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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U902M) for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2016.

Application 14-11-003
(Filed November 14, 2014)

And Related Matter.

Application 14-11-004

ADMINISTRATIVE LAW JUDGE’S RULING ON THE MOTION REQUESTING RULING ON VIDEO RECORDING AND WEBCASTS

On December 30, 2014, Citizens Oversight, Inc. (Citizens Oversight) submitted its “Motion Requesting Ruling On Video Recording and Webcasts” (Motion) in the general rate case (GRC) of San Diego Gas & Electric Company (SDG&E) in Application (A.) 14-11-003. The Motion requests a “ruling on the use of video and audio recording devices,” and for the Commission “to provide a webcast of any public meetings related to the proceeding, including Prehearing Conference, Evidentiary Hearing, Public Participation Hearings, etc.” (Motion at 8.)

A Prehearing Conference (PHC) has been noticed for Thursday, January 8, 2015 at 10:00 a.m. in the Commission’s Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco. (See December 26, 2014 Administrative Law Judge’s (ALJ) Ruling; December 19, 2014 E-Mail of Advance Draft of Ruling.) Since the Motion seeks to videotape or record the January 8, 2015 PHC, a ruling on the Motion is being issued today in accordance with Rule 11.1(g) of the Commission’s Rules of Practice and Procedure.

The Motion of Citizens Oversight states the following in the “Overview” section of its Motion:

Recently, the public has been restricted from using recording devices in prehearing conferences and evidentiary hearings conducted by the California Public Utilities Commission (CPUC) through rulings and actions. It is our assertion that these restrictions are illegal and must cease. We therefore request a ruling on the topic in proceeding A.14-11-003, the [SDG&E GRC], such that we may initiate legal action if our rights continue to be violated.

We hereby notify the Commission that we intend to video record all meetings of these proceedings by placing our video camera in the back of the room in an inconspicuous location. Our recordings will be “C-SPAN” style, and will not be interrupted or muted during “off the record” periods. These recordings may be hosted on the Internet on a permanent basis. Also, our First Amendment rights allow us and other members of the public to create derivative works based on these recordings. We also assert that other members of the public may also make their own recordings.

In addition, we request that the Commission webcast the proceedings to make it possible for members of the public to more easily observe the proceedings without traveling to the CPUC offices in San Francisco.

Furthermore, we believe it is appropriate to hold some or all of these proceedings in the service area of SDG&E so members of the public can participate in person.

Citizens Oversight contends that the Bagley-Keene Open Meeting Act (Bagley-Keene), which is found in Government Code § 11124.1 and following, and the First Amendment of the United States Constitution, allows it to videotape and record all PHCs, evidentiary or administrative law hearings, and Public Participation Hearings (PPHs) of the CPUC. Citizens Oversight contends

that it “recorded hundreds of public meetings,” and has “recorded CPUC evidentiary hearings in the past.” (Motion at 2, 5.)

Consistent with the policy of the Administrative Law Judge Division, as described in past rulings in Investigation 12-10-013, A.13-01-016 and related matters, and the code sections and the Commission’s Rules of Practice and Procedure cited below, there is no right under Bagley-Keene or the United States Constitution for any entity to videotape or record a PHC, evidentiary hearing, or PPHs involving these consolidated proceedings.

Bagley-Keene does not apply to a PHC, evidentiary or administrative hearing, or PPHs that are held in connection with a Commission proceeding. Instead, Bagley-Keene applies to “Every state board, or commission, or similar multimember body that exercises any authority of a state body delegated to it by that state body.” (Government Code § 11121.) Bagley-Keene is triggered when there is a meeting “of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains. (Government Code § 11122.5.)

Government Code § 11121.1(d) specifically excludes from Bagley-Keene “State agencies when they are conducting proceedings pursuant to [Government Code] Section 3596.” Furthermore, Government Code §3596 specifically exempts “Any hearing, meeting, or investigation conducted by a factfinder or arbitrator” from the provisions of Bagley-Keene, which commence at Article 9 (Government Code § 11120) of Chapter 1 of Part 1 of Division 3 of Title 2” of the Government Code.

Bagley-Keene does not apply to PHCs, evidentiary and administrative hearings, and PPHs because the “state body” is not conducting an “official

meeting” within the meaning of Government Code § 11121. Instead, it is the assigned ALJ or Commissioner, who in the role of a factfinder, is conducting the hearing or meeting. These hearings or meetings are not being held for the full Commission to decide the outcome of the underlying applications.

