

Decision 98-12-025 December 3, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations and practices of the San Diego Gas and Electric Company in connection with its compliance with requirements to maintain proper clearance between power lines and vegetation.

Investigation 98-04-010
(Filed April 9, 1998)

O P I N I O N

ORIGINAL

Summary

This decision grants the joint motion for adoption of a settlement filed on September 15, 1998 which would resolve all outstanding issues in this investigation of the tree trimming practices of San Diego Gas & Electric Company (SDG&E). Specifically, the settlement requires SDG&E to pay a penalty of \$1 million and to spend \$200,000 in educating the public regarding the safety benefits of tree trimming. The settlement finds that three fires occurred as a result of trees coming into contact with SDG&E equipment and that SDG&E has previously assumed financial liability for these fires.

Procedural Background

On April 13, 1998, the Commission issued Order Instituting Investigation (I.) 98-04-010 into SDG&E's compliance with Decision (D.) 97-01-044, D.97-10-056 and General Order 95, and statutes governing clearances between electric facilities and vegetation, less formally referred to as "tree trimming." We initiated the investigation largely on the basis of a report by the Consumer Services Division (CSD) titled "Report on the Compliance Investigation of San Diego Gas and Electric Company's Tree Trimming Program" dated March 1998

and issued on April 15, 1998. The report alleges that SDG&E violated the Commission's tree trimming rules on 19 occasions, including three occasions that resulted in fires during August 1997.

The Commission held a prehearing conference in this proceeding on May 18, 1998. Pursuant to Rule 6.3 of the Commission's Rules of Practice and Procedure, the Assigned Commissioner issued a Scoping Memo on May 27, 1998, setting a procedural schedule and describing the proceeding's scope.

Subsequently, CSD conducted more inspections of SDG&E's territory and issued a supplemental report on June 15, 1998. The supplemental report found 147 instances of trees coming within 18 inches of electrical conductors. Among these instances were 51 in which foliage was in contact with the conductor.

Immediately prior to the date set for hearings on August 27, 1998, CSD requested that the hearings be suspended in recognition that several of the active parties expected to reach settlement of all outstanding issues. The Commission suspended the hearings as CSD requested. On September 15, 1998, SDG&E, CSD, and William Adams filed a settlement. Holly Duncan, appearing on her own behalf, protested it.

Issues Raised in This Investigation

Compliance History

CSD states it has had concerns regarding SDG&E's tree trimming practices since 1992, when it investigated a related fatality. CSD observes that D.95-08-054 resolved the matter and directed SDG&E to create tree trimming procedures which it would apply to contractors hired to conduct SDG&E's tree trimming activities in the field. Subsequently, the Commission issued D.97-01-044 modifying tree trimming standards in General Order 95. CSD states that SDG&E failed to comply with certain reporting requirements.

Specific Violations

CSD's March 1998 report found 19 violations of clearance requirements under the rules adopted in D.97-01-044. Three of those violations, according to CSD, caused fires in SDG&E's territory. In its supplemental report, dated July 1998, CSD reports 147 violations of the Commission's rules regarding appropriate clearances between SDG&E equipment and vegetation. In most of these cases, vegetation was either in contact with SDG&E equipment at the time of inspection or would, under normal conditions, contact SDG&E equipment intermittently.

Status of SDG&E's Tree Trimming Program

CSD has reviewed SDG&E's current tree trimming program and believes it provides evidence that SDG&E has made a commitment to comply with the Commission's concerns and rules. According to CSD, SDG&E no longer delegates monitoring and data base management to contracting firms. It has expanded the types of information it will maintain and created a management position with responsibility for the tree trimming program.

Response by SDG&E

SDG&E responds to CSD's allegations by describing its efforts to comply with the Commission's new rules. It states it will increase its spending levels and deploy additional crews to trim more than 400,000 trees. SDG&E states it informed the Commission that although it had a plan for complying with Commission rules, it could not be certain that all of the vegetation along any individual circuit would be trimmed until the completion of the two years granted by the Commission for implementation. SDG&E describes its new data base as one which centralizes and standardizes information about vegetation in SDG&E's territory and was provided by a variety of contractors.

SDG&E states that a significant element of its program involves public awareness of the requirements of the Commission's clearance rules. It states it has worked with city officials and a non-profit organization to facilitate support for its program and appropriate placement of trees in the proximity of power lines.

