

Decision 10-04-047 April 22, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission’s Own Motion into the Operations and Practices of San Diego Gas & Electric Company Regarding the Utility Facilities linked to the Witch and Rice Fires of October 2007.

Investigation 08-11-006
(Filed November 6, 2008)

Investigation on the Commission’s Own Motion into the Operations and Practices of Cox Communications and San Diego Gas & Electric Company Regarding the Utility Facilities linked to the Guejito Fire of October 2007.

Investigation 08-11-007
(Filed November 6, 2008)

DECISION APPROVING AND ADOPTING THE WITCH/RICE AND GUEJITO FIRE SETTLEMENTS

1. Summary

The Consumer Protection and Safety Division and the San Diego Gas & Electric Company and the Consumer Protection and Safety Division, CoxCom Inc., and Cox California Telcom LLC jointly moved for the approval and adoption of their respective Settlement Agreements, which resolve the Commission’s Orders Instituting Investigations 08-11-006 and 08-11-007. Under the terms of the Consumer Protection and Safety Division and the San Diego Gas & Electric Company Agreement, San Diego Gas & Electric Company will pay \$14,350,000 to the General Fund of the State of California within 60 days of the issuance of this decision. In accordance with the terms of the Consumer

Protection and Safety Division, CoxCom Inc., and Cox California Telcom LLC Agreement, CoxCom Inc. and Cox California Telcom LLC will pay \$2,000,000 to the General Fund of the State of California within 60 days of the issuance of a final non-appealable decision. San Diego Gas & Electric Company will also reimburse the Consumer Protection and Safety Division up to an additional \$400,000 in order to implement a computer work module to assist the Consumer Protection and Safety Division. San Diego Gas & Electric Company shall remit any unused balance of the \$400,000 to the General Fund of the State of California within 60 days of being directed to do so by the Consumer Protection and Safety Division. Investigations 08-11-006 and 08-11-007 are closed.

2. Background and Procedural History

In late October 2007, several severe fires occurred in the San Diego area. The Rice Fire ignited in Fallbrook, California, and the Witch Fire ignited in southern San Diego County near State Highway 78 and Santa Ysabel. The Guejito Fire started in the San Pasqual area of the county. On November 12, 2008, this Commission issued Order Instituting Investigation (OII or I.) 08-11-006 into "the Operations and Practices of the San Diego Gas & Electric Company Regarding the Utility Facilities linked to the Witch and Rice Fires of October 2007." On the same day, the Commission also issued I.08-11-007 into "the Operations and Practices of Cox Communications and San Diego Gas & Electric Company Regarding the Utility Facilities linked to the Guejito Fire of October 2007."

The Commission stated that it was issuing I.08-11-006 "to determine whether San Diego Gas & Electric Company (SDG&E) violated any provision of the Public Utilities Code, general orders, other rules or requirements in regards to: 1) utility facilities which have been linked to the October 2007 Witch and Rice

Fires; and 2) failing to cooperate with the Consumer Protection and Safety Division (CPSD).” The OII provided notice that a hearing would be held on the matter, and it directed SDG&E to show cause as to why the Commission should not find violations in this proceeding and why the Commission should not impose penalties and/or any other forms of relief, if it found any violations. The OII also directed SDG&E to respond to certain questions and to provide CPSD with certain information.¹

The Commission declared that it was issuing I.08-11-007 “to determine whether Cox Communications (Cox) and/or [SDG&E] violated any provision of the Public Utilities Code, general orders, other rules, or requirements in regards to: 1) utility facilities which have been linked to the October 2007 Guejito Fire; and 2) failure to cooperate with the [CPSD].” The OII provided notice that a hearing would be held on the matter, and directed Cox and SDG&E to show cause as to why the Commission should not find violations in this proceeding, and why the Commission should not impose penalties and/or any other forms of relief, if it found any violations. The OII also directed Cox and SDG&E to respond to certain questions and to provide CPSD with certain information.²

The Guejito and Witch/Rice Fire OIIs’ May 1, 2009 Scoping Memos scheduled evidentiary hearings to begin respectively, on June 29, and July 13, 2009. Before the start of the Guejito Fire OII hearings, CPSD, Cox, and SDG&E requested that the matter be held in abeyance³ so that the parties could

¹ I.08-11-006 at 1.

