

AUG 14 1995

Decision 95-08-054 August 11, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion and Order to Show Cause)
 to determine if San Diego Gas &)
 Electric Company should be held in)
 violation of the Commission's)
 General Order 95 for failure to have)
 exercised reasonable tree trimming)
 practices and procedures.)

I.94-06-012
(Filed June 8, 1994)

ORIGINAL

INTERIM OPINION

Summary

In this interim decision, we approve a settlement between respondent San Diego Gas & Electric Company (SDG&E or respondent) and the Utilities Safety Branch (USB) of the Commission's Safety and Enforcement Division. The settlement pertains to an investigation which was instituted by the Commission following an accident in which a farmworker was electrocuted while picking avocados in the vicinity of a SDG&E electric line. The settlement concludes Phase I of this proceeding.

Background

SDG&E and USB have negotiated a settlement that would resolve the issues addressed by our original order in this proceeding (the OII). The OII initiated a formal investigation of SDG&E's tree-trimming practices as they related to the fatal injury of the aforementioned farmworker, and required SDG&E to show cause why it should not be found to have violated the Commission's tree-trimming rules, and be penalized for doing so. This investigation was subsequently designated as Phase I of the proceeding, as the Commission broadened its inquiry to encompass all California electric utilities' tree-trimming practices in a further investigation designated as Phase II. Phase II is proceeding concurrently and independently of Phase I.

SDG&E and USB were the only active parties before the Commission under the terms of the OII, and they have accordingly characterized their agreement as an all-party settlement within the meaning of Decision (D.) 92-12-019. They have jointly moved the Commission to adopt it as our order pursuant to Rule 51.1(c) of Rules of Practice and Procedure (Rules).

The OII

To determine whether the settlement is responsive to concerns we had at the time we issued the OII, we must review the circumstances under which we issued that order. The record then consisted of the affidavit of USB's investigator and some correspondence and records of SDG&E regarding the history of tree trimming at the accident site. These items indicated that each SDG&E district had its own manner of handling tree trimming; that, assuming SDG&E had a structured tree-trimming policy, the respondent had not always adhered to it; that the trees in the orchard where the accident occurred had not been trimmed for at least two and a half years; that if those trees had been trimmed to make all conductors noticeable and visible, perhaps the decedent would have been able to see them and avoid fatal contact; and that there were other probable deficiencies in the conduct of the respondent's tree-trimming program.

In short, the investigative facts pointed to a strong likelihood that SDG&E was derelict in discharging its responsibility to keep trees trimmed in the vicinity of its electric lines, and that this resulted in an unsafe condition which was a contributing cause of the fatal accident. We concluded:

"[I]t appears that SDG&E has not fully complied with the Commission's Rule 35 of General Order 95. Accordingly, SDG&E may have violated and may be in continuing violation of the Commission's General Order 95." (OII, p. 4.)

In response we issued the OII, which encompasses an order to show cause why SDG&E should not be fined for violation of

Commission rules and orders, why it should not be ordered to cease and desist from such violations, and why other remedies and penalties should not be ordered; a requirement that SDG&E produce historical records concerning its companywide tree-trimming practices and procedures and its history of trimming and inspecting the trees involved in the incident; and an order commencing a formal investigation of respondent's conduct by assigning the matter to an administrative law judge (ALJ) for evidentiary proceedings.

SDG&E filed a response to the OII and supporting affidavit which contests the assertion that the respondent violated Rule 35, the tree-trimming rule under General Order (GO) 95. As required by the OII, the ALJ convened a prehearing conference (PHC) and fixed certain compliance deadlines in Phase I. These included deadlines for SDG&E to produce relevant documents for USB inspection, for service of USB's testimony, and for service of SDG&E's rebuttal testimony. Those deadlines have now been met.¹

