

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

Petition of San Diego Gas & Electric Company (U 902-E) to Adopt, Amend, or Repeal a Regulation Pursuant to Pub. Util. Code Section 1708.5	Petition 07-11-007
---	--------------------

**RESPONSE OF THE CENTER FOR BIOLOGICAL DIVERSITY AND THE
SIERRA CLUB TO SAN DIEGO GAS & ELECTRIC COMPANY'S PETITION
TO ADOPT, AMEND, OR REPEAL A REGULATION PURSUANT TO PUBLIC
UTILITIES CODE SECTION 1708.5**

Steven Siegel
Staff Attorney
Center for Biological Diversity
3421 Park Place
Evanston, IL 60201
Phone: (619) 241-6409
Email: ssiegel@biologicaldiversity.org

Justin Augustine
Staff Attorney
Center for Biological Diversity
1095 Market Street, Suite 511
San Francisco, CA 94103
Phone: (415) 436-9682 x302
Email: jaugustine@biologicaldiversity.org

Dated: December 20, 2007

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

Petition of San Diego Gas & Electric Company (U 902-E) to Adopt, Amend, or Repeal a Regulation Pursuant to Pub. Util. Code Section 1708.5	Petition 07-11-007
---	--------------------

**RESPONSE OF THE CENTER FOR BIOLOGICAL DIVERSITY AND THE
SIERRA CLUB TO SAN DIEGO GAS & ELECTRIC COMPANY'S PETITION
TO ADOPT, AMEND, OR REPEAL A REGULATION PURSUANT TO PUBLIC
UTILITIES CODE SECTION 1708.5**

I. INTRODUCTION

The Center for Biological Diversity and the Sierra Club agree with San Diego Gas and Electric Company (SDG&E) that the dangers presented by electric power lines present a significant hazard to the public. A review of current regulations is particularly important in light of the repeated instances of catastrophic fires to strike Southern California the last five years. Existing rules found at General Order No. 95 (GO 95) do not expressly discuss fire risks. As was made abundantly clear from the fire siege to strike Southern California in October 2007, fire poses an almost immeasurable risk to public safety, as well as the economy. Reporting on the number of deaths, injuries, and acreage burned in the fires, or placing a price tag on economic losses, only begins to describe the disruption and damage caused by the fires. Public health and safety measures must be fully and carefully considered in evaluating new power lines and assessing means to reduce the risks of existing lines.

II. NEED FOR BACKGROUND INFORMATION

We believe a critical component in any regulatory effort to ensure public health and safety from the fire risk associated with power lines begins with an understanding of

where safety precautions have already failed. SDG&E should share this view, as it co-authored a power line fire prevention guide that concludes, “Critical to the prevention of fires caused by electrical power is knowing when and where they occur and building this information into a GIS database which is shared by the fire agencies and electric utilities for future models and projects.”¹ To this end, it is essential to understand the reasons why power lines caused past fires, including at least three of the October 2007 fires.²

SDG&E highlights the important public purpose of its petition by recounting the number of deaths, injuries, and damaged structures resulting from the Cedar fire in 2003 and the October 2007 fires. The role of strong Santa Ana winds is also highlighted in the petition. Possible equipment failures, inadequate maintenance, and inappropriate siting of lines are not mentioned as possible fire risks or causes of past fires in the petition. We recommend a more detailed investigation of the circumstances leading to the fires. The investigation would need to reach back to at least 2003 to better understand whether appropriate steps were taken to prevent the October 2007 fires. As discussed below, the public purposes of the proposed rulemaking highlight the importance of releasing the findings of the investigation early in the rulemaking process. Information learned through the investigation is important not only for consideration during the rulemaking, but also for comment in ongoing proceedings that may result in additional power lines and the increased fire risk associated with the lines.

SDG&E has unavoidable conflicts of interest in the results and timing of the release of an investigation of its role in the October 2007 fires. It has already been sued by those harmed by the fires and is exposed to substantial liability.³ The results of an investigation can prove damaging to the Company in the lawsuit. In addition, SDG&E is now in the middle of a hearing in front of this Commission on its application for issuance of a certificate of public convenience and necessity for the Sunrise Powerlink transmission project (STP). The Company has a large financial stake in the outcome of

¹ Attachment 1, Testimony of Dr. Joseph Mitchell on behalf of the Mussey Grade Road Alliance, page 4, submitted May 31, 2007, and accepted as Exhibit MG-1 in A.06-08-010.