² I.08-11-007 at 1.

³ The parties requested abeyance until the start of the Witch and Rice hearings on July 13, 2009.

fully develop the settlement agreement in principle that they had reached. At the July 13 Prehearing Conference for both proceedings, CPSD and SDG&E reported that they had also reached a settlement agreement in principle on key terms in the Witch and Rice Fire OII. CPSD, SDG&E, and Cox asked that both proceedings be temporarily held in abeyance while the parties further discussed and set forth the details of the respective agreements.

To monitor the progress of the continuing discussions and finalizing of the agreements, the assigned Administrative Law Judge (ALJ) convened weekly and then bi-weekly status conferences from July 22 through October 9, 2009. On October 21, 2009, CPSD and SDG&E requested the assistance of one of the Commission's Alternative Dispute Resolution (ADR) Neutrals, to help them reach agreement on several remaining issues. CPSD and SDG&E met with an ADR Neutral on October 26, 2009.⁴ On October 30, 2009, CPSD and SDG&E filed a settlement agreement resolving the Witch/Rice and Guejito Fires OIIs as to SDG&E. On the same day, CPSD and Cox also filed a settlement agreement resolving the Guejito Fire OII as to Cox. No comments were filed on the proposed settlement agreements.⁵

⁴ The parties to I.08-11-007 (SDG&E, Cox, and CPSD) and I.08-11-006 (SDG&E and CPSD) held a Settlement Conference on October 28, 2009, with each party waiving the seven-day notice contemplated by Rule 21.1(b). They contend that they set this schedule because they are the only parties in each OII, and they wanted to expedite the public filing of the settlements. See Joint Motion of CPSD and SDG&E at 12 (October 30, 2009).

⁵ On November 5, 2009, the ALJ issued a ruling giving notice that the captions of both proceedings would be used solely for the purpose of addressing the joint motions in I.08-11-006 and I.08-11-007. The Witch/Rice and Guejito proceedings are not consolidated.

3. The Settlement Agreements

Each proposed settlement agreement resolves the issues identified in the respective Assigned Commissioner Rulings and Scoping Memos. Following is a description of the main terms of each of the settlement agreements.

3.1. The CPSD and SDG&E Settlement Agreement⁶

3.1.1. Statement of Apology by SDG&E

SDG&E acknowledges and understands its obligation and duty to respond promptly to Commission requests for access to information and utility employees. SDG&E admits that its efforts fell short of meeting this obligation and duty in connection with CPSD's investigation into the Witch, Rice, and Guejito fires, and apologizes for permitting this to happen. SDG&E agrees that it will conduct additional training in this area.

3.1.2. Admissions Regarding the Accident Reporting Requirements

SDG&E admits that it failed to provide the Commission with a 20-day follow-up letter required by the Accident Reporting Requirements for the Witch, Rice, and Guejito fires. SDG&E agrees that it will conduct additional training in this area.

3.1.3. No Admission Regarding Safety Violations

SDG&E does not admit to any violations of the safety General Order provisions or related statutory requirements.

⁶ The CPSD-SDG&E Settlement Agreement is appended as Attachment I to this decision.

3.1.4. Without Prejudice to Other Parties or Plaintiffs

SDG&E and CPSD state that they enter into the Settlement Agreement, without prejudice to any positions, including positions connected to OII-related evidence that any party may want to introduce, in any other Commission proceeding. They also enter into the Agreement without prejudice to positions that any party, including civil plaintiffs, might take in the civil litigation related to the Witch, Rice, and Guejito fires.