SDG&E takes issue with some of the violations CSD alleges. It does not deny liability for the three fires that occurred in August 1997. SDG&E nevertheless believes that CSD erroneously found "non-compliance" in cases where trees could not have been brought into compliance because of their characteristics (e.g., palm trees), where tree growth during the trimming cycle exceeded reasonable expectations, and where SDG&E was denied access to trim or remove trees that did not meet the clearances required by the rules. SDG&E argues that its failure to identify such circumstances is not a violation of Rule 1, as CSD originally alleged.

The Settlement

The settlement would resolve all outstanding issues in this investigation, including (1) whether SDG&E complied with the tree trimming rules adopted in D.97-01-044; (2) whether SDG&E provided accurate information to the Commission with regard to its tree trimming program; (3) whether SDG&E caused certain fires because of its tree trimming practices; and (4) whether SDG&E otherwise violated Commission rules, orders, or law in the conduct of its tree trimming program. CSD comments that it is satisfied that SDG&E did not violate Rule 1 in the way it reported compliance with Commission rules. CSD and Adams state that they are satisfied with SDG&E's procedures for dealing with homeowners who refuse to permit SDG&E to trim their trees. Finally, CSD states that it investigated whether SDG&E was responsible for a fire which allegedly occurred in San Diego in February 1998 and found no evidence of a fire.

The settlement provides that:

- (1) SDG&E agrees that three fires in its territory occurred as a result of trees that came in contact with SDG&E electrical conductors and has agreed to pay the fire suppression costs and related claims in the case of those fires;
- (2) SDG&E shall pay \$1 million in penalties; and
- (3) SDG&E shall spend \$200,000 of shareholder money to undertake an education program by way of advertising which shall be subject to approval by CSD staff.

Holly Duncan filed a protest to the settlement.

Protest of Holly Duncan

In her protest to the settlement, Duncan asserts that its provisions with regard to the removal of healthy, mature trees anticipate the violation of Rule 35 "insofar as Rule 35 incorporates PUC Rule 17.1 by reference." Duncan argues that Rule 17.1 enjoins the utilities from removing healthy trees, and the Commission's order should clarify the rule to provide that tree removal is permitted only when absolutely necessary to achieve compliance with Rule 35.

Duncan also objects to the provision in the settlement which states that "SDG&E has informed CSD the homeowners at [Duncan's] address refused, in writing, to allow SDG&E access to trim the tree." Duncan asserts that in fact she permitted SDG&E's contractors to trim the subject tree and that she has reached an agreement with SDG&E to have the tree trimmed routinely in the future by a specified arborist.

Duncan provides significant background information alleging that SDG&E's treatment of her tree was improper and that her actions were legal.

SDG&E responds to Duncan's concerns, arguing that they are beyond the scope of the proceeding.

Discussion

The proposed settlement would resolve all outstanding issues raised in this proceeding and satisfies CSD's concerns with regard to SDG&E's ongoing compliance efforts. It does so by affirming SDG&E's liability for certain fires, penalizing SDG&E by \$1 million and requiring SDG&E to educate its customers better about the Commission's tree trimming regulations. The settlement follows an extensive investigation by CSD and subsequent negotiations between CSD and SDG&E.

Duncan protests that portion of the settlement which finds that "SDG&E informed CSD the homeowners at [Duncan's] address refused, in writing, to allow SDG&E access to trim the tree." Duncan believes this is a misrepresentation, arguing that in fact the tree has been trimmed and will be trimmed regularly in the future. SDG&E presents argument and documents to demonstrate that Duncan did refuse to permit SDG&E to trim her tree for a period prior to an agreement she ultimately reached with SDG&E. Duncan does not dispute the authenticity of the documents.

We presume the statement over which Duncan expresses concern is included in the settlement to relieve SDG&E from liability for failure to comply with Commission rules, consistent with the purpose of this proceeding, which is to determine SDG&E's past compliance. We also presume that the statement is not intended to disparage Duncan's actions and we certainly make no judgments about her actions here. The statement is not damaging to Duncan with that clarification and we therefore decline to omit it from the settlement.

We also decline to find that Rule 17.1 is relevant to SDG&E's tree trimming policy. Rule 17.1 addresses projects which are subject to review under the California Environmental Quality Act (CEQA). Maintenance of vegetation around utility distribution facilities is not subject to CEQA. This is not the

appropriate forum to reconsider the rules which apply to tree trimming, if for no other reason than other interested parties to such action have not had an opportunity to participate in the reconsideration of the matter. If Duncan wishes to pursue changes to the Commission's rules, she should file a petition to modify D.97-01-044 and D.97-10-056.

