

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



FILED

08-31-09

12:27 PM

Application No. 08-12-021
(Filed December 22, 2008)

Application of SAN DIEGO GAS
& ELECTRIC COMPANY for
Review of its Proactive De-
Energization Measures and
Approval of Proposed Tariff
Revisions (U 902-E)

**MUSSEY GRADE ROAD ALLIANCE COMMENTS ON PROPOSED AND
ALTERNATE PROPOSED DECISIONS REGARDING SAN DIEGO GAS
AND ELECTRIC'S SHUT OFF PLAN AND RULE 14 CHANGE**

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August 31, 2009

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MUSSEY GRADE ROAD ALLIANCE COMMENTS ON PROPOSED AND ALTERNATE PROPOSED DECISIONS REGARDING SAN DIEGO GAS AND ELECTRIC'S SHUT OFF PLAN AND RULE 14 CHANGE

I. INTRODUCTION

The Mussey Grade Road Alliance (Alliance) files this response with the California Public Utilities Commission (Commission) in accordance with Rule 14.3 of the California Public Utilities Commission Rules of Practice and Procedure and in accordance with the instructions contained in the Proposed Decision of Commissioner Simon (Proposed Decision)¹ and the Alternate Proposed Decision of ALJ Kenney (Alternate Proposed Decision).²

The Alliance has been an active participant in this proceeding, and has consistently opposed SDG&E's application for a shut-off plan and Rule 14 change. Our involvement in this particular issue dates back to our participation in P.07-11-007, SDG&E's original petition for a Rulemaking.³ As the sole community intervenor in the present proceeding, the Alliance is also the single party that has personally experienced a catastrophic wildland fire in 2003 (Cedar Fire) and the threat to Mussey Grade Road of a second wildland fire in 2007 (Witch Fire). Based in Ramona, one of the largest communities that would be affected by the proposed shut-off plan and which suffered the impacts of both of these fires, the Alliance has consistently sought to bring to the Commission a realistic view from the ground regarding the issues in this proceeding.

The Alliance supports the Alternate Proposed Decision of ALJ Kenney, which denies without prejudice the SDG&E on the grounds that it fails to meet its burden of proof in two critical tests: - that the plan reduce the overall risk of wildfire ignition and that the benefits of the shut off plan outweigh the costs of power loss.⁴ Based on our analysis of SDG&E's filings throughout this proceeding, and the company's unresponsiveness to the many noted problems with their proposed

¹ A.08-12-021; PROPOSED DECISION OF COMMISSIONER SIMON; DECISION GRANTING SAN DIEGO GAS & ELECTRIC COMPANY CONDITIONAL AUTHORITY TO IMPLEMENT ITS POWER SHUT-OFF PLAN AS A PILOT PROGRAM; AND GRANTING IN PART AND DENYING IN PART THE PROPOSED CHANGES TO TARIFF RULE 14; August 11, 2009.

² A.08-12-021; ALTERNATE PROPOSED DECISION DENYING WITHOUT PREJUDICE SAN DIEGO GAS & ELECTRIC COMPANY'S APPLICATION TO SHUT OFF POWER DURING PERIODS OF HIGH FIRE DANGER; August 11, 2009.

³ MUSSEY GRADE ROAD ALLIANCE RESPONSE TO SAN DIEGO GAS & ELECTRIC PETITION TO ADOPT, REPEAL OR AMEND A REGULATION PURSUANT TO PUBLIC UTILITIES CODE § 1708.5; December 24, 2007.

⁴ Alternate Proposed Decision; p. 41.

plan to shut off power to thousands of San Diego County residents, the Alliance asserts that SDG&E constructed its shut-off plan to minimize its own costs, maximize its own benefits and in the process has given insufficient weight to the overall good of the public. This unbalanced approach to the problem of wind-driven, catastrophic wildland fires ignited by power lines has resulted in a shut-off plan that is inimical to the best interests of SDG&E's ratepayers. We are therefore gratified by the Alternate Proposed Decision ruling that the application should be denied.

Additionally, the Alliance supports the Alternate Proposed Decision's denial of SDG&E's proposed changes to Rule 14, which would shift liability for the consequences of shutting off electrical power to ratepayers.

The Alliance has not and does not oppose, in principle, the shut off of electrical power under extreme conditions. Rather, we believe that the correct approach is the one that minimizes overall risk and cost to the public and which properly takes into account all of the hazards and risks inherent in the loss of electrical power under extreme fire risk conditions. To this end, the Alliance has consistently advocated for a cost/benefit analysis and the Alliance fire expert has offered a framework for such a cost/benefit analysis that can be used to determine the proper threshold at which such a shut-off plan should be activated.⁵

II. THE ALLIANCE SUPPORTS THE ALTERNATE PROPOSED DECISION OF JUDGE KENNEY DENYING WITHOUT PREJUDICE THE SDG&E PLAN

A. The Alternate Proposed Decision Is the Correct Decision Because SDG&E Failed to Meet Its Required Burden of Proof and Has Conducted No Cost/Benefit Analysis. The Proposed Decision Errs in Accepting SDG&E Mitigation Measures as Sufficient Without Factual Basis.

