

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

Application of San Diego Gas & Electric)
Company for Review of Its Proactive De-)
Energization Measures and Approval of)
Proposed Tariff Revisions.)
_____)

Application 08-12-021
(Filed November 6, 2008)

Opening Comments of CCTA And Time Warner Cable

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On behalf of Time Warner Cable

March 27, 2009

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Pursuant to the *Assigned Commissioner's Ruling and Scoping Memo* ("ACR") dated February 26, 2009, the California Cable and Telecommunications Association ("CCTA") and Time Warner Cable hereby submit Opening Comments addressing SDG&E's Application 08-12-021 in which SDG&E seeks review of the portion of its Fire Preparedness Plan that proposes to establish proactive de-energization measures where, under specified circumstances, SDG&E will shut-off power to its customers, including cable companies.

I. Background and Summary

CCTA's members consist of incumbent cable television systems throughout California and within the footprint of SDG&E's service territory. Time Warner Cable offers cable television, broad-band voice and internet access services in parts of SDG&E's territory including those affected by the proposed plan. Time Warner Cable and other San Diego area cable systems obtain electric power from SDG&E in order to provide broadband-band voice, Internet, and video services and also access SDG&E's rights of way pursuant to Public Utilities Code Section 767.5.

Both CCTA and Time Warner Cable urge the Commission to reject SDG&E's proposed plan and its proposed revision to Tariff Rule 14 because their adoption would preemptively deny access to cable-provided broadband services for those San Diego County and Orange County area residents who depend upon those services for access

to emergency information such as Emergency Alert System (EAS) alerts and E 911, as well as announcements regarding timely evacuation and other critical information in times of crisis. Access to those services is critical to cable consumers and is clearly threatened by SDG&E's de-energization plan. Moreover, SDG&E's proposal must be rejected because it "pulls the plug" in times of emergencies on two key California priorities: the use of broadband to provide advanced services to its citizens at the very time California's Broadband Task Force is urging local communities to develop broadband technology applications in areas such as telemedicine, emergency services, and security issues;¹ and in California's Emergency Alert System (EAS).

OVERARCHING/POLICY ISSUES

SDG&E's plan raises two overarching policy issues: 1) is it in the public interest to permit SDG&E to effectively eliminate access to key public information sources at the very time those sources are most needed, and 2) should SDG&E be protected from an event it proactively causes – while at the same time shifting costs, risks, and liabilities to others who may be expected to fill in the void created by SDG&E's action?

As highlighted in CCTA's Protest, and in CCTA's and Time Warner Cable's respective Prehearing Conference Statements, the greater San Diego area greatly depends upon television and Internet as a means of responding to disasters. As CCTA previously noted, San Diego Mayor Jerry Sanders has explained that the city uses television as a way to distribute information during a crisis, like recent wildfires. Moreover, local government representatives referred people to television to identify road closures and to see where the fires were moving. Television and Internet media provided around-the-clock coverage² of events and disseminated critical emergency information to residents throughout the area.

¹ See Final Report of the California Broadband Task Force, January 2008 at 68. See "CPUC Applauds California Broadband Task Force Report and Pledges Statewide Leadership on Broadband Issues at http://docs.cpuc.ca.gov/Published/News_release/77883.htm.

² San Diego Television Fire in Paradise by http://www.sandiego.com/option,com_sdca/target,db43332d-85c3-4d48-8d70-e99571612726/

The Commission should not be forced to decide between the potential benefits of pro-active de-energization and the loss of communication sources that provide important paths to critical information during a potential mass emergency. As CCTA has previously described, Congress recognized that Cable services provide critical communications paths in times of emergency and accordingly requires Cable Operators to provide the national Emergency Alert Service (“EAS”) message (signaled by the Emergency Action Notification event code) and to use their EAS equipment to disseminate information about state and local emergencies. SDG&E’s discretionary de-energization event would effectively shut down one of government’s most powerful emergency information resources.

Despite CCTA’s Protest and the CCTA and Time Warner Cable respective Prehearing Conference Statements underscoring the need to recognize the role television plays in informing the San Diego area public of fire-related emergencies, and notwithstanding the ACR’s direction that SDG&E explain how it will coordinate with communications providers to enable them to correctly identify which of their facilities will be subject to a an imminent de-energization event,³ SDG&E’s Informational Filing makes no reference to this information technology.

Moreover, despite the inherent and obvious impact to the health and safety of San Diego area residents, SDG&E has failed to adequately show that its proposal will, in fact, provide benefits that outweigh the additional risks and burdens that are introduced, particularly given the potential length of the outages – up to 72 hours according to SDG&E’s plan. While SDG&E reports that thirteen incidents of fire related to its electric power line equipment appear to be associated with high wind events, it does not provide specific information on the circumstances of those events, merely stating that a number of the fires described may have been prevented. This level of ambiguity and avoidance of detailed explanation are unacceptable because it leaves the Commission unable to determine whether more routine maintenance actions would have likewise prevented the fires. Indeed, the Commission’s Investigation ((I.) 08-11-006) suggests those fires may have been prevented by far less impacting actions by SDG&E, such as tree trimming and ensuring proper clearances consistent with General

³ ACR at 12, question 13.