3.1.5. Remedial Measures

- A. SDG&E will conduct additional training regarding vegetation management to ensure familiarity with tree inspection/trimming and vegetation management processes.
- B. SDG&E will also conduct additional training regarding identification and repair of safety hazards, including clearance violations and broken lashing wires.
- C. SDG&E conducted inspections pursuant to the recommendation in the CPSD Report.
- D. SDG&E will conduct Supplemental Quality Assurance/Quality Control inspections for its distribution and transmission systems in the Highest Risk Fire Areas (HRFAs) until the end of 2016.
- E. SDG&E shall adopt, on a going forward basis, design criteria for steel poles and supported facilities in the HRFAs that ensure facilities are designed to withstand the wind load associated with a basic wind speed of 85 miles per hour.
- F. For 69 kilovolt transmission lines, three-dimensional laser scanning surveys focused on ensuring compliant conductor clearances in the HRFAs shall be conducted by SDG&E on a three-year cycle.
- G. SDG&E will develop and implement protocols to improve communication and coordination with

Communications Infrastructure Providers (CIPs)
regarding inspection and maintenance of facilities on
joint use poles.

3.1.6. Settlement Payment

Under the Agreement, SDG&E will pay \$14,350,000 to the General Fund of the State of California. SDG&E will also reimburse CPSD up to an additional \$400,000 to implement a computer work module designed to assist CPSD in future audits and investigations of utility safety hazards and incidents. SDG&E shall remit any unused balance of the \$400,000 established for that purpose to the General Fund of the State of California within 60 days of being directed to do so by CPSD.

3.2. The CPSD and Cox Settlement Agreement

Under the CPSD-Cox Agreement, Cox agrees to implement additional inspection, maintenance, documentation, and reporting measures, which in certain respects exceed the requirements adopted by the Commission for other CIPs in Decision (D.) 09-08-029 in Phase 1 of Rulemaking (R.) 08-11-005, and to make a settlement payment to the General Fund of the State of California. In general, it agrees to the following terms.

3.2.1. Enhanced Inspection Policies and Practices

Cox shall develop and implement further enhanced inspection policies and practices, in addition to its existing inspections, including additional Patrol Inspections throughout its service territories in California⁷ and annual Detailed Inspections in Extreme and Very High Fire Threat Areas and Southern

⁷ Cox completed its initial Patrol Inspections by October 31, 2009. Under D.09-08-029, in contrast, other CIPs are not required to complete their initial Patrol Inspections in the Extreme and Very High Fire Threat Areas of Southern California until September 30, 2010. (D.09-08-029, mimeo. at 52-53 (Ordering Paragraph 1).)

California, through an independent, dedicated General Order 95/128 inspection program.

3.2.2. Enhanced Maintenance Policies and Practices

Cox shall develop and implement additional enhanced maintenance policies and practices that require corrective actions to remedy safety issues within specific time periods reflecting the relative significance and priority of the condition.

3.2.3. Documentation

Cox shall develop and implement additional documentation, record keeping, and reporting requirements regarding maintenance and inspection activities.

3.2.4. Enhanced Training

Cox shall develop and implement additional, enhanced training for employees and contractors.

3.2.5. Time Period

Cox shall implement the additional enhanced inspection, maintenance, documentation, record keeping, and reporting measures set forth in the Settlement Agreement for a period of seven years, irrespective of whether and the extent to which less stringent measures may be adopted by the Commission for other CIPs in R.08-11-005.⁸

⁸ However, Cox is required to comply with any requirements that the Commission may adopt in R.08-11-005, or in a subsequent proceeding, that are more stringent than the measures required by the Settlement Agreement. See CPSD-Cox Settlement Agreement at § 2.3.

3.2.6. Enhanced Communication and Coordination

Cox shall seek to develop and implement enhanced communication and coordination measures with SDG&E regarding General Order 95 issues on joint use poles.