Other portions of Duncan's comments appear to request the Commission's affirmation that SDG&E acted improperly toward her in the course of trimming her tree or reaching some accommodation with her. We make no findings here regarding Duncan's dispute with SDG&E because it is not within the scope of this proceeding. If Duncan wishes to pursue additional relief on these matters, she should file a complaint against SDG&E.

We find herein that the settlement reached between SDG&E and CSD is reasonable in light of the whole record, consistent with the law, and in the public interest. We approve it.

Findings of Fact

1. The settlement filed in this proceeding reasonably resolves all outstanding issues raised in this investigation.

2. The settlement filed in this proceeding does not compromise Holly Duncan's rights to petition to modify Commission rules or file a formal complaint against SDG&E. In adopting the settlement, the Commission need not make or imply any findings with regard to Duncan's dispute with SDG&E except that the settlement exonerates SDG&E from a finding of noncompliance with Commission rules in its treatment of Duncan's tree.

Conclusion of Law

The Commission should adopt the settlement proposed in this proceeding.

O R D E R

IT IS ORDERED that:

1. The settlement filed in this proceeding on September 15, 1998 in this proceeding and attached as Appendix A to this decision is adopted.
2. This proceeding is closed.

This order is effective today.

Dated December 3, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

1 SETTLEMENT AGREEMENT

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4 I. PARTIES

5 The Parties to this Settlement Agreement are the Consumer Services Division (CSD)
6 and San Diego Gas & Electric Company (SDG&E).

7 II. RECITALS

8 1. CSD is the office of the California Public Utilities Commission
9 (Commission or CPUC) responsible for enforcing compliance with Commission orders,
10 rules, and laws.

11 2. SDG&E is an investor-owned public utility in the State of California and is
12 subject to the jurisdiction of CPUC with respect to providing electric service to its CPUC-
13 jurisdictional retail customers.

14 3. Prior to the issuance of D.97-01-044, Rule 35 of the Commission's General
15 Order 95 provided, "Where overhead wires pass through trees, safety and reliability of service
16 demand that a reasonable amount of tree trimming be done in order that wires may clear
17 branches and foliage." This is commonly referred to as the "no touch" rule.

18 4. On January 23, 1997, the Commission issued D.97-01-044 revising General
19 Order 95's tree trimming standards, and establishing an implementation schedule for utilities'
20 compliance with the new standards that required 25% compliance within 6 months, 50%
21 compliance within 12 months, 75% compliance within 18 months, and 100% compliance
22 within 2 years. In addition, the Commission ordered each utility to submit a plan to USB
23 within 10 days of the order describing the specifics of how the utility would meet the
24 scheduled compliance, including a current estimate of the total number of trees which require
25 trimming in order to comply.

26 5. On October 22, 1997, the Commission issued D.97-10-056 modifying the
27 compliance schedule to provide for 33 1/3% compliance within 12 months and 66 2/3%
28 compliance within 18 months.

1 6. On April 13, 1998, the Commission issued Order Instituting Investigation (I.)
2 98-04-010 into SDG&E's compliance with D.97-01-044, D.97-10-056, General Order 95, and
3 various state statutes regarding clearances between electric facilities and vegetation. The OII
4 was based, among other things, on the CSD's March 1998 "Report on the Compliance
5 Investigation of San Diego Gas & Electric Company's Tree Trimming Program" (Report)
6 contained in the April 15, 1998, declaration by Mr. Richard C. Maniscalco (Declaration).
7 The Report details a series of inspections by CSD in August and September 1997 and March
8 1998, and, based on those inspections, alleged that SDG&E had violated the Commission's
9 tree trimming rules on 19 different occasions, including three occasions that resulted in fires
10 in August 1997.

11 7. Subsequently, CSD conducted another series of inspections from May 25 to
12 June 5, 1998. Based on this further investigation, on June 15, 1998, CSD issued the
13 Supplemental Declaration of Richard C. Maniscalco (Supplement) finding 14 instances of
14 trees coming within 18 inches of a conductor in areas designated for compliance under the
15 "new" Rule 35 of General Order 95, and 147 instances of trees coming within 18 inches of a
16 conductor in non-compliance areas. Of these 147 instances in non-compliance areas, CSD
17 found 51 instances in which the tree was in contact with the conductor. Of the remaining 96
18 instances, CSD contends, and SDG&E disputes, that some showed signs of intermittent
19 contact under normal conditions that would constitute a violation of the "old" Rule 35 then in
20 effect. The June 14, 1998, Investigative Report of Raffy Stepanian included, as Attachment B
21 to the Supplement, reports on a fire which was alleged to have occurred in San Diego in
22 February 1998, and concludes that SDG&E was in compliance at the location in question.