Discussion

As explained in the introductory portion of the written Settlement Agreement (Settlement), the issue of whether SDG&E's tree-trimming practices violated Rule 35 during the relevant period from 1990 through 1992 remains in controversy. Adjudication of the merits of the OII consequently would still be necessary, and USB would have to show that SDG&E had violated Rule 35, before any penalty could be assessed or corrective action taken by the Commission. The Settlement obviates the need for such a formal proceeding, provides that payments and contributions be made by SDG&E shareholders in a total amount equivalent to a \$750 per day

¹ At the request of the parties, several of these deadlines were extended after the PHC. Scheduling of an evidentiary hearing was postponed at the parties' request pending receipt of the joint motion to adopt the settlement which is before us now.

penalty for a one-year period, and accelerates the process of instituting appropriate corrective action to prevent the recurrence of an incident such as the one which took the life of the farmworker. The total monetary value of the payments and contributions is \$273,750.

The essence of our inquiry today is whether the terms of the Settlement proposal would effectively carry out the objectives of Rule 35. The purpose of the rules under GO 95, as stated in Rule 11, is to formulate,

uniform requirements for overhead electrical line construction, the application of which will insure adequate service and secure safety to persons engaged in the construction, maintenance, operation, or use of overhead electrical lines and to the public in general.

Rule 35 specifically states that "safety and reliability of service demand that a reasonable amount of tree trimming be done in order that the wires may clear branches and foliage." The underlying mishap in this proceeding aroused the Commission's concern that SDG&E's tree-trimming efforts were inadequate to satisfy this standard.² We must, therefore, ascertain that the Settlement will remedy any deficiency in SDG&E's tree trimming practices that may jeopardize the safety and reliability of its electric service.

Settlement Terms

The Settlement provides, inter alia, that SDG&E will pay specified sums of money, or furnish services of equivalent value, to ameliorate the sorts of problems which apparently contributed to

² Although we are charged with the responsibility to secure public safety, we are without jurisdiction to award damages to redress the death of the farmworker. This is the exclusive province of the courts. The various monetary features of the settlement therefore must not be construed as having a relationship to any private right of recovery which may exist by reason of a possible violation of Commission rules.

the cause of the fatal accident. These problems include not only SDG&E's probable failure to trim the trees in the vicinity of its lines frequently enough, but also the deceased farmworker's use of a tool with a conductive handle and his possible lack of awareness of the electrocution hazard involved in his work. In addition, SDG&E will pay \$75,000 to the State Treasury within 30 days of Commission approval of the settlement as a monetary penalty, without regard to fault.³ Lastly, the Settlement provides that SDG&E will implement a new program of inspection, tree trimming, and recordkeeping procedures.

Briefly summarized, the contributions consist of \$40,000 in cash and services to institute a conductive handle exchange program for residents and businesses exposed to electric lines in SDG&E's service territory, and \$158,750 in cash and services to institute an overhead line educational program in its territory, particularly for agricultural workers. There are specific caps that limit to approximately 25% the proportion of in-kind service contributions and money which may be devoted to administration and publicity, and accounting and reporting requirements to insure that SDG&E satisfies these various obligations and limitations. All of the penalties and costs will be paid by its shareholders, and not by its ratepayers, so that the financial liability will be borne by the utility's owners rather than customers. Additional provisions insure that any surplus funds will not be retained by SDG&E.

As part of the Settlement, SDG&E agrees to create a new set of tree-trimming procedures that emphasize safety and fully delineate the relationship between SDG&E and its outside tree-trimming contractors. There is provision for review of all aspects

³ This penalty payment will go into the State's general fund, and will not be earmarked for any particular program or agency.

of implementation by USB, and an annual reporting requirement to promote accountability by SDG&E and insure oversight by USB.

Requirements for Approval of the Settlement

Rule 51.1(e) provides that the Commission will not approve a settlement unless it is reasonable in light of the whole record, consistent with law, and in the public interest. In reviewing an all-party settlement, i.e., a settlement sponsored by all active parties to a Commission proceeding, four standards apply in lieu of the requirement to show that the settlement provisions are reasonable. (Re San Diego Gas & Electric Company General Rate Case, D.92-12-019, 46 CPUC2d 538.) Specifically, these standards are:

1. The proposed settlement commands the unanimous sponsorship of all active parties to the instant proceeding.
2. The sponsoring parties are fairly reflective of the affected interests.
3. No term of the settlement contravenes statutory provisions or prior Commission decisions.
4. The settlement conveys to the Commission sufficient information to permit us to discharge our future regulatory obligations with respect to the parties and their interests.