Cox agrees not to seek recovery of the costs it incurs in implementing the Settlement Agreement through a surcharge on its customer bills.

3.2.7. Cooperation

Cox shall cooperate with CPSD in any further investigation regarding SDG&E's alleged failure to cooperate with CPSD's investigation of the Guejito Fire in I.08-11-007 or a subsequent proceeding.

3.2.8. Settlement Payment

Cox shall make a settlement payment in the amount of \$2,000,000 to the General Fund of the State of California, within 60 days of the issuance of a final non-appealable decision by the Commission approving the Settlement Agreement without material change.

3.2.9. Consistency

Cox shall take no position inconsistent with the express terms of the CPSD-Cox Settlement Agreement in either Phase I or Phase II of R.08-11-005.

Finally, Cox agrees that the Settlement Agreement is without prejudice to the rights of Cox or any other person or party in any other potential or pending civil litigation.

4. The Record

CPSD and SDG&E assert that, after extensive discovery, they submitted prepared written testimony that sets forth a thorough record of the Witch, Rice, and Guejito proceedings. They attached a list of exhibits as an appendix to the CPSD-SDG&E Settlement Agreement.

CPSD's testimony in the proceedings consists of the documents referenced in the appendix of the CPSD-SDG&E Settlement Agreement. With respect to the Witch fire, the CPSD report and testimony alleged that SDG&E is in violation of California Public Utilities Commission (Commission) requirements because it failed to design, construct, and maintain the affected lines and conductors in accordance with General Order 95, and failed to maintain the clearances between conductors also required by General Order 95. With respect to the Rice fire, the CPSD report and testimony alleged failures of SDG&E's vegetation management practices⁹ in violation of General Order 95. With respect to the Guejito fire, CPSD alleged that both SDG&E and Cox failed to maintain proper clearances in violation of Public Utilities Code § 451 and General Order 95. Finally, with respect to all three fires, CPSD also alleged failures to adequately cooperate with its investigations.

The appendix of the CPSD-SDG&E Settlement Agreement also references the documents comprising SDG&E's testimony in the proceedings. Regarding the Witch fire, SDG&E alleged that its facilities and practices were in compliance with General Order 95. Regarding the Rice fire, SDG&E alleged that its vegetation management practices were in compliance with General Order 95 and Public Resources Code § 4293. Regarding the Guejito fire, SDG&E alleged that it maintained proper clearances, consistent with Public Utilities Code § 451 and General Order 95. SDG&E also alleged that it cooperated with CPSD's investigation of all three fires.

⁹ Tree trimming.

In the Agreement, CPSD and SDG&E have stipulated to enter all of their prepared testimony into the record solely to form the basis of factual support for the CPSD-SDG&E Settlement Agreement.

CPSD and Cox assert that they have engaged in extensive discovery, and have both prepared and served lengthy testimony and supporting exhibits in substantiation of their litigation positions. CPSD and Cox have identified this testimony in the appendix to the CPSD-Cox Settlement Agreement, and request that this testimony be included in the proceeding record for the limited purpose of providing a basis for considering whether the CPSD-Cox Settlement satisfies the requirements of Rule 12.1 of the Commission's Rules of Practice and Procedure (Rules).

In order to fully substantiate the extensive records in I.08-11-006 and I.08-11-007, we marked for identification 27 exhibits of testimony and supporting documentation.¹⁰ With today's decision, we receive the 27 exhibits into the formal records of these proceedings.¹¹

5. Discussion of Proposed Settlement Agreements

Pursuant to Rule 12.1 of the Commission's Rules, Commission settlements must be reasonable in light of the record, consistent with the law, and in the public interest.

¹⁰ Attachment III to this decision lists the exhibit numbers, sponsoring parties, descriptions, and the dates the exhibits were identified and included in the formal record.

¹¹ Exhibits 1-WR through 6-WR become part of the formal record of the Witch/Rice Fire Investigation, I.08-11-006, and Exhibits 1-G through 21-G become part of the formal record of the Guejito Fire Investigation, I.08-11-007.