23 8. On July 7, 1998, William P. Adams served his prepared testimony. Mr. Adam's
24 testimony sets forth his concern that some property owners refuse to allow trimming of trees
25 on their property even though SDG&E has certain conditions and rights connected to its
26 easements, with the time taken by SDG&E to resolve "refusals," and with SDG&E's practices
27 with respect to recording, tracking, and ultimately resolving the "refusals."

28 9. No other party served prepared testimony in this proceeding.

1 **III. AGREEMENT**

2 **A. SETTLEMENT TERMS**

3 A genuine dispute exists between the Parties. Accordingly, the Parties to this
4 Settlement agree to resolve all issues of which CSD is aware and arising from the OII,
5 including the Commission's concerns regarding a Rule 1 violation, in the manner set forth
6 below. The Parties regard this Settlement as a package, the resolution of which reflects a
7 compromise between the Parties. The resolved issues are interrelated with one another and
8 no issue or term of the Agreement should be evaluated in isolation from the remainder of the
9 package.

10 It is understood that, except as otherwise provided herein, this Settlement does not
11 constitute an admission of any liability by any Party, but is intended to resolve the Parties'
12 disputed claims in the OII. Each Party hereby declares and represents that it is executing this
13 Settlement after consultation with its own legal counsel.

14 The Parties acknowledge and agree:

15 (1) Three fires were caused as a result of trees that came in contact with SDG&E
16 electrical conductors. At the time of these fires, SDG&E agreed to pay the fire suppression
17 costs and related claims in the case of the identified fires.

18 (2) In addition to reimbursing the California Department of Forestry for the costs
19 related to suppressing the three fires, and to resolve all allegations of violation of Commission
20 tree trimming regulations listed in the Report, Declaration and Supplement, SDG&E shall:

21 (a) pay to the Commission a penalty of \$1,000,000; and

22 (b) apply an additional \$200,000, on a one-time basis, towards an education campaign
23 regarding the need for tree trimming and safety, of which at least 66% shall be applied toward
24 the actual implementation, as opposed to the development of the education campaign;

25 provided, however, SDG&E shall not record the payments described above in (2)(a)
26 and (b) as an operating expense for ratemaking purposes.

1 (3) CSD shall have the right to review and approve the text of any advertisements
2 SDG&E sponsors as part of the educational program identified in (2)(b) above, but may not
3 require SDG&E to state that the advertisement is pursuant to a CPUC rule or order.

4 (4) The OII and violations alleged by CSD pertain to past events. CSD has
5 investigated SDG&E's Vegetation Management Program and, based on that review, believes
6 that SDG&E has developed a Vegetation Management Program that, if properly maintained
7 and consistently implemented, should allow it to fully comply with the Commission's rules
8 and orders, including the compliance schedule ordered by D.97-01-044 as modified by D.97-
9 10-056.

10 (5) The parties acknowledge substantial continuing expenditures will be necessary to
11 maintain compliance.

12 (6) Based on CSD's investigation, SDG&E did not violate Rule 1 of the Commission's
13 Rules of Practice and Procedure.

14 **B. ACCEPTANCE OF ENTIRE SETTLEMENT**

15 The Parties agree to recommend that the Commission accept and adopt this Settlement
16 in its entirety as a complete and full resolution of all issues of which CSD is aware and
17 arising from the OII. If the Commission fails to adopt the Settlement in its entirety, without
18 change or modification as proposed herein, the Parties shall convene a settlement conference
19 within 15 days after Commission action on this Settlement to discuss whether they can
20 resolve issues raised by the Commission's action. If the Parties cannot mutually agree to
21 resolve the issues raised by the Commission's actions, the Parties shall be released from their
22 obligation to support this Settlement and may pursue any action they deem appropriate;
23 provided, however, the Parties agree to cooperate to establish a procedural schedule.

24 **C. GENERAL TERMS**

25 **(1) Settlement Not Precedential**

26 The Parties expressly reserve the right to advocate in other proceedings principles,
27 assumptions, or methodologies different from those that may underlie or appear to be implied
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1 by this Settlement so long as those actions do not conflict with recommendations explicitly
2 set forth in this Settlement.