² Attachment 2, Cal Fire press release, November 16, 2007.

³ Attachment 3, “Lawsuits: SDG&E negligence led to wildfires,” SignOn San Diego, November 13, 2007.

the hearing.⁴ There is the potential that findings in the investigation would impact the outcome of the hearing, calling into question whether the public would support authorizing a substantial public investment in expanded transmission lines constructed by the Company, as well as placing its trust that the Company would operate the lines without jeopardizing public health, welfare, and the fragile environments the proposed lines would traverse. Therefore, any credible rulemaking depends on an independent and publicly available investigation. In addition to developing improved safety measures to prevent fires, an investigation into the cause of past fires should provide insights into improved monitoring to ensure compliance with any regulations developed by the Commission. We ask that the rulemaking process include the following steps:

1. Commission cooperation with other agencies in determining the cause of the October 2007 fires.
2. An assessment of whether each of the utilities serving Southern California examined the fire risks associated with their equipment after the 2003 fires, the lessons learned from those and other fire events, and whether/how the utilities adapted their practices to reduce the likelihood their equipment or operations could cause a fire.
3. A determination of whether the 2007 operation and maintenance manuals and procedures for each utility serving Southern California utilize the best known practices for ensuring public health and safety.
4. A review of whether each of the utilities identified above properly trained their employees, had the appropriate staffing, properly implemented their operation and maintenance practices, and otherwise took all appropriate measures to prevent fires. We recommend the review extend back to at least the 2003 fires.
5. To the maximum amount allowed by law, share all findings with the public.

Alternatively, if the Commission either chooses not to proceed with a rulemaking or does not choose to include the five items listed above in the rulemaking, we request the Commission exercise its authority under Article 5 of the CPUC Rules of Practice and Procedure. Article 5.1 authorizes states, in part:

⁴ Attachment 4, testimony of Michael Shames on behalf of the Utility Consumer Action Network, page 10, projects SDG&E will reap profits of \$780 million over the life of the STP, if approved by this Commission. Testimony was submitted June 1, 2007, and accepted as Exhibit U-1 in A.06-08-010.

The Commission may at any time institute investigations on its own motion. Orders instituting investigation shall indicate the nature of the matters to be investigated. Investigations directed at specific utilities or regulated entities will be served on them.

The public has faced the devastating impact of the Southern California fires twice in five years, and the effects of global warming are increasing the likelihood of additional fires throughout the State. The California Climate Change Center has determined that every climate change scenario it projects will have an increased risk of wildfires, with risk increasing by as much as 55% by the end of the century.⁵ The CPUC has also recognized the increasing likelihood of fires from our changing climate:

“[Greenhouse Gas] emissions contribute to climate change. By increasing the number of extremely hot days, and the ‘frequency, duration, and intensity of conditions conducive to air pollution formation, oppressive heat, and wildfires,’ the public health of Californians could be dramatically affected.”⁶

The very real consequences to the public of a single fire, let alone a developing pattern of increasingly frequent fires, makes it imperative that the results of any investigation into the cause of the October 2007 fires are made available to the public for its consideration when reviewing and commenting on the important public policy decisions now being made by the Commission. The California Energy Commission anticipates billions of dollars of public funds will be invested in distribution lines in the next five to ten years.⁷ The Public Utility Commission is engaged in hearings on the proposed STP and has received applications for other projects representing a major expansion of the State’s network of transmission lines. These projects also represent, if approved, significant public expenses. The immediate threat of fire and rapid expansion of power lines makes an independent, and public, investigation of the causes of the October 2007 fires a high

⁵ The Climate Change Center was established by the California Energy Commission in 2003. The increasing risk of wildfires is described in “*Our Changing Climate: Assessing the Risks to California*,” a 2006 summary report from the Climate Change Center at pages 10-11 and 15, found at http://www.climatechange.ca.gov/biennial_reports/2006report/index.html

⁶ Interim Opinion on Phase I Issues: Greenhouse Gas Emissions Performance Standard, D.07-01-039, January 25, 2007, pages 214 and 227.