We find that the Settlement satisfies all of these criteria.

As a threshold matter, the Settlement is properly considered to be an all-party settlement. Although other respondents have since been named for the purpose of considering statewide tree-trimming standards in Phase II, the conduct of utilities other than SDG&E is not at issue in Phase I. Only SDG&E and USB were before us when we issued the OII. No comments were filed when the settlement was proposed for adoption, and no appearance has been made by any other party with a direct interest

in this investigation. We will, therefore, review it as an all-party settlement between the two settling parties.

The Settlement rationally addresses the specific factors which caused the fatal mishap and resulted in the investigation. Although we do not have any estimate of the number of conductive handles which require replacement, nor the number of potentially at-risk persons who should be educated about electrocution hazards near SDG&E's lines, the sums of money which will be advanced to accomplish these purposes is significant in relation to the prevalence of the potential hazard. Fortunately, accidents of the sort which instigated this investigation are a rarity. These expenditures should materially reduce the likelihood of future injuries and power outages from such mishaps in SDG&E's territory. We conclude that the Settlement will promote the public interest and the objectives of Rule 35.

We also conclude that the settlement is consistent with law. It affords relief that has an obvious relationship to the substance of our OII, and is a proper exercise of our jurisdiction.

The Settlement commands the sponsorship of both active parties. In view of the circumstance that the Commission has no power to award damages for injury or death of an individual, the USB fairly represents the interests of the general public vis a vis SDG&E, and all affected interests are thus reflected in the Settlement. Third, no term of the settlement contravenes any statute or prior Commission decision. Finally, pending the outcome of Phase II, the settlement affords a specific mechanism for the Commission to participate in, and maintain scrutiny of, SDG&E's efforts to conduct its tree trimming program, educate the public, and reduce the use of unsafe tools in proximity to its lines. The Settlement, therefore, satisfies the "reasonableness" standards for approval.

In light of these findings, we grant the parties' joint motion and adopt the Settlement as part of our order concluding Phase I of this proceeding.

Findings of Fact

1. Respondent SDG&E and the USB of this Commission have jointly moved the Commission to adopt the written Settlement which is attached to our Order, pursuant to Rule 51 et seq. of our Rules.

2. Prior to signing the Settlement, the settling parties convened at least one conference with at least seven days' advance notice to all parties and an opportunity to participate.

3. The parties' joint motion contains a statement of factual and legal considerations adequate to advise the Commission and parties not expressly joining in the Settlement of its scope and of the grounds upon which adoption is urged.

4. No comments have been filed in response to the motion for adoption of the Settlement.

5. The Settlement is signed by all active parties in Phase I of this proceeding.

6. The parties signing the Settlement are fairly reflective of all affected interests in Phase I of this proceeding.

7. No term of the Settlement contravenes statutory provisions or prior Commission decisions.

8. The Settlement conveys sufficient information to enable us to discharge our future regulatory obligations with respect to the parties and their interests.

9. The flexibility provided by Sections III(5) and III(6) of the Settlement is appropriate to the magnitude of residual funding, if any, so long as the Commission receives notice and a full description of program extensions.

Conclusions of Law

1. The Settlement is consistent with law.
2. The Settlement is in the public interest.

3. The Settlement is reasonable in light of the record.
4. The Settlement should be adopted as our Order concluding Phase I of this proceeding.

INTERIM ORDER

IT IS ORDERED that:

1. The Settlement between San Diego Gas & Electric Company (SDG&E) and the Utilities Safety Branch, executed on April 5 and 6, 1995, is adopted.