The Alternate Proposed Decision sets up two key tests for approval of the SDG&E : "(i) its Power Shut-Off Plan will decrease the number of wildfires, and (ii) the benefits of its Power Shut-Off Plan outweigh the significant costs, burdens, and risks imposed on customers and communities

⁵ A.08-12-021; MGRA Opening Comments; Appendix A; Mitchell, Joseph W; M-bar Technologies and Consulting, LLC for the Mussey Grade Road Alliance; "WHEN TO TURN OFF THE POWER? COST/BENEFIT OUTLINE FOR PROACTIVE DEENERGIZATION"; March 27, 2009.

in the areas where power is shut off under the Plan.”⁶ These are concise, legally and logically correct criteria for evaluating any proposed plan for electrical shut-off under hazardous conditions.

In his Summary of Decision, Judge Kenney states: “SDG&E has not met its burden to demonstrate that the benefits of shutting off power outweigh the significant costs, burdens and risks that would be imposed on customers and communities in the areas where power is shut off.”⁷ In his Conclusion, he says that SDG&E “provided no evidence or analysis that shows its Plan will improve public safety overall.”⁸

SDG&E’s application has been correctly judged to be built on assertions rather than facts that can be objectively assessed. The Alternate Proposed Decision correctly points to the lack of a factual basis for claims that the shut-off plan would improve public safety and points to the lack of an analysis to obtain the necessary facts. The Conclusion also states that SDG&E may file another application for authority to shut-off power, but warns that any such application should demonstrate with evidence and analysis that the benefits of the proposed shut off plan exceed the myriad of significant costs, burdens and risk to customers in the areas where the power is shut off. The Conclusion suggests that the model proposed by the Alliance may provide a reasonable conceptual framework for SDG&E’s analysis.⁹

On the other hand, the Proposed Decision does not evaluate the SDG&E application according to these or equivalent criteria, and therefore is deficient. Instead, in its Discussion the Proposed Decision accepts that measures proposed by SDG&E to mitigate adverse impacts of the shut-off plan are sufficient, without providing any factual basis for that conclusion.¹⁰ This is a critical error based on the lack of facts necessary to come to the determination the Proposed Decision makes concerning the sufficiency of SDG&E’s shut-off plan, including measures suggested by the company to overcome the negative effects of the plan on customers. Consequently, the Alternate Proposed Decision should be given preference by the Commission.

⁶ Alternate Proposed Decision; p. 61.

⁷ Ibid; p 2

⁸ Ibid; p. 54.

⁹ Ibid; p. 54.

¹⁰ Proposed Decision; p. 46.

B. The Proposed Decision of Commissioner Simon Makes a Fundamental Technical Error Regarding Assessment of Risk.

Included with the SDG&E Response to Water and School District Joint Motion for Official Notice issued July 20th was an additional Motion for Notice containing a Cal Fire report.¹¹ The Proposed Decision uses specific facts in this document (compiled list of ignition sources) to extrapolate to a prediction (expected rate of ignitions during power outages), which is highly dependent upon assumptions.

That the facts in the Cal Fire document do not cleanly or naively lead to specific risk estimation is demonstrated most clearly by the fact that the Proposed and Alternative Proposed Decisions reach diametrically opposite findings when presented with the same information. The Proposed Decision by Commissioner Simon jumps immediately to the conclusion that “SDG&E has shown that risk of ignitions from other sources is very small”¹² while the Alternate Proposed Decision by ALJ Kenney correctly states that “The reported number of fires from other sources does not reflect the impact of SDG&E’s Power Shut-Off Plan because the Plan has never been put into effect. For example, we would expect there would normally be very few generator fires in SDG&E’s service territory because there would be little need for SDG&E’s customers to use portable generators on a day-to-day basis. However, if a power shut-off event occurs, then every affected customer with a portable generator would have a need to use it... The upshot is that the risk of fires from other sources would be multiplied manyfold during a power shut-off event, perhaps surpassing the risk of power-line fires.”¹³ The argument of ALJ Kenney is more complete and therefore more correct.

Commissioner Simon’s Proposed Decision makes a fundamental technical error in risk assessment in the Proposed Decision’s use of the Cal Fire report on equipment fires. In order to properly give the appropriate weight to the assessment of risk, the fraction of time an electrical system is operating must be taken into account as risks arising from power outages (increased use of generators, for instance) do not generally exist except when the electricity is off. In 2008, the

¹¹ A.08-12-021; MOTION OF SAN DIEGO GAS & ELECTRIC COMPANY FOR OFFICAL NOTICE; July 20, 2009; citing a report titled “Fires by Equipment Involved in Ignition, 2003-2007” prepared by the State Fire Marshall at http://osfm.fire.ca.gov/cairs/pdf/firesbyeqinignition2003_07.pdf.

¹² Proposed Decision; p. 45.

¹³ Alternate Proposed Decision; p. 45.

average time spent by SDG&E customers without electricity due to outages was roughly 0.9 hours (1 hour per year).¹⁴ It is during such outages that we would expect to see the majority of fires listed in the Cal Fire report. If we increase the number and duration of outages, as the SDG&E shut-off plan would, one would naturally expect to see a commensurate increase in the number of fires. Failure to account for this effect will yield a result an large error in the estimation of risk.