⁷ “*2007 Integrated Energy Policy Report*,” Committee Final Report, California Energy Commission, November 2007, CEC-100-2007-008-CTF, page 195, found at http://www.energy.ca.gov/2007_energypolicy/documents/

priority. Every effort should be made to provide the public with sufficient time to consider the results of the investigation while commenting on the STP and other projects under consideration by the Commission.

III. BALANCING PUBLIC SAFETY WITH ADDITIONAL CONSTRUCTION

We recognize the high priority the Commission has placed on adding electrical transmission lines in California. However, a headlong rush in building new infrastructure without appropriate safeguards to protect the public health and welfare will increase the risk of another calamity striking again, at great cost in human life, millions of dollars, and severe environmental damage. We recommend the Commission implement an aggressive schedule for completing the proposed rulemaking process. However, until the new rules are in place, we ask the Commission to delay the construction of new transmission lines until the new safety features can be incorporated into the design of the lines. This is particularly important in high fire risk areas.⁸ Delaying new construction is particularly important to protect public safety in light of Section 12.3 of the GO 95, which does not require existing lines to incorporate the safety features in the order. In the face of the real, actual, and imminent threat of additional catastrophic fires, it would be a severe disservice to the public to build additional lines without incorporating the safety features and lessons learned from the 2003 and October 2007 fires.⁹

We include the proposed STP among the lines that, if approved by the Commission, should not be constructed until safety features identified in the rulemaking

⁸ High fire risk areas should be defined to include areas that present a high risk today, or may become a high risk as a result of changing climatic conditions during the life of a proposed line, vegetation growth, or changing vegetation. For example, chaparral habitat burned in Southern California may lead to an increased risk of fire if native vegetation is out competed by more flammable invasive species. This “conversion” of habitat is discussed by Dr. Mitchell at page 41 of his testimony, found at attachment 1. The consequences of conversion of the chaparral and sage scrub habitats in California is also analyzed at Attachment 5, Keeley, J.E. 2006, *Fire management impacts on invasive plant species in the western United States*, Conservation Biology 20:375-384 at page 379.

⁹ Rule 12.4 allows for the reconstruction or alteration of lines if required to protect public safety or interests. However, the very nature of the petition suggests that building lines in a manner that assures public safety requires that the standards developed through the rulemaking process are incorporated in the lines as they are built. The public will be at risk while the lines operate without the safety features, and would face substantial increases in costs by reconstructing lines. Such an approach would also downplay the possibility that there may be available and more cost effective alternatives to additional lines once the full costs of the lines are calculated.

process are in place and full consideration is given to placing portions of the proposed line underground or other methods to reduce fire risk. The expense of the STP may increase if safety features and possible redesign or underground placement of the line becomes necessary after initial construction has begun.¹⁰ The STP is proposed for construction in high risk burn areas. The two largest fires in California history, the Cedar fire in 2003 and the Witch fire in 2007, burned through significant portions of the routes proposed for the STP. The Witch fire appears to have started from a power line located in the easement for SDG&E's preferred route for the STP. Prior to the October 2007 fires, 17% of all areas burned in San Diego County since 1960 were from fires that originated from power lines.¹¹ We ask the Commission to update the percentage of all land burned from power line related fires in San Diego County. The substantial amount of land burned highlights the importance of not cutting any corners where public safety is at risk from additional construction.¹²

IV. LOCAL CONDITIONS SHOULD BE CONSIDERED

There are several considerations which may limit the applicability of a single statewide rule.¹³ Certain portions of the State may face either higher fire risks than other areas, or may have a more urgent need for additional power than other areas. As SDG&E notes, the ability to respond to an emergency also varies in different parts. Different

¹⁰ SDG&E has estimated the line, as proposed, would cost \$1.3 billion. This estimate obviously does not account for additional costs that would be necessitated by the proposed rulemaking. Parties opposing the STP in CPUC Application No. 06-08-010 have presented testimony demonstrating significant costs in constructing and operating the line were not included in SDG&E's cost estimate.

