



The Protect Our Communities Foundation
4452 Park Boulevard #309
San Diego, California 92116

October 28, 2020

California Public Utilities Commission
Attn: Energy Division, Tariff Unit
505 Van Ness Ave.
San Francisco, CA 94102

Sent Via Email (EDTariffUnit@cpuc.ca.gov)

Re: Protest by The Protect Our Communities Foundation to SDG&E Advice Letter 3629-E

To Whom It May Concern:

The Protect Our Communities Foundation (PCF) protests San Diego Gas & Electric Company (SDG&E) Advice Letter 3629-E. PCF protests SDG&E's Advice Letter on the following grounds set forth in General Rule 7.4.2 of General Order 96-B:

- (1) The utility did not properly serve or give notice of the advice letter;
- (2) The relief requested in the advice letter would violate statute or Commission order, or is not authorized by statute or Commission order on which the utility relies;
- (3) The analysis, calculations, or data in the advice letter contain material errors or omissions;
- (4) The relief requested in the advice letter is pending before the Commission in a formal proceeding;
- (5) The relief requested in the advice letter requires consideration in a formal hearing, or is otherwise inappropriate for the advice letter process; or
- (6) The relief requested in the advice letter is unjust, unreasonable, or discriminatory...¹

In AL 3629-E, SDG&E purports to notify the Commission that "SDG&E has incurred costs exceeding its annual revenue requirement for vegetation management for fiscal year 2020, including costs incurred in implementing the SDG&E Enhanced Vegetation Management (EVM) Program described in its 2020 Wildfire Mitigation Plan (WMP)."² However, SDG&E should not be spending *any* money on its enhanced vegetation management program because the program remains entirely unjustified and unauthorized.

¹ General Order 96-B, General Rule 7.4.2.

² SDG&E AL 3629, p. 1.

In its advice letter, SDG&E admits that it does not have “an approved annual revenue requirement for vegetation management in its WMP” as contemplated by Section 8386.3(d), and claims that its “annual revenue requirement for all of SDG&E’s vegetation management activities...was established in the decision approving SDG&E’s General Rate Case (GRC), D.19-09-051.”³ Notably, SDG&E failed to serve the service list of A.17-10-007 – the service list comprised of the persons most likely to be familiar with the fact that D.19-09-051 nowhere considered or approved SDG&E’s enhanced vegetation management program.

While the costs of each program within SDG&E’s WMP must be considered in a formal proceeding which SDG&E has failed to file, SDG&E’s enhanced vegetation management program remains unjustified and unauthorized by the terms of the Commission’s orders. Thus, even if the Commission were to consider the costs of each program in SDG&E’s WMP in an appropriate formal proceeding, SDG&E’s unauthorized enhanced vegetation management program would need to be excluded. As further discussed below, the Commission should reject outright the highly irregular attempt by SDG&E to address issues related to the costs of an unapproved and unauthorized program via advice letter.

I. SDG&E’S ENHANCED VEGETATION MANAGEMENT PROGRAM REMAINS UNJUSTIFIED AND UNAUTHORIZED.

SDG&E blames its excessive spending on prevailing wage requirements,⁴ but fails to explain in AL 3629-E that its enhanced vegetation management program remains entirely unauthorized. SDG&E’s enhancement vegetation management program continues to be unauthorized pursuant to the terms of D.19-05-039, and the program may not be approved unless and until SDG&E complies with the California Environmental Quality Act (CEQA).

A. SDG&E Has Admitted to Violating D.19-05-039.

D.19-05-039 prohibits SDG&E from proceeding with vegetation management practices unsupported by scientific evidence or other data.⁵ In Resolution WSD-005, the Commission determined that SDG&E failed to comply with the Commission’s express orders in this regard.⁶

³ SDG&E AL 3629, p. 1; Pub Util. Code, § 8386.3, subd. (d) (“An electrical corporation shall not divert revenues authorized to implement the plan to any activities or investments outside of the plan. An electrical corporation shall notify the commission by advice letter of the date when it projects that it will have spent, or incurred obligations to spend, its entire annual revenue requirement for vegetation management in its wildfire mitigation plan not less than 30 days before that date.”).

⁴ SDG&E AL 3629-E, p. 2; *see* Cal. Pub. Util. Code, § 8386.6, subd. (b).

⁵ D.19-05-039, *Decision on San Diego Gas & electric Company’s 2019 Wildfire Mitigation Plan Pursuant to Senate Bill 901* (May 30, 2019), p. 29-30 (OP 5).

⁶ Resolution WSD-005, *Resolution Ratifying Action of the Wildfire Safety Division on San Diego Gas & Electric Company’s 2020 Wildfire Mitigation Plan Pursuant to Public Utilities Code Section 8386* (June 11, 2020), Appendix A, A9 (“...detailed discussion or evidence of the effect of these increased vegetation clearances on utility ignitions remains lacking. Specifically, SDG&E does not detail proposed guidelines for where such a clearance is both feasible and necessary, or scientific evidence or other data showing that such clearance will reduce wildfire risk, as directed in our decision approving SDG&E’s 2019 WMP.”).