Compounding this problem is the fact that the SDG&E shut-off plan would greatly reduce reliability in affected areas. To compensate for this problem, SDG&E customers would be more likely to purchase and use electrical generators than people living in areas where electricity was more reliable. In fact, SDG&E has encouraged customers in affected areas to use their own generators.¹⁵ The probability of fire from generators will be proportional to the number of generators in use. The Proposed Decision also errs in not taking this effect into account.

C. The Shut-Off Criteria Approved by the Proposed Decision Do Not Pass a Reasonableness Standard and Therefore Constitute a Legal Error in the Proposed Decision.

The Alliance notes that the Proposed Decision holds that the SDG&E criteria for shut-off must be held to a “reasonableness” standard. We show that several inconsistencies and logical errors in the SDG&E criteria render them unreasonable, and therefore unsuitable as the basis of a shut-off plan.

1. The Commission must enforce “reasonableness” criteria on SDG&E shut-off plan

There has been some argument that it is up to SDG&E to manage its own system, as stated in California Public Utilities Code §399.2,¹⁶ which gives utilities broad discretion in the construction and operations of their systems. That this discretion is not unlimited and that it is

¹⁴ A.08-12-021; OPENING COMMENTS OF UTILITY CONSUMERS’ ACTION NETWORK; (UCAN) UCAN’s Review of its Proactive De-Energization Measures and Approval of Proposed Tariff Revisions; March 27, 2009; p. 20.

¹⁵ Contents of SDG&E’s customer education package are available online; “Portable Generators for Residential Use”; <http://www.sdge.com/documents/forms/portablegenerators.pdf>.

¹⁶ California Public Utilities Code 399.2 (a)(2): In furtherance of this policy, it is the intent of the Legislature that each electrical corporation shall continue to be responsible for operating its own electric distribution grid including, but not limited to, owning, controlling, operating, managing, maintaining, planning, engineering, designing, and constructing its own electric distribution grid, emergency response and restoration, service connections, service turnons and turnoffs, and service inquiries relating to the operation of its electric distribution grid, subject to the commission’s authority.

subject to regulation by the Commission is clearly stated in these decisions.¹⁷ Regulated utilities are held to a “reasonableness” standard, as stated in Public Utilities Code §451: “Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service...” This is stated as well in Commissioner Simon’s Proposed Decision: “While SDG&E may believe that meeting all five of its proposed shut-off criteria is sufficient to trigger de-energization, the Commission has authority to conduct a reasonableness review of SDG&E’s actions.”

One literal definition of “reasonable” is “governed by or in accordance with reason or sound thinking”.¹⁸ In other words, something cannot be reasonable if it is based upon clear logical errors or internal inconsistencies. We do not refer to differences in professional judgment or analysis methods, but rather to *prima facie* errors. The SDG&E wind speed shut-off criteria, by this standard, are not reasonable. We would ask these be noted as deficiencies in the Final Decision denying this application.

It has been extraordinarily frustrating for the Alliance to have raised the existence of these inconsistencies early in the proceeding,¹⁹ and repeated them regularly, only to have them consistently ignored by SDG&E throughout the proceeding, up to and including the issuance of the Proposed Decision, which accepts the SDG&E criteria (though withholds judgment regarding their reasonableness). It has been rather like shouting down a well. We present these inconsistencies below.

2. SDG&E admits it did not create its average wind speed shut-off criteria to avoid power line fires

SDG&E’s shutoff threshold criteria for average wind speeds vary between 25 mph and 30 mph, depending on other conditions.²⁰ While this is a plan to reduce the risk of power line fires, SDG&E has shown no increase in the number of power line fires at these wind speeds, which are far below the GO 95 wind loading requirements. Instead, as it first explained in an Alliance data

¹⁷ Proposed Decision, p. 61 states “Regulated utilities do not have unfettered discretion to make decisions regarding service.”

¹⁸ American Heritage Dictionary, 3rd ed.

¹⁹ A.08-12-021; MUSSEY GRADE ROAD ALLIANCE COMMENTS ON SDG&E’S SHUTOFF PLAN AND PROPOSED RULE 14 CHANGE; March 27, 2009; p. 26.

²⁰ Proposed Decision, pp. 27-29.

request,²¹ these wind speeds were chosen because aerial firefighting is less effective under those weather conditions.²² However, 99% of fires at these wind speeds are NOT power line fires, so there is absolutely no logical justification for shut-off unless the loss of electricity has no impact whatsoever on the safety of communities under wildland fire conditions – and parties have shown comprehensive evidence that this is not so. SDG&E does not “help” us by shutting off power when its lines are not in danger.

SDG&E also argues that adopting a lower shut-off threshold protects its lines from windblown debris.²³ However, it provides no evidence to support this assertion, and the fire history data argue otherwise. Of the thirteen power line fires in the SDG&E records, while five are due to contact with tree limbs, only one of them (the Rice fire) *might* have met the criteria for lower shut-off threshold,²⁴ and in this case SDG&E is under investigation for improper vegetation management, which is the more likely cause of the fire.²⁵ Hence the probability that adopting this threshold will prevent power line fires is very small, whereas the probability that it will hamper fire reporting, fire protection and evacuation for the 99% of fires that are not due to power lines is very large.