3 (2) **Obligation to Promote Approval**

4 The Parties agree to use their best efforts to propose, support, and advocate adoption of
5 this Settlement by the Commission. No Party to this Settlement will contest any aspect of this
6 Settlement in this proceeding or any other forum, by contact or communication, whether
7 written or oral or in any other manner before the Commission until the Commission has acted
8 on this Settlement. Moreover, the Parties agree to actively and mutually defend this
9 Settlement if the adoption is opposed by any other party to the proceeding.

10 (3) **Commission Jurisdiction**

11 The Parties agree that the Commission shall have exclusive jurisdiction over any issues
12 related to the interpretation of this Settlement and that no other court, regulatory agency, or
13 other governing body shall have jurisdiction over any issue related to the interpretation of this
14 Settlement, the enforcement of the Settlement, or the rights of the Parties to the Settlement,
15 except for the California Court of Appeals or California Supreme Court in connection with
16 review of any Commission decision in this proceeding. All rights and remedies are limited to
17 those available before the Commission.

18 The Parties further agree that no signatory to this Settlement, nor any member of the
19 Staff of the Commission, assumes any personal liability as a result of this Settlement. The
20 Parties agree that no legal action may be brought in any state or federal court, or in any other
21 forum, against any individual signatory, party representative, or staff member related to this
22 Settlement.

23 (4) **Governing Law**

24 This Settlement shall be governed by the laws of the State of California (without
25 regard to conflicts of law principles) as to all matters, including, but not limited to, matters of
26 validity, construction, effect, performance and remedies.

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1 **(5) Headings: Interpretation**

2 The section headings contained in this Settlement are solely for the purpose of
3 reference, are not part of the agreement of the Parties, and shall not in any way affect the
4 meaning or interpretation of this Settlement. All references in this Settlement to Sections are
5 to Sections of this Settlement, unless otherwise indicated. Each of the Parties hereto and their
6 respective counsel have contributed to the preparation of this Settlement. Accordingly, no
7 provision of this Agreement shall be construed against any Party because that Party or its
8 counsel drafted the provision.

9 **(6) No Waiver**

10 It is understood and agreed that no failure or delay by any Party hereto in exercising
11 any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single
12 or partial exercise thereof preclude any other or future exercise thereof or the exercise of any
13 other right, power or privilege.

14 **(7) Entire Agreement**

15 **Amendment/Severability.** This Settlement sets forth the entire understanding and
16 agreement between the parties with reference to the subject matter hereof and this Settlement
17 may not be modified or terminated except by an instrument in writing signed by all Parties
18 hereto. This Settlement supersedes all prior agreements, negotiations, and understandings
19 among the Parties, both oral and written related to this matter.

20 **(8) Counterparts**

21 This Settlement may be executed in counterparts, each of which shall be deemed an
22 original, but all of which together shall constitute one and the same instrument.

23 **(9) Miscellaneous**

24 The Parties acknowledge and agree that time is of the essence to this Settlement.

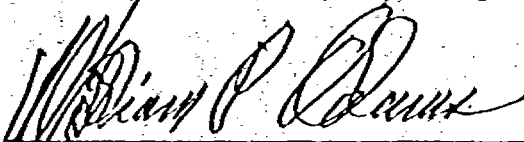
25 The Parties acknowledge, agree, and request that the Commission issue an order, on an
26 ex parte basis, finding that the Settlement Agreement is reasonable in light of the whole
27 record, consistent with the law, and in the public interest.

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In Support of the Settlement

I had proposed conditions to be considered in the Settlement to address some of my concerns. My concerns were adequately resolved in our discussion at the Settlement Conference: a) easement rights and duties were explained, b) the resolution of refusals of permission to trim has a high priority as demonstrated by the utilization of a data base to be ready in 1999, and c) there has been progress in the interpretation and uniform application of Rule 35. I support the Settlement Agreement.

Adams Electrical Safety Consulting




By: William P. Adams
Title: Electrical Safety and Service Consultant

1 (10) Execution

2 In witness whereof, intending to be legally bound, the Parties hereto have duly
3 executed this Settlement on behalf of the Parties they represent.

4 Dated as of this 15 day of September 1998.


5 San Diego Gas & Electric Company

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8 By: STEVEN DAVIS

9 Title: Vice President - Distribution Operations

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11 California Public Utilities Commission
12 Consumer Services Division

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14 _____

15 By: WILLIAM R. SCHULTE

16 Title: DIRECTOR