SDG&E itself subsequently confirmed its failure to comply with D.19-05-039, admitting in its Remedial Compliance Plan (RCP) that it has not and cannot yet comply with the requirements in D.19-05-039 to ensure that its enhanced vegetation management program be grounded in science *before* proceeding with such a program.⁷

B. SDG&E’s Enhanced Vegetation Management Program Cannot Be Approved Without First Complying with CEQA.

As PCF explained in its comments on SDG&E’s WMP, no CEQA exemption applies to SDG&E’s enhanced vegetation management program.⁸ Before SDG&E’s enhanced vegetation management program may be approved, SDG&E must comply with the CEQA with respect to its vegetation management program as a whole.⁹ CEQA requires that the public and decision-makers be informed of the environmental consequences of projects before they are undertaken; and it requires scientific and fact-based decision-making, consideration of alternatives, and implementation of feasible mitigation.¹⁰ SDG&E would need to comply with CEQA before the Commission could approve SDG&E’s enhanced vegetation management program.

II. SDG&E FAILED TO NOTIFY THE SERVICE LIST IN A.17-10-007, A CURRENTLY PENDING PROCEEDING DIRECTLY RELEVANT TO THE CLAIMS MADE IN SDG&E’S ADVICE LETTER.

Although the advice letter regards SDG&E’s claim that it has exceeded its “annual revenue requirement for all of SDG&E’s vegetation management activities...established in the decision approving SDG&E’s General Rate Case (GRC), D.19-09-051,”¹¹ SDG&E failed to notify the service list in A.17-10-007 - the proceeding in which D.19-09-051 was issued. A.17-10-007 constitutes an open proceeding where, based on SDG&E’s own position therein, SDG&E’s revenue requirements for 2020 remain directly relevant.¹²

⁷ San Diego Gas & Electric Company’s 2020 Wildfire Mitigation Plan Remedial Compliance Plan (July 27, 2020), p. 5 (SDG&E admitting it has not yet gathered enough data to support its proposed enhanced vegetation management); *compare* D.19-05-039, p. 29-30 (OP 5: allowing for enhanced vegetation only “if such a practice is supported by scientific evidence or other data showing that such clearance will reduce risk under wildfire conditions”); *see also* The Protect Our Communities Foundation’s Comments on San Diego Gas & Electric Company’s Remedial Compliance Plan (August 10, 2020), p. 11-14.

⁸ The Protect Our Communities Foundation Comments on the 2020 Wildfire Mitigation Plans Pursuant to Resolution WSD-001 (April 7, 2020), p. 24-25.

⁹ *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1188, citing CEQA Guidelines § 15378.)

¹⁰ *See e.g.* Cal. Code Regs., tit. 14, § 15064, subd. (b)(1); Cal. Code Regs., tit. 14, § 15126.6; Cal. Code Regs., tit. 14, § 15088; *Laurel Heights Improvement Assn. v. Regents of University of Cal.* (1988) 47 Cal.3d 376, 392, 394.

¹¹ SDG&E AL 3629-E, p. 1.

¹² *See generally* A.17-10-007/008, Joint Petition for Modification of D.19-09-051 of Southern California Gas Company and San Diego Gas & Electric Company (April 9, 2020) (SDG&E arguing rates approved in D.19-09-051 are reasonable and should form the basis for rates in 2022 and 2023).

III. SDG&E'S WMP COSTS MUST BE CONSIDERED IN A FORMAL PROCEEDING.

When the Commission reviewed the utilities' 2019 WMPs in May of 2019, the Commission made clear that the utilities would need to meet their respective burdens of proof in their individual GRC proceedings before ratepayers could be required to pay for any of the activities proposed in the utilities' respective WMPs:

Pursuant to SB 901, the costs of the actions in the WMP will be the subject of review at a later time, in the context of individual GRCs. Thus, nothing in this decision should be interpreted as a determination that those costs are reasonable or that any respondent has acted as a prudent manager. Any provision in a WMP that represents that approval of the Plan constitutes a determination on cost, reasonableness, or prudence is disapproved.¹³

At the time the Commission issued the WMP decisions in May of 2019, Section 8386 included subsection (g) which required the Commission to "consider whether the cost of implementing each electrical corporation's plan is just and reasonable in its general rate case application," and explained that "[n]othing in this section shall be interpreted as a restriction or limitation on Article 1 (commencing with Section 451) of Chapter 3 of Part 1 of Division 1."¹⁴ When AB 1054 amended SB 901 in July of 2019, AB 1054 moved the language in Section 8386(g) to newly enacted Section 8386.4(b)(1), and added an alternative option in Section 8386.4(b)(2) which allows a utility to file a standalone application "at the conclusion of the time period covered by the plan."¹⁵

This year, after reviewing the utilities' 2020 WMPs, the Commission again confirmed that "[a]s set forth in Public Utilities Code §8386(g), and confirmed by Decision 19-05-036, the Commission will consider costs recovery related to WMPs in the electrical corporations' General Rate Cases or application permitted by Section 8386.4(b)(2)".¹⁶ In short, the Commission has now repeatedly recognized the statutory requirement that WMP costs be considered in general rate case applications or in an "application for recovery of the cost of implementing its plan as accounted in the memorandum account at the conclusion of the time period covered by the plan."¹⁷

¹³ D.19-05-036, *Guidance Decision on 2019 Wildfire Mitigation Plans Submitted Pursuant to Senate Bill 901* (May 30, 2019), p. 38.