¹¹ Attachment 1, testimony of Dr. Joseph Mitchell on behalf of the Mussey Grade Road Alliance, pages 18-19, submitted May 31, 2007, Exhibit MG-1 in A.06-08-010. The testimony, prepared before the October 2007 fires, obviously does not take into account the additional acreage burned in those fires.

¹² We note that some of the goals identified by SDG&E to support its petition are best served by alternatives other than the construction of new power lines. The risk of harm by terrorists, natural disasters, or equipment failure is reduced if we do not rely on centralized sources of power. Similarly, the consequences of any disaster would likely be reduced if there are multiple sources of power located closer to energy users and a more diverse distribution of that power. While we do not object to the narrow focus of the rulemaking request, we ask the Commission to also recognize that alternatives to additional lines must be considered when weighing the safety implications of various methods of delivering energy.

¹³ In addition to the discussion in this paragraph, we note that the rules in GO 95 "are not intended as complete construction specifications, but embody only those requirements which are most important from the standpoint of safety and service. Construction shall be according to accepted good practice for the given local conditions in all particulars not specified in the rules." GO 95, Rule 13, page I-6.

challenges and risks are also presented by the variety of habitats and landscapes throughout California. A uniform standard for removing vegetation, as suggested for consideration in the petition, may have substantially different risk abatement benefits and environmental consequences in different parts of the state. We believe these differences in geography, risk-reduction benefits, emergency response capacity, and impacts on the environment are all factors that warrant consideration in the rulemaking process.

V. CONCLUSION

The Center for Biological Diversity and the Sierra Club agree with SDG&E that a closer look at the health and safety threats posed by power lines warrants a closer look at existing safety measures. The increasing frequency of catastrophic fires and the conditions leading to them, the loss of life and severe disruption of lives resulting from power line related fires, the economic damage resulting from these fires, and the environmental devastation wrought by the fires all suggest that a change in existing practices is necessary. We ask that the Commission investigate the causes of the October 2007 fires and whether SDG&E could have taken measures to reduce the risk of fire resulting from the operation of its power lines. We also ask that the public be given an opportunity to comment on the results of the investigation prior to a final decision by the Commission on the STP application. We also recommend approval of the STP and other pending projects in potentially high risk fire areas be conditioned on incorporating the safeguards to public health and welfare that come from the proposed rulemaking. Thank you for considering these comments.

Respectfully submitted,

/s/ Steven Siegel

Steven Siegel
Staff Attorney

Center for Biological Diversity

3421 Park Place

Evanston, IL 60201

Phone: (619) 241-6409

Email: ssiegel@biologicaldiversity.org

/s/ Justin Augustine
Justin Augustine
Staff Attorney
Center for Biological Diversity
1095 Market Street, Suite 511
San Francisco, CA 94103
Phone: (415) 436-9682 x302
Email: jaugustine@biologicaldiversity.org

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 attached "Response of the Center for Biological Diversity and the Sierra Club to San Diego Gas & Electric Company's Petition to Adopt, Amend, or Repeal A Regulation Pursuant to Public Utilities Code Section 1708.5" to all parties on the service list for Petition No. 07-11-007. Service was completed by electronic mail using the comma-delimited file. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 20th day of December, 2007, at Evanston, Illinois.

/s/ Steven Siegel

Steven Siegel
Center for Biological Diversity
3421 Park Place
Evanston, IL 60201
Phone: (619) 241-6409
Email: ssiegel@biologicaldiversity.org

CALIFORNIA PUBLIC UTILITIES COMMISSION

Service Lists

Proceeding: P0711007 - SDG&E - PETITION TO
Filer: San Diego Gas & Electric Company
List Name: LIST
Last changed: December 18, 2007

lurick@sempra.com
Case.Admin@sce.com
james.lehrer@sce.com
Robert.F.LeMoine@sce.com
atrial@sempra.com
liddell@energyattorney.com
esther.northrup@cox.com
RGiles@semprautilities.com
FSC2@pge.com
ens@loens.com
dietrichlaw2@earthlink.net
douglas.garrett@cox.com
mrw@mrwassoc.com
btorgan@parks.ca.gov
blamb@parks.ca.gov
ntilg@parks.ca.gov
rrayb@parks.ca.gov
rim@cpuc.ca.gov
tim@cpuc.ca.gov