3. Adjusting continuous wind speed criteria to account for the difference in weather station and pole height lacks logical justification

The most egregious and blatant error SDG&E makes in its shut-off criteria, and that the Proposed Decision accepts when it allows the plan to go forward, is to adjust those criteria that have nothing to do with power lines (shut off at 35 mph average or 30 mph with higher gusts) with the same ratio it applies to criteria that it applies to power lines, which it claims (incorrectly) to be 15%, reducing the shut-off criteria to 30 mph average or 25 mph with higher gusts.²⁶ Fire-fighting activities take place at ground level, not at the top of utility poles, so applying *any* wind speed adjustment for elevation makes no logical sense whatsoever and is a *prima facie* error. This

²¹ Op. Cite; Appendix C (attached); SDG&E Response to MGRA Data Request #1, part 2. Feb. 24, 2009. MGRA-21.

²² A.08-12-021; REPLY OF SAN DIEGO GAS & ELECTRIC COMPANY TO RESPONSES TO MOTION FOR TEMPORARY RESTRAINING ORDER; August 18, 2009; p. 4.

²³ Ibid.

²⁴ Proposed Decision pp. 31-32.

²⁵ CPSD; REPORT OF THE CONSUMER PROTECTION AND SAFETY DIVISION REGARDING THE GUEJITO, WITCH AND RICE FIRES; Sept. 2, 2008.

²⁶ A.08-12-021; MUSSEY GRADE ROAD ALLIANCE COMMENTS ON SDG&E’S SHUTOFF PLAN AND PROPOSED RULE 14 CHANGE; March 27, 2009; p.27.

adjustment is not a reasonable basis to deny power to customers, and the Proposed Decision errs when it does not apply a reasonableness standard to this adjustment made by SDG&E.

4. SDG&E's wind speed adjustment calculations appear to be in error

The Alliance has submitted alternative calculations for the proper elevation adjustment to apply to GO-95 wind loadings,²⁷ and these were checked for accuracy by the CPSD's engineer.²⁸ In contrast, SDG&E's expert provides no calculations,²⁹ and the numbers he provides do not correspond to accepted standards.³⁰ Additionally, SDG&E's expert recommends adjustments of only 10-12% under gusting conditions, whereas SDGE adopts a 15% adjustment, making their criteria inconsistent even with the recommendations of their own expert.³¹ Based on Alliance analysis, no wind speed elevation correction for utility poles of greater than 7% has been shown to be reasonable.³² The Final Decision denying the plan should note these discrepancies so that they are addressed before any subsequent applications.

D. SDG&E Has Demonstrated in This Proceeding That It Is Incapable of Assessing Risk to the Public and Acting on Behalf of Public Safety

SDG&E has adopted a hard-line approach throughout these proceedings, and has never adjusted its shut-off criteria based on input from parties that described the dangers that its low threshold for shutoff would create, or when confronted with blatant logical fallacies in its argumentation. We have become convinced that they are not acting in good faith, and have the minimization of their own liability at heart, rather than utilizing the public service they are paid to provide to help to minimize overall risk to the public.

²⁷ A.08-12-021; MUSSEY GRADE ROAD ALLIANCE ADDITIONAL COMMENTS REGARDING SAN DIEGO GAS & ELECTRIC REPLY COMMENTS AND RESPONSES TO ALJ QUESTIONS CONCERNING WIND ISSUES; May 26, 2009.

²⁸ A.08-12-021; JOINT REPLY COMMENTS OF THE CONSUMER PROTECTION AND SAFETY DIVISION AND THE DIVISION OF RATEPAYER ADVOCATES; May 26, 2009; p. 12.

²⁹ A.08-12-021; RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY TO ALJ QUESTIONS AND REPLY COMMENTS DATED MAY 19, 2009; May 26, 2009; Attachment 1.

³⁰ Op. Cite.

³¹ A.08-12-021; MUSSEY GRADE ROAD ALLIANCE ADDITIONAL COMMENTS; p. 8.

³² Ibid. p. 7.

1. SDG&E has consistently ignored criticisms rather than addressing them

Even the discovery of blatant logical error, such as that described in the previous section, has not proved sufficient for SDG&E to compromise or work with parties in order to arrive at a plan that actually minimizes potential harm to the public. During this proceeding, the Alliance has provided significant input resulting from analysis of Cal Fire data, wind data, and engineering standards. SDG&E's response has generally been to ignore the facts and arguments we've raised,³³ and by doing so hope that the Commission will also ignore them. To summarize our greatest concern in this regard, SDG&E has been well-informed from the start of these proceedings that parties are extremely concerned about the dangers that customers denied electrical power and communications under extreme fire risk conditions would face, and has not attempted to take any action or provide any reasonable argument to alleviate these concerns. It has ignored the fact that this is an application, and the burden of proof lies with them, and not other parties.