5.1. Reasonableness in Light of the Whole Record

The settling parties represent that the thorough factual record developed in the OIIs provides an ample basis for review and approval of the proposed Settlement Agreements.

In the CPSD-SDG&E Settlement Agreement, SDG&E provided a statement of apology regarding lack of cooperation and has taken on significant remedial measure commitments to address public safety issues raised in the OIIs. SDG&E has also agreed to make a substantial payment of shareholder funds to the General Fund of the State of California. CPSD and SDG&E represent that their Agreement was carefully and extensively negotiated as a package, and they believe that the record or the circumstances of this case individually support each of the items. They maintain that the CPSD-SDG&E Agreement is closely based on the record developed by the parties, and is reasonable because it effectively addresses the specific issues raised by the evidentiary record.

CPSD and Cox contend that the increased inspection and maintenance measures provided for by their proposed accord are consistent with the Commission's goal of enhancing fire safety, and exceed in certain significant respects the requirements mandated of other CIPs under applicable Commission rules. CPSD and Cox submit that their Agreement not only reduces the time, expense, and risk of litigation, but also conserves scarce Commission resources.

We find that both Settlement Agreements resolve the issues in the proceeding in a manner that reflects a reasonable compromise among the litigation positions taken by the settling parties in their testimony. Thus, we conclude that the settlements are reasonable in light of the whole record.

5.2. Consistent with the Law

CPSD and SDG&E assert that their accord resolves the Witch/Rice and Guejito OIIs, and agree that it is consistent with State and Federal law. They are unaware of any conflicts in this regard.

CPSD and SDG&E submit that while the Commission does not have an extensive record of comparable enforcement cases relating to electric utilities, they have looked to previous Commission settlements and decisions for guidance, and noted three applicable decisions.¹² The decisions involved settlement agreements in electric utility investigations with remedial measures undertaken, shareholder payments into the General Fund of the State of California, and vegetation management inspection and compliance protocols. CPSD and SDG&E claimed that to the best of their knowledge, the provisions of the proposed Settlement Agreement are not inconsistent with any orders or requirements in any of these decisions, or any other Commission decisions.

CPSD and Cox also represent that nothing in their Agreement contravenes any statute, Commission decision, or rule.

We concur that the settlement agreements are the product of good faith negotiations, compromise, and do not conflict with State and Federal law. Therefore, we conclude that both settlement agreements are consistent with the law.

5.3. In the Public Interest

CPSD and SDG&E contend that the proposed Settlement Agreement provides significant and direct benefits to SDG&E's customers. The accord requires SDG&E to make payments totaling \$14,750,000. Additionally, a

¹² D.06-02-003, D.99-07-029, and D.04-04-065.

number of remedial measures will provide going forward benefits in the form of system fire-prevention improvements and additional training to employees and agents in a variety of related areas. SDG&E will also conduct further training regarding the Accident Reporting Requirements. Finally, the settling parties note that SDG&E has issued a statement of apology for falling short in meeting its obligation and duty regarding cooperation with CPSD investigations into the Witch/Rice and Guejito fires.

CPSD and Cox maintain that their Agreement reflects a reasonable compromise between their positions and will avoid the time, expense, and uncertainty of evidentiary hearings and further litigation. It will also facilitate the implementation of additional enhanced inspection, maintenance, documentation, record keeping and reporting by Cox, on a more expedited schedule than would have been possible in the absence of the Settlement Agreement.

We concur with both settling parties' assertion that the proposed agreements provide numerous public interest benefits, and conclude that the proposed settlements are fully in the public interest.

We further concur that these proposed agreements address the alleged violations at issue in the Witch/Rice and Guejito Fire Investigations. Therefore, we approve and adopt both settlement agreements

6. Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6 (c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

7. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Jacqueline A. Reed is the assigned ALJ in this proceeding.