2. SDG&E shall promptly furnish its accounting of program costs performed pursuant to Section III, paragraphs (2) and (3) of the Settlement to the Commission Advisory and Compliance Division in addition to making such information available to the Utilities Safety Branch as provided in the Settlement.

3. The annual conductive handle exchange program report furnished to the Commission under subparagraph III(2)(e) of the Settlement shall include a statement of the number of handles actually exchanged under the program, and an explanation of the basis for SDG&E's evaluation of whether the program was worthwhile.

4. The annual overhead line educational program report furnished to the Commission under subparagraph III(3)(f) of the Settlement shall include a statement of the number of agricultural workers, and of other persons, who received education under the program, and an explanation of the basis for SDG&E's evaluation of whether the program was worthwhile.

5. SDG&E and USB shall submit notice to the Executive Director of any program extensions mutually agreed upon pursuant to Sections III(5) and III(6) of the Settlement.

6. As used in Sections III(2)(c) and (d) of the Settlement, the term "administration" shall include the procurement and exchange of handles.

7. In the event that any term or condition of the Settlement and Order herein is inconsistent with any order issued in Phase II of this proceeding, the latter shall control.

8. SDG&E shall, in addition to the recordkeeping specified in Section III(8) of the Settlement, keep records of which SDG&E circuits are inspected in each calendar year by its own employees.

9. This Order concludes Phase I of Investigation 94-06-012. This order is effective today.

Dated August 11, 1995, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners

I CERTIFY THAT THIS ORDER
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY

Wealey Franklin
Acting Executive Director

ATTACHMENT
Page 1

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I.94-06-012

SETTLEMENT AGREEMENT

I. INTRODUCTION

Pursuant to Rules 51 through 51.10 of the Commission's Rules of Practice and Procedure, San Diego Gas & Electric Company ("SDG&E") and the Utilities Safety Branch ("USB") hereby enter into a Settlement Agreement (the "Settlement") in Phase I of the captioned proceeding. This is an all-party settlement according to the criteria established by Decision 92-12-019, because it is supported by all active parties in Phase I.¹ If adopted, the Settlement will resolve all pending issues in Phase I.

¹ SDG&E and USB are the only active parties in Phase I.

II. BACKGROUND

On June 8, 1994, the Commission issued the Order Instituting Investigation and Order to Show Cause (the "OII") that initiated this matter. The OII was based upon an affidavit submitted by Fadi Daye of the USB. Mr. Daye's affidavit asserts that it is the opinion of USB that SDG&E has failed to comply with Rule 35 of General Order 95. On July 11, 1994, SDG&E filed a response and supporting affidavit which responds to the allegations in Mr. Daye's affidavit, and asserts that SDG&E has at all times complied with Rule 35.

On December 12, 1994, USB issued a staff report prepared by Mr. Daye (the "Report") regarding SDG&E's tree trimming program. According to the Report, SDG&E has not fully complied with Rule 35. On February 12, 1995, SDG&E filed rebuttal testimony which responds to the Report. With this testimony SDG&E again asserts that it has at all times complied with Rule 35.

III. AGREEMENT

To resolve Phase I, SDG&E and USB agree that:

(1) SDG&E will pay a monetary penalty of \$75,000 for its alleged noncompliance with Rule 35. SDG&E does not admit that it has violated Rule 35, but for purposes of settlement SDG&E has agreed not to contest USB's assertion that SDG&E's tree trimming practices in 1990-1992 did not fully comply with Rule 35. The penalty will be paid to the State Treasury within 30 days of Commission approval of this Agreement.

(2) SDG&E will contribute \$40,000 in cash and services to institute a conductive handle exchange program in SDG&E's service territory.

(a) The program will be available to: (1) property owners in SDG&E's service territory who have SDG&E overhead electrical lines either above or adjacent to their properties; and (2) businesses operating in SDG&E's service territory that use long-handled hand-held tools near overhead electrical lines.