The assigned ALJ or Commissioner, when conducting a PHC, evidentiary or administrative hearing, or PPHs, is acting as a factfinder who has the delegated authority to hold such proceedings pursuant to the following: Pub. Util. Code §§ 309, 311, 1701.1; §§ 2 and 3 of Article XII of the California Constitution; and Rule 9.1 of the Commission’s Rules of Practice and Procedure (found in California Code of Regulations, Title 20, Division 1, Chapter 1). The ALJ Division and assigned ALJ “may take such other action as may be necessary and appropriate to the discharge of his duties, consistent with the statutory or other authorities under which the Commission functions and with the rules and policies of the Commission. (Rule 9.1.) That includes deciding whether videotaping and recording of such hearings or meetings should be permitted. Thus, there is no right under Government Code § 11124.1 of Bagley-Keene or under the United States Constitution to videotape or record PHCs, evidentiary or administrative hearings, or PPHs, in these proceedings.

Based on the above discussion of the applicable code sections and rules and policies of this Commission, the motion of Citizens Oversight to use video and recording devices at the PHCs and evidentiary hearings is denied.

With respect to the use of video and audio recording of the PPHs, that part of the motion is granted. The purpose of the PPHs is to solicit comment from the public about the effect of the utility’s application on them. Print and television outlets often publicize, appear, and video record the PPHs to encourage the public to turn out at such events. Accordingly, other members of the public will

be allowed to video and record the PPHs so long as that activity is done in a discrete manner that does not interfere with the running of, and conduct of, the PPHs.

As for the request in the motion “that the Commission webcast the proceedings to make it possible for members of the public to more easily observe the proceedings without traveling to the CPUC offices in San Francisco,” that request is denied. However, the January 8, 2015 PHC will be webcast for those who do not plan to attend in person.

We deny the request to webcast the remaining PHCs, evidentiary hearings, and PPHs for four reasons. First, Citizens Oversight has not demonstrated in its motion that persons other than Citizens Oversight will be viewing such a webcast. Second, as discussed below, PPHs will be scheduled at various locations in SDG&E’s service territory, in which the public can address the issues in SDG&E’s application. Also, all the PHCs, evidentiary hearings, and PPHs are open to the public to attend, and a reporter’s transcript of those events are prepared. Third, in order to webcast a PHC, evidentiary hearing, or PPHs, the appropriate resources need to be obtained by the Commission. That includes scheduling of a facility that has the appropriate video and recording equipment, a connection to a media channel, and obtaining the person(s) to operate such equipment during the event. All of these logistics involve securing the necessary facilities, equipment, and personnel at great expense to the Commission. And fourth, the cost of providing a webcast needs to be balanced against the number of persons who plan to view such webcasts, and whether they plan to view the webcasts for the entire duration. The issues discussed and litigated at PHCs and in evidentiary hearings may be too technical, tedious, and uninteresting for the average lay person. Since the evidentiary hearings are likely to last two to four

weeks, with an average of five hearing hours each day, the cost of providing a webcast for all of these events outweigh the benefits of webcasting these events.

Citizens Oversight also states "it is appropriate to hold some or all of these proceeding [sic] in the service area of SDG&E so members of the public can participate in person." This ruling notes, as has occurred in the past GRC proceedings of SDG&E, that PPHs will be scheduled and held in SDG&E's service territory to hear from the public about SDG&E's GRC application. The date, time, and location of these PPHs will be noticed in a future ruling, and publicized through an SDG&E bill insert, as well as in local newspapers.

Since the service list of the consolidated proceedings are still being compiled, this ruling is to be served on the initial service lists in A.14-11-003 and A.14-11-004, and on the service lists in the consolidated proceedings of A.10-12-005 and A.10-12-006.

IT IS RULED that:

1. The December 30, 2014 motion of Citizens Oversight, Inc. to allow it to video and audio record the prehearing conference(s) and evidentiary hearings, and its request for the Commission to webcast the prehearing conference(s), evidentiary hearings, and public participation hearings, is denied.
2. With respect to Citizens Oversight, Inc.'s request to video and audio record the public participation hearings in these consolidated proceedings, that part of the motion is granted.
3. The January 8, 2015 Prehearing Conference in these consolidated proceedings will be webcast. The webcast of the January 8, 2015 Prehearing Conference can be accessed on the Internet beginning on January 8, 2015 at 10:00 a.m. by going to: <http://www.cpuc.ca.gov/PUC/Webcasts>.

4. This ruling shall be served on the initial service lists in Application (A.) 14-11-003 and A.14-11-004, and on the service lists in the consolidated service lists for A.10-12-005 and A.10-12-006.

Dated January 5, 2015, at San Francisco, California.

 /s/ JOHN S. WONG
John S. Wong
Administrative Law Judge