2. SDG&E has exhibited extremely poor judgment in its description of how it would handle actual fire conditions

One clear example of how leaving shut-off solely at the discretion of SDG&E would put the public in danger is in the dialogue between SDG&E and parties regarding "back-casting" the script of the Witch Fire, or seeing what the effect of the shut-off plan would have been had it been in place in October 2007. SDG&E disagrees with other parties regarding the sequence of events that would have transpired in Ramona on October 21, 2007 had its plan been in place there,³⁴ with SDG&E claiming that shutting off its system based solely on its five criteria would have had minimal effect on automatic notifications.

SDG&E has missed one key point. SDG&E's submitted data have shown that the probability of preventing a fire for *any particular* shut-off is small,³⁵ and we doubt they would argue to the contrary. On the other hand, the probability that those in the path of an existing rapidly moving fire will be at risk is 100%, and to *knowingly* increase their danger by removing power and

³³ The extremely cursory response in Reply Comments is typical – A.08-12-021; REPLY COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E); April 10, 2009; p. 20-21.

³⁴ A.08-12-021; RESPONSE OF SDG&E TO JOINT MOTION FOR OFFICIAL NOTICE OF PADRE DAM WATER DISTRICT RESOLUTION; August 6, 2009.

³⁵ Proposed Decision, pp. 31-32.

communications from them – as SDG&E claims it would have done by shutting off the power after the Witch Fire had been ignited – vividly demonstrates the utility’s an egregious inability to judge overall risk and public good that borders on negligence. And yet, that is what SDG&E says it would have done in this circumstance. It thereby demonstrates that it should not be allowed to have sole discretion in the implementation of a shut-off plan.

3. A shut-off plan without public agency oversight cannot work

The Proposed Decision implicitly recognizes the risk of leaving a shut-off decision solely in the hands of SDG&E, and gives both Cal Fire and the San Diego Office of Emergency Services the ability to either veto or mandate the implementation of a shut-off under SDG&E’s plan. The Alliance concurs that only agencies that are able to accurately gauge the *overall* risk to the public, and not just risks due to power line fires, should be in a position to supervise any shut-off plan that may be implemented now or in the future.

However, both the County of San Diego and Cal Fire appear to have backed away in public statements from assuming any responsibility for the SDG&E shut-off plan. SDG&E notes that there are “recent press reports making it abundantly clear that San Diego County and fire officials do not want to make the decision on whether power lines should be shut off”.³⁶ The Alliance and other parties have shown that SDG&E is incapable of correctly gauging the overall public good. If our public agencies refuse to do so, then who is left to protect the public? Should public agencies refuse to participate, then the Proposed Decision must be discarded and the Alternative Proposed Decision denying the application must be accepted.

III. THE ALLIANCE SUPPORTS THE DENIAL OF SDG&E’S PROPOSED RULE 14 CHANGE THAT LIES AT THE HEART OF THIS APPLICATION

A. The Proposed Decision Would Result in SDG&E Issuing Numerous False Alarms in Order to Reduce It’s Liability.

The Proposed Decision grants a limited waiver of liability to SDG&E for outages that would be initiated by its shut-off plan under the condition that “SDG&E shall provide no less than 8 hours

³⁶ A.08-12-021; RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY TO MOTION FOR TEMPORARY RESTRAINING ORDER; August 17, 2009; pp. 8-9.

notice to those persons (i.e. ratepayers, school districts, water districts, emergency service providers, and anyone else in the area that will be the subject of the interruption of service.)”³⁷ The Alliance does not believe that increasing the notification time will significantly reduce risk or lessen the public impact of shut-off. Weather forecasting becomes significantly less accurate the further out one tries to forecast. We should expect SDG&E to compensate for this uncertainty by lowering the criteria under which it would send out notice of shut-off. The net result will be the real possibility that SDG&E will simply issue many additional “false alarms” if required to provide a longer notice period. Each of these will potentially increase public impact, with students being kept home³⁸ and reduction of business activities. If the public becomes inured to these false alarms and ceases to prepare, they may be caught unaware when a shut-off is finally put into effect. Therefore, we believe this mitigation measure put forward in the Proposed Decision will result in certain negative impacts to the public despite whatever advantages may be obtained from the additional warning time.

B. Liability for Fires Due to Shut-Off and Other Damages Will Not Provide Sufficient Deterrence Due to Onerous Burden of Proof on Harmed Parties.

Ideally, the perfect attribution of liability would have a self-regulatory role on SDG&E’s actions, and explicit regulation by the Commission would be unnecessary. If SDG&E can be held liable for harm caused, it would need to do its own cost/benefit analysis with respect to any shut-off that takes into account not only the potential liability due to power line fires but also general harm and risk to the public. The Proposed Decision would still allow SDG&E to be held liable under certain conditions. However, this places an undue burden on the public, and therefore fails as a self-regulatory constraint.

Take the example of a fire ignition in the area that has been shut off, in which witnesses observe the fire starting but are unable to report the fire due to lack of communications. Say that this delays fire agency response by 20 minutes and that the fire grows out of control under high winds and destroys property. To prove SDG&E liability, the harmed parties would have to show

³⁷ Proposed Decision, p. 63; The Proposed Decision also mandates 12 hour notice, p. 3 and additionally discusses the potential of notice given at six hours or less and posits the “unlikely event” that a shut off occurs with no warning at all, p. 24.

