “the day, time and place for public comment hearings.” The Rate Case Plan also provides that “At the appropriate time, the utility shall give notice of the Public Comment Hearings, pursuant to Rule 13.1, using the format shown on page A-36.” (D.07-07-004, Appendix A at A-13; *See* 30 CPUC2d 576, Appendix B at 602.) In the sample notice format referenced in the Rate Case Plan, a sample notice of a PPH is shown, and in the “Notes” at the bottom of the sample notice, the Rate Case Plan states:

1. The above notice is only a sample format. A utility may suggest other formats that would better communicate the required information.
2. All notices must be submitted to the Commission’s Public Advisor’s Office for review at least five working days prior to the printer’s deadline.

As SDG&E and SoCalGas note in their response, allowing the other party intervenors to assist in drafting the notice of the PPH is likely to run afoul of PG&E v. PUC. Although the facts in PG&E v. PUC are distinguishable from what the Joint Parties request in the present motion, the holding of PG&E v. PUC, that requiring SDG&E and SoCalGas to include the viewpoints of other “impermissibly requires [SDG&E and SoCalGas] to associate with speech with which [SDG&E and SoCalGas] may disagree,” applies equally to the request contained in the motion of the Joint Parties. (PG&E v. PUC, 475 U.S. at 15.)

The noticing procedures for the joint PPHs, as set forth in the Commission’s Daily Calendar and in the April 27 and 28, 2011 ALJ rulings, are consistent with Rule 13.1 and § 454(c).

As for the Joint Parties’ argument that the bill insert notice may be inadequate, or that it does not “maximize public attention and understanding of the key issues affecting them,” the Joint Parties have not pointed out any specific

deficiency in SoCalGas' bill insert notice. SoCalGas' bill insert notice states that SoCalGas is requesting an increase of approximately \$308 million over the 2010 authorized revenues, and that this will result in an increase of \$3.35 per month for a typical residential gas customer. The bill insert notice also states that persons interested in commenting on either the applications of SoCalGas or SCE, or both, are welcome to attend and comment at the PPH. The bill insert notice also states that a member of the Public Advisor's office will be at the PPHs to provide assistance, and also provides the Public Advisor's contact information if someone has questions about how to participate in the PPH process. SoCalGas' bill insert notice of the joint PPHs provides all the information required by the Rate Case Plan, and §§ 321 and 454(c).

Therefore, **IT IS RULED** that the May 5, 2011 "Motion To Ensure Maximum Public Participation In A Cost Effective Manner For The Sempra and Edison Public Participation Hearings," which was filed by the Black Economic Council, the Latino Business Chamber of Greater Los Angeles, and the National Asian American Coalition, is denied.

Dated May 17, 2011, at San Francisco, California.

/s/ JOHN S. WONG

John S. Wong
Administrative Law Judge