(b) Eligible participants will be able to take conductive long-handled hand-held tools to SDG&E and have the conductive handles exchanged for nonconductive handles, at no cost to the participants. SDG&E will destroy the conductive handles it receives, so that they can not be used again. If practical, SDG&E will take the handle materials to a recycling center for recycling.

(c) SDG&E will administer the program and provide any necessary publicity. The cost of administration and publicity will be included in SDG&E's total \$40,000 contribution of cash and services to this program. However, the cost of administration and publicity may not exceed \$10,000. In addition, SDG&E will use free or low-cost publicity for the program whenever possible.

(d) SDG&E will not provide any services to the conductive handle exchange program other than administration and publicity. SDG&E will maintain internal accounting records for all cash and services it provides to the program, and SDG&E

will make these accounting records available for USB to inspect.

(e) SDG&E will provide USB with an annual conductive handle exchange program report for each year that the program exists. This report will list the year's program expenditures, and will provide a brief description of the year's program activities. In addition, if SDG&E determines during the year that certain program procedures are more effective than others, SDG&E will identify the more effective procedures in the report. In the final report, SDG&E will also discuss whether it believes that the program was a worthwhile utility activity.

SDG&E will provide each report to USB by March 31 of the year after the report year. After a report is issued to USB, SDG&E will also provide a copy of the report to any party in this proceeding who asks for it, so long as the party agrees to keep confidential any information in the report which has been designated as confidential by SDG&E. SDG&E will begin implementation of the conductive handle exchange program within 30 days of Commission approval of this Agreement. SDG&E and USB agree that it may take longer than 30 days for the actual handle exchanges to start.

(3) SDG&E will contribute \$158,750 in cash and services to institute an overhead line educational program in its service territory.

(a) This program will be designed to continue for at least three years, though it may terminate earlier if SDG&E's contribution is used up earlier.

(b) A primary focus of the program will be to educate agricultural workers in SDG&E's service territory about the hazards associated with overhead electrical lines.

(c) SDG&E will administer the program and provide any necessary publicity. The cost of administration and publicity will be included in SDG&E's total \$158,750 contribution of cash and services to this program. However, the cost of administration and publicity may not exceed \$40,000. In addition, SDG&E will use free or low-cost publicity for the program whenever possible.

(d) SDG&E will conduct all of the education unless SDG&E and USB mutually agree that a third party could more effectively provide some or all of the education. Within 60 days of Commission approval of this Agreement, SDG&E and USB will meet to discuss whether a third party could more effectively provide some or all of the education. Prior to this meeting, SDG&E will develop a list of third parties that SDG&E believes could effectively provide some or all of the education. Whether SDG&E or a third party conduct the education, the cost of the education will be included in SDG&E's total \$158,750 contribution of cash and services.

(e) SDG&E will not provide any services to the overhead line educational program other than administration, publicity, and

education. SDG&E will maintain internal accounting records for all cash and services it provides to the program, and SDG&E will make these accounting records available for USB to inspect.

(f) SDG&E will provide USB with an annual overhead line educational program report for each year that the program exists. This report will list the year's program expenditures, and will provide a brief description of the year's program activities. In addition, if SDG&E determines during the year that certain program procedures are more effective than others, SDG&E will identify the more effective procedures in the report. In the final report, SDG&E will also discuss whether it believes that the program was a worthwhile utility activity.

SDG&E will provide each report to USB by March 31 of the year after the report year. After a report is issued to USB, SDG&E will also provide a copy of the report to any party in this proceeding who asks for it, so long as the party agrees to keep confidential any information in the report which has been designated as confidential by SDG&E. SDG&E will begin implementation of the overhead line educational program within 30 days of Commission approval of this Agreement. SDG&E and USB agree that it may take longer than 30 days for the actual education to start.

(4) To help insure that the conductive handle exchange program and overhead line education program are as effective as possible, all of the program guidelines specified above in sections (2) and (3) may be changed upon the mutual agreement of SDG&E and USB without the need for any further Commission approval or authorization. However, the amount of cash and services that SDG&E has committed to these programs will not be changed.