³⁸ A.08-12-021; OPENING COMMENTS BY SAN DIEGO COUNTY SUPERINTENDENT OF SCHOOLS; March 27, 2009; p. 11.

that this 20 minute delay was due to the power shut off, and that but for this delay the fire would have been controlled. Both would be extremely hard to prove. Therefore the potential liability SDG&E might have in this case would be a weak deterrent to inappropriate shut-off. This example demonstrates why “regulation by tort” would be insufficient to protect public safety overall, and why explicit regulation of SDG&E’s plan by the Commission is appropriate in this case.

IV. THE ALTERNATE PROPOSED DECISION SHOULD CLARIFY SDG&E’S RESPONSIBILITIES UNDER EXTREME CONDITIONS

The Alliance has some concern that SDG&E might use the Commission’s denial of this Application as an excuse not to take appropriate action in the event of extreme weather conditions.

A. SDG&E’s Infrastructure is Subject to GO 95 Wind Loading Requirements.

Rule 95 governs how utilities should design for wind loading, yet this is not the only factor that SDG&E has used in its shut-off criteria. A confusing range of numbers has been bandied about in this proceeding, and we try to assemble these in the table below.

Wind Speed	Avg/gust	Description
0-25 mph	Average	No shut off.
>25 mph	Average	SDG&E shut-off if gusts >48 mph, to “aid firefighting”/debris protection. Alliance - Inappropriate use of pole-height correction. Alliance & CPSD – no threat to lines; inappropriate shutoff
>30 mph	Average	SDG&E - Triggers shut-off - “aid firefighting”/debris protection. Alliance - Inappropriate use of pole-height correction. Alliance & CPSD – no threat to lines; inappropriate shut-off. ALSO (same as >25 mph if pole-height correction not made)
>35 mph	Average	SDG&E – same as 30 mph, but without pole-height correction. Alliance & CPSD – no threat to lines; inappropriate shut-off.
>48 mph	Gust	SDG&E shut-off if average >25 mph due to threat to lines. GO 95 + pole height correction. Alliance & CPSD – pole height correction calculation incorrect. CPSD – no safety factor applied.
51 mph	Gust	GO95 loading + Alliance & CPSD pole height correction (w.o. safety factor)
55 mph	Gust	GO95 loading without corrections or safety factor
79 mph	Gust	GO95 loading including safety factor, non-joint use (CPSD) ³⁹

³⁹ JOINT REPLY COMMENTS OF THE CONSUMER PROTECTION AND SAFETY DIVISION AND THE DIVISION OF RATEPAYER ADVOCATES TO SAN DIEGO GAS & ELECTRIC COMPANY’S RESPONSE TO ADMINISTRATIVE LAW JUDGE’S RULING; May 26, 2009; p. 10.

91 mph	Gust	GO95 loading including safety factor, joint-use (CPSD)
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Based on the table above, it is clear that SDG&E wishes to de-energize its infrastructure under wind loading conditions under which it should be able to provide safe and reliable service. Its arguments for picking such a low threshold are so dubious, and its adherence to these arguments so tenacious that we are convinced that this shut-off plan is simply a means of protecting a utility infrastructure that is currently unable to withstand maximal GO 95 wind loadings.

As SDG&E is currently under two Commission investigations and defending against remaining private lawsuits arising from fire damages, it would be overly optimistic to expect them to come clean on this point any time soon. However, this leaves us residents of the fire-prone areas in something of a quandary. We would not like to “prove” (again) the inadequacy of the SDG&E infrastructure at the cost of more fires. We believe that the Proposed Decision offers SDG&E a “Get Out of Jail Free” card by blanket acceptance of the ludicrous SDG&E shut-off criteria, while the Alternate Proposed Decision is vague on the point of what constitutes a danger, and could potentially be used by SDG&E as a defense to deflect liability to the Commission for the next fire it causes (“We had a shut-off plan ready but the Commission didn’t let us use it!”).

The Alliance believes that if there is a *substantial* risk of fire due to power lines encountering wind-gust conditions below the GO 95 standards, the utility *may* de-energize its system to prevent them. *However – this would constitute a de-facto admission of non-compliance with GO 95 requirements and would require Commission review and the imposition of a remedial plan to achieve GO 95 compliance. Additionally, all liability for such an action will accrue to the utility.* We propose supplemental language for the Alternate Proposed Decision to this effect.

B. SDG&E Must Produce a Schedule to Bring its System up to GO 95 Standards as Interpreted by the Commission.

Both the Alternative Proposed and Proposed Decisions acknowledge SDG&E’s program to improve fire safety by “hardening” its infrastructure. The Proposed Decision explicitly requires a schedule for the completion of this process: “When the hardening of the lines is complete, it may obviate the need for the shut-off program that is being adopted by the Proposed Decision. Therefore, we request that SDG&E submit for approval by this Commission its schedule for the

hardening of the lines.”⁴⁰ However, we note that this request does not appear in the Ordering paragraphs. This is important because cursory examination shows that the SDG&E program will not be completed in a reasonable time frame. For instance, SDG&E has responded to the Alliance that it maintains 75,600 wooden poles in high fire risk areas, and that its steel pole replacement program is planned to replace 1000 poles per year, which yields an estimated completion time of 75 years.⁴¹ Additionally, we believe that this lack of a schedule needs to be noted as a deficiency in the Alternate Proposed Decision of ALJ Kenney, so that any subsequent re-application by SDG&E will be required to contain this schedule.