¹⁴ Pub. Util. Code, § 8386, subd. (g) (January 1, 2019).

¹⁵ Pub. Util. Code, § 8386.4, subd. (b).

¹⁶ Resolution WSD-002, *Resolution Ratifying Action of the Wildfire Safety Division on 2020 Wildfire Mitigation Plans Pursuant to Public Utilities Code Section 8386* (June 11, 2020), p. 44 (OP 2) ("Nothing in this Resolution constitutes approval of the costs associated with electrical corporations' Wildfire Mitigation Plan (WMP) efforts. As set forth in Public Utilities Code §8386(g), and confirmed by Decision 19-05-036, the Commission will consider costs recovery related to WMPs in the electrical corporations' General Rate Cases or application permitted by Section 8386.4(b)(2)").

¹⁷ Pub. Util. Code, §8386.4, subd. (b)(1)-(2).

IV. SDG&E HAS NOT APPLIED FOR WMP COST APPROVAL.

SDG&E has not applied for a determination that the cost of implementing its WMP is just and reasonable in its GRC or by separate application as stated in Section 8386.4. D.19-09-051 did not and could not have determined either of SDG&E's WMPs are just and reasonable, because SDG&E had not yet prepared its first WMP at the time it filed its TY 2019 GRC application or at the time it presented testimony in the GRC proceeding.¹⁸ Although wildfire mitigation plans were first required by SB 1028¹⁹ which was effective January 1, 2017, SDG&E did not file its first WMP until February 6, 2019, as ordered by the Assigned Commissioner's Scoping Memo and Ruling in R.18-10-007.²⁰

Nor did SDG&E apply for cost approval in the context of its relatively recent petition for modification of D.19-09-051.²¹ SDG&E's failure to include WMP cost recovery in its petition for modification of D.19-09-051, or to file an application for recovery of the cost of implementing its 2019 WMP at the conclusion of the period covered by the 2019 WMP, should preclude cost recovery.

V. THE ADVICE LETTER REVEALS SDG&E'S VEGETATION MANAGEMENT COSTS SHOULD NOT APPROVED EVEN IN AN APPROPRIATE FORMAL PROCEEDING.

SDG&E admits in AL 3629-E that it comingles its wildfire related vegetation management practices with vegetation management unrelated to wildfires.²² According to Resolution WSD-002, SDG&E's lumping together these costs should result in the Commission declining to approve SDG&E's wildfire related vegetation costs.²³

¹⁸ D.19-09-051, *Decision Addressing the Test Year 2019 General Rate Cases of San Diego Gas & Electric Company and Southern California Gas Company* (September 26, 2019), p. 277 (SDG&E's "GRC application was filed in late 2017 and so the most recent data available at the time of preparing and filing the application or 2016 data.").

¹⁹ Stats 2016, Ch. 598 (SB 1028).

²⁰ R.18-10-007, San Diego Gas & Electric Company's Wildfire Mitigation Plan (February 6, 2019); R.18-10-007, Assigned Commissioner's Scoping Memo and Ruling (December 7, 2018), p. 4.

²¹ A.17-10-007/008, Joint Petition for Modification of D.19-09-051 of Southern California Gas Company and San Diego Gas & Electric Company (April 9, 2020).

²² SDG&E AL 3629-E, p. 2.

²³ Resolution WSD-002, p. 25 ("It is not clear how electrical corporations are tracking their WMP activities in memorandum accounts if they do not budget for them by type of initiative. The Commission will scrutinize electrical corporations' memorandum accounts for WMP carefully, and if all costs are simply lumped together or included in general operations and maintenance accounts, electrical corporations risk failing to provide entitlement to cost recovery."). The Commission also found SDG&E's 2020 WMP in particular contained "a clear gap and absence of detail on the relationship between various hardening, vegetation management, and asset management initiatives and corresponding impacts on thresholds for imitating PSPS events," and faulted SDG&E for failing to provide spending data for its resource allocation methodology." Resolution WSD-005, p. 43-44.

In conclusion, PCF respectfully requests that AL 3629-E be rejected outright.²⁴ The Commission, if it chose to do so, could also direct SDG&E to raise vegetation management concerns unrelated to SDG&E's enhanced vegetation management program in an application for WMP cost review in A.17-10-007 or in an WMP cost approval application according to Section 8386.4(b)(2). SDG&E's enhanced vegetation management program, however, remains unjustified and unauthorized in its entirety. The Commission should reject outright the highly irregular attempt by SDG&E to address issues related to the costs of an unjustified and unauthorized program via advice letter.

Sincerely,
/s/ Malinda Dickenson
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Service List for R.18-10-007
Service List for A.20-07-003

²⁴ If the Commission is not inclined to reject the Advice Letter outright, PCF requests evidentiary hearings to address the myriad issues raised by the advice letter and discussed herein.