Findings of Fact

1. The settlement agreements resolve all pending issues outlined in the respective assigned Commissioner's Rulings and Scoping Memos that relate to the Witch/ Rice and Guejito Fire OIIs.
2. No party filed in opposition to the proposed settlement agreements.
3. The settlement agreements are the product of good faith negotiations between the parties.
4. Exhibits 1-WR through 6-WR are the testimonies and supporting documents of the Witch/Rice Fire Investigation.
5. Exhibits 1-G through 21-G are the testimonies and supporting documents of the Guejito Fire Investigation.
6. In accordance with the settlement agreement, SDG&E will pay \$14,350,000 to the General Fund of the State of California.
7. Under the settlement agreement, SDG&E will reimburse CPSD up to an additional \$400,000 in order to implement a computer work module, and will remit any unused balance of this sum to the General Fund of the State of California.
8. In accordance with the CPSD-Cox settlement agreement, Cox will pay \$2,000,000 to the General Fund of the State of California.

Conclusions of Law

1. The settlement agreements are reasonable in light of the whole record.
2. The settlement agreements are consistent with the law.

3. The settlement agreements are in the public interest because they provide significant and direct benefits to customers and the overall public.

4. To fully substantiate the extensive records in the Witch/Rice and Guejito Fire Investigations, the testimony and supporting documents should become part of the formal records of these proceedings.

5. The SDG&E-CPSD and Cox-CPSD agreements should be approved and adopted immediately so that the terms and conditions of the agreements can be promptly implemented.

O R D E R

IT IS ORDERED that:

1. The Joint Motion of the Consumer Protection and Safety Division and San Diego Gas & Electric Company for approval and adoption of the Settlement Agreement in Investigation (I.) 08-11-006 and I.08-11-007, appended to this decision as Attachment I, is granted.

2. The Joint Motion of the Consumer Protection and Safety Division and CoxCom, Inc. and Cox California Telcom, LLC for approval and adoption of the Settlement Agreement in Investigation 08-11-007, appended to this decision as Attachment II, is granted.

3. The 27 exhibits identified in Attachment III to this decision as Exhibits 1-WR through 6-WR in Investigation 08-11-006, and Exhibits 1-G through 21-G in Investigation 08-11-007 are received as part of the formal records of the respective proceedings.

4. In accordance with Paragraph 8 of the Consumer Protection and Safety Division and San Diego Gas & Electric Company Settlement Agreement, within

60 days of the issuance of this decision, San Diego Gas & Electric Company shall pay \$14,350,000 to the General Fund of the State of California.

5. Within 10 days of the remittal of payment, San Diego Gas & Electric Company shall provide photocopies of the settlement check to the Consumer Protection and Safety Division.

6. In accordance with Paragraph 8 of the Consumer Protection and Safety Division and San Diego Gas & Electric Company Settlement Agreement, San Diego Gas & Electric Company shall reimburse the Consumer Protection and Safety Division up to an additional \$400,000 in order to implement a computer work module designed to assist the Consumer Protection and Safety Division in future audits and investigations of utility safety hazards and incidents.

7. San Diego Gas & Electric Company shall remit any unused portion of the \$400,000 described in Ordering Paragraph 6 to the General Fund of the State of California within 60 days of being so directed by the Consumer Protection and Safety Division.

8. In accordance with Section 2.5 of the Consumer Protection and Safety Division and CoxCom, Inc. and Cox California Telcom, LLC Settlement Agreement, within 60 days of the issuance of a final non-appealable decision, CoxCom, Inc. and Cox California Telcom, LLC shall make a settlement payment of \$2,000,000 to the General Fund of the State of California

9. Investigation (I.) 08-11-006 and I.08-11-007 are closed.

This order is effective today.

Dated April 22, 2010, at Los Angeles, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

TIMOTHY ALAN SIMON

NANCY E. RYAN

Commissioners

ATTACHMENTS I thru III