V. CONCLUSION

The Proposed Decision by Commissioner Simon insufficiently protects the public from the hazards it would face resulting from power loss during high-fire risk conditions. We appreciate that the Commission’s motivation is to prevent catastrophic fires such as those that occurred in 2003 and 2007.⁴² As people who have lived through both of these disasters, we are very familiar with the issues, and believe the Proposed Decision is misguided in its approach.

As we’ve stated in our Reply Comments, one of the issues in Cedar Fire of 2003 was the delay in fire reporting that prevented air attack from occurring.⁴³ This fire overran Mussey Grade neighborhood in the middle of the night. Anyone who would suggest that the loss of electric power would not hamper evacuations has never actually evacuated at night. Dozens of trips up and down stairs, packing necessities and valuables into vehicles, securing pets, and preparing one’s residence for the coming onslaught is not something that one can do easily or effectively in the smoky blackness of a fire night. And we didn’t have to – SDG&E had kept the power on. This also allowed us to call and warn our neighbors – there was no reverse 9-1-1 in 2003, nor any other official notification, warning, or evacuation notice. Yet, because we were able to *communicate*, nobody on Mussey Grade died. We are not sure this would have been the case if a power outage had blinded and silenced us.

⁴⁰ Proposed Decision, p. 51.

⁴¹ A.08-12-021; MGRA Opening Comments; March 27, 2009; Appendix B; SDG&E Response to MGRA Data Request #1, part 1. Feb. 24, 2009. MGRA-6, MGRA-8.

⁴² Proposed Decision; p. 44.

⁴³ A.08-12-021; MUSSEY GRADE ROAD ALLIANCE REPLY COMMENTS ON PARTY RESPONSES TO THE SDG&E SHUT-OFF PLAN AND RULE 14 CHANGE; April 10, 2009; p. 2.

We've also reported that we were besieged again in 2007, and that our ability to monitor fire status through television broadcasts allowed us to gauge our risks as we were surrounded by fire on three sides, and how we were able to use phone communication to coordinate with neighbors to warn each other.⁴⁴ So the Alliance members know from our own personal experience how important electrical and communications infrastructure is during hazardous fire conditions.

While we have argued from the beginning that power shut-off may be reasonable – even desirable – under extreme conditions, our experiences in these proceedings have convinced us that SDG&E is not interested in working with parties to determine best practices. Rather, it has set out to dictate terms that reduce their own liability at the cost of putting their customers in danger, and it has consistently held to these terms and ignored all rational argument to the contrary.

We therefore urge that the Alternative Proposed Decision of ALJ Kenney be adopted by the Commission, and that the matter of shut-off be pursued in the context of a cost/benefit analysis that can scientifically and logically deduce the shut-off criteria that minimize overall risk to the public.

Respectfully submitted this 31st day of August, 2009,

By: /s/ **Diane Conklin**

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⁴⁴ A.08-12-021; MUSSEY GRADE ROAD ALLIANCE PRE-HEARING CONFERENCE STATEMENT; February 3, 2009; pp. 1-2.

Appendix

Subject Index of Proposed Changes

APD denotes Judge Kenney’s Alternate Proposed Decision; **PD** denotes Commissioner Simon’s Proposed Decision. Additions will be indicated by underline, while deletions will be indicated by strikethrough.

APD, p. 31; PD, pp. 33-34 –

“The Alliance and CPSD contend that SDG&E has selected a wind-speed criterion that is too low, which will cause needless power shut-off events. They state that SDG&E is required by General Order 95 to design, construct, and maintain power lines that can withstand wind speeds well in excess of SDG&E’s wind-speed criterion. The Alliance further claims to find inconsistencies and errors in the SDG&E shut-off criteria.”

APD, p. 31; PD, p. 34 –

Add the following section:

“**Unreasonable Criteria for Shut-Off.** The Alliance and CPSD have noted internal inconsistencies and errors in the SDG&E shut-off criteria. Specifically, they note that the average wind speed criteria between 25 mph and 35 mph used by SDG&E are not intended to protect against fires caused by power line failures, that they will hamper rather than assist firefighting, and note that historical fire evidence does not show they protect against fires caused by debris. The Alliance notes furthermore that SDG&E inappropriately applies a 15% correction to reduce thresholds that is intended to be used only adjusting between the height of wind gauges and utility poles. Finally the Alliance and CPSD assert that SDG&E’s expert erred in his calculation of wind speed adjustments for gusts at the top of utility poles, which they claim should not exceed 7%.”