(5) Any of SDG&E's \$40,000 contribution to the conductive handle exchange program which is not used by January 1, 1998, will be paid by SDG&E to the State Treasury. However, if SDG&E and USB mutually agree prior to January 1, 1998, that such unexpended program funds should be used to extend the program, or for other overhead line safety enhancements in SDG&E's service territory, then the unexpended program funds may be used for the program extension or overhead line safety enhancements in SDG&E's service territory that SDG&E and USB mutually agree upon, without the need for any further Commission approval or authorization.

(6) Any of SDG&E's \$158,750 contribution to the overhead line education program which is not used by January 1, 2000, will be paid by SDG&E to the State Treasury. However, if SDG&E and USB mutually agree prior to January 1, 2000, that such unexpended program funds should be used to extend the program, or for other overhead line safety enhancements in SDG&E's service territory, then the unexpended program funds may be used for the program extension or overhead line safety enhancements in SDG&E's service territory that

SDG&E and USB mutually agree upon, without the need for any further Commission approval or authorization.

(7) All of the \$75,000 penalty paid by SDG&E pursuant to this Settlement, and all of the \$198,750 of funds and services paid and contributed by SDG&E pursuant to this Settlement for the conductive handle exchange program and the overhead line education program, will be paid and contributed by SDG&E shareholders. SDG&E and USB recognize that this \$273,750 total (\$75,000 plus \$198,750) is equal in amount to, but does not constitute, a Public Utilities Code section 2107 penalty of \$750/day for one year.

(8) Within 120 days of the approval of this Settlement by the Commission, SDG&E will implement any changes necessary to enable it to keep a record of which SDG&E circuits are inspected in each calendar year by SDG&E's outside contractors. SDG&E will keep such a record and make it available for USB to inspect until the Commission issues a final decision in Phase II of this proceeding. Once such a decision is issued, the recordkeeping obligation specified in this section will end, and SDG&E will instead comply with whatever statewide recordkeeping standards, if any, are established by the Phase II decision.

(9) Within 60 days of the approval of this Settlement by the Commission, SDG&E will take the information in its currently applicable tree trimming guidelines, SDG&E's January 28, 1994 tree trimming white paper, and other relevant documents, and SDG&E will create a new set of SDG&E tree trimming procedures. These new written procedures will emphasize safety, and will fully delineate

the relationship between SDG&E and its outside tree trimming contractors, including the steps that SDG&E will take to oversee the trimming and inspection activities of the outside tree trimming contractors. Before distribution of the final procedures within SDG&E, SDG&E will provide a draft of the procedures to USB for comment. SDG&E will incorporate as many suggestions by USB in the final procedures as SDG&E believes it reasonably can.

IV. RESERVATIONS

SDG&E and USB respectfully request that the Commission promptly approve the Settlement without modification. Any material change to the Settlement shall render it null and void, unless both SDG&E and USB agree to such changes.

This Settlement represents a negotiated compromise of disputed issues. SDG&E and USB have assented to the terms of the Settlement only to arrive at the agreement embodied herein. Nothing contained in the Settlement should be considered an admission or acceptance of any fact, principle, or position by either SDG&E or USB.

SDG&E and USB agree that the Settlement should not be used as a precedent or admitted into evidence in any other Commission proceeding or any court case. If the Settlement is not accepted by the Commission without substantial modification, SDG&E and USB agree that the Settlement should not be admitted into evidence in this proceeding either. Additionally, it is the intention and desire of SDG&E and USB that any Commission order, resolution, or decision regarding this Settlement be subject to the provisions of Public Utilities Code Section 315.

Agreed to by the undersigned parties on the dates indicated
below.

Utilities Safety Branch

Jaspal S. Soni
By: Jaspal Soni
Senior Utilities Engineer

4/5/95
Date

San Diego Gas & Electric Company

Gary D. Cotton
By: Gary D. Cotton
Senior Vice President - Customer Operations

4/6/95
Date

(END OF ATTACHMENT)