APD, p. 31; PD, p. 34 –

Insert comparison table:

“...power lines that can withstand wind speeds well in excess of SDG&E’s

wind-speed criterion. We summarize shut-off criteria and party claims regarding them in the table below:

Wind Speed	Avg/gust	Description
0-25 mph	Average	No shut off.
>25 mph	Average	SDG&E shut-off if gusts >48 mph, to “aid firefighting”/debris protection. Alliance - Inappropriate use of pole-height correction. Alliance & CPSD – no threat to lines; inappropriate shutoff
>30 mph	Average	SDG&E - Triggers shut-off - “aid firefighting”/debris protection. Alliance - Inappropriate use of pole-height correction. Alliance & CPSD – no threat to lines; inappropriate shut-off. ALSO (same as >25 mph if pole-height correction not made)
>35 mph	Average	SDG&E – same as 30 mph, but without pole-height correction. Alliance & CPSD – no threat to lines; inappropriate shut-off.
>48 mph	Gust	SDG&E shut-off if average >25 mph due to threat to lines. GO 95 + pole height correction. Alliance & CPSD – pole height correction calculation incorrect. CPSD – no safety factor applied.
51 mph	Gust	GO95 loading + Alliance & CPSD pole height correction (w.o. safety factor)
55 mph	Gust	GO95 loading without corrections or safety factor
79 mph	Gust	GO95 loading including safety factor, non-joint use (CPSD) ⁴⁵
91 mph	Gust	GO95 loading including safety factor, joint-use (CPSD)

p. 53 – APD –

“We agree that the Public Utilities Code ranks public safety as a top priority. We further agree that a safe electric system is one which is operated to prevent fires. However, operating a safe system also includes the reliable provision of electricity. In this regard, we find that SDG&E has not met its burden of proof to show that its shut off criteria are reasonable or correct. Without power, numerous unsafe conditions can occur. Traffic signals do not work, life support systems do not work, water pumps do not work, and communication systems do not work.”

p. 55 – APD –

“SDG&E’s statutory obligation to operate its system safely requires SDG&E to shut off its system if doing so is necessary to protect public safety. Any decision by SDG&E to shut off

⁴⁵ JOINT REPLY COMMENTS OF THE CONSUMER PROTECTION AND SAFETY DIVISION AND THE DIVISION OF RATEPAYER ADVOCATES TO SAN DIEGO GAS & ELECTRIC COMPANY’S RESPONSE TO ADMINISTRATIVE LAW JUDGE’S RULING; May 26, 2009; p. 10.

power may be reviewed by the Commission pursuant to its broad jurisdiction over matters regarding the safety of public utility operations and facilities. Specifically, if SDG&E maintains that it is necessary to shut off power for some portion of its system at wind speeds less than those mandated by GO 95 for the safe and reliable operation in order to prevent power line fires, any such incident shall be regarded as potential GO 95 non-compliance, and will be subject to Commission review and the requirement of a remediation plan. Any liability or restitution for damages caused by such a shut-off would be SDG&E's responsibility."

p. 56 – APD –

We commend SDG&E for its concern for fire safety and its extensive efforts to implement measures to protect the public, both in this proceeding and with its broader Community Fire Safety Program. We encourage SDG&E to continue its efforts, particularly with respect to its inspections of overhead power lines, hardening its facilities in fire-prone areas, and sound vegetation management. We note, however, that SDG&E maintains 75,600 wooden poles in high fire risk areas, and that its current steel pole replacement program is planned to replace only 1000 poles per year.⁴⁶ No schedule for completion of its hardening program has been provided, and this must be considered another deficiency of the current application.

p. 61 – APD – Alter Finding of Fact –

“5. SDG&E did not demonstrate that its Power Shut-Off Plan will result in an overall reduction in the number of wildfires, that its shut-off criteria are reasonable, or that the public safety benefits of its Plan exceed the significant costs, burdens, and risks that are imposed on customers and communities in areas where power is shut off.”

p. 62 – APD - Alter Conclusion of Law #2 –

“2. SDG&E has authority under §§ 451 and 399.2(a) to shut off power in emergency situations when necessary to protect public safety. Any decision by SDG&E to shut off power may be reviewed by the Commission pursuant to its broad jurisdiction regarding the safety of public utility operations and facilities. Specifically, if SDG&E maintains that it is

⁴⁶ A.08-12-021; MGRA Opening Comments; March 27, 2009; Appendix B; SDG&E Response to MGRA Data Request #1, part 1. Feb. 24, 2009. MGRA-6, MGRA-8.

necessary to shut off power for some portion of its system at wind speeds less than those mandated by GO 95 for the safe and reliable operation in order to prevent power line fires, it does so at its own risk. Any such incident shall be regarded as potential GO 95 non-compliance and will be subject to Commission review and the requirement of a remediation plan.”

CERTIFICATE OF SERVICE

I hereby certify that pursuant to the California Public Utilities Commission's Rules of Practice and Procedure, I have served a true copy of the **MUSSEY GRADE ROAD ALLIANCE COMMENTS ON PROPOSED AND ALTERNATE PROPOSED DECISIONS REGARDING SAN DIEGO GAS AND ELECTRIC'S SHUT OFF PLAN AND RULE 14 CHANGE** to all parties on the service list for Application A.08-12-021 via electronic mail.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 31st day of August, 2009 at Ramona, California.

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