Order (GO 95). The fact that the Commission's Investigation is incomplete suggests that SDG&E's proposed solution in the form of proactive de-energization is, at best, premature.

II. IMPACT OF SDG&E's PLAN ON SERVICES AND CUSTOMERS

The ACR also asks parties to comment on the costs, liabilities, burdens, risks, and other impacts that SDG&E's de-energization plan imposes on individual customers. Major customers, such as communications providers, are asked to provide certain additional information⁴ concerning the impact of the SDG&E plan.

Number of Cable Customers Affected

Five CCTA members provide cable service to approximately 62% of households throughout 92 communities within San Diego County and SDG&E's service territory. That amounts to approximately 868,000 thousand households or 2.5 million people. Approximately 30% to 40% of cable households also subscribe to cable voice service offerings. According to SDG&E's information filing dated March 13, 2009, the current, albeit tentative,⁵ estimate of potentially affected customers is approximately 60,000 customers. Assuming that a SDG&E "customer" and a cable "household" are generally equivalent as they both reflect a single billing account, then approximately less⁶ than 37,200 cable households, or 107, 508 people who receive service from CCTA members, are affected by SDG&E's plan.⁷ SDG&E also estimates that an event will impact about eight to ten thousand customers. This would translate to approximately five thousand to six thousand cable customers, or 14,500 to 17,300 persons, served by Cable, affected per event.

⁴ ACR at 13.

⁵ SDG&E explains that it will "firm up" its estimate on April 3, 2009. SDG&E at 4.

⁶ CCTA assumes that some of SDG&E accounts represent business accounts and not households *per se*. Cable also services business accounts but does not segregate those customers here.

⁷ SDG&E cites estimates that there are 2.89 people per household in its service territory.

Specific Geographic Regions Affected By SDG&E's Plan

CCTA's Protest to SDG&E's De-energization plan noted that the maps provided with SDG&E's Application contained insufficient detail, lacking specific grids and coordinates that outline the location of those specific areas and that as a consequence, companies are unable to accurately assess how a power outage to any particular "specific area" would affect the cable system, since it is unclear where SDG&E's "specific areas" align themselves with cable television system footprints or head-end facilities. Moreover, SDG&E originally created maps that utilize 2004 data points from CalFire. Cable Operators are now seeking from SDG&E newer and more detailed maps that go beyond the single "specific area" since powering for a cable node located within one "specific area" may also be providing cable related services to an area outside of the "specific area" being proactively de-energized by SDG&E. Until geographic information system (GIS) formatted maps are obtained for the indicated areas and analyzed, a complete picture of the affect of SDG&E's plan upon the cable industry is unavailable.

Estimated Cost of A 72 hour De-Energization Event

To begin to consider the multitude of costs, liabilities, and risks SDG&E's de-energizing plan would impose upon cable operators, a description of the cable architecture is warranted. Cable Operators utilize a hybrid fiber-coaxial (HFC) network, utilizing high-capacity, digital, two way data transmission that is used for broadband Internet, video, and voice services. The HFC network consists of distribution fiber connecting the cable company's distribution hubs⁸ to a local distribution node. The node, in turn, converts cable TV and cable modem data from optical signals to radio frequency (RF) signals to be retransmitted through coaxial cable to the customer's premise. A

⁸ A "hub" is a signal distribution point for part of an overall system. Larger cable systems are often served by multiple hub sites, with each hub in turn linked to the main head-end with a transportation link such as fiber optics, coaxial super trunk, or microwave.

cable node serves between 125 and 500 Cable households. Thus, the area affected by SDG&E's plan would be served by anywhere from 74 to 186 nodes. Each household would presumably contain at least one television (the average U.S. household contains 2+ televisions). Customers who receive digital services would have at least one AC powered device (set-top, modem, and or eMTA for voice service).

Cable companies have utilized more than one technology for the delivery of voice services. For example, some providers deliver voice services to customers through a circuit switched architecture, where power is delivered over the network to the customer's premise (similar to traditional telephone service provided by the ILECs). However, the predominate technology being deployed today by cable systems is VoIP (Voice over IP) where the voice, data, and video services utilize the same customer peripherals in most cases, therefore have the same standby capabilities. VoIP customers receive this service through a cable modem, which is typically equipped with a battery, providing a manufacturer specified backup powering time of up to 8 hours. The actual amount of available backup time varies depending upon a variety of factors, including phone use and age of the battery.

Each aspect of the Cable HFC network: the head-end⁹, distribution hubs, nodes, and customer's premise equipment, normally operate under AC power obtained from the local utility, in this case SDG&E. In the event of a power outage, the head-end and distribution hubs are equipped with an array of batteries and diesel powered generators to provide uninterrupted AC power to the facility. Headends and distribution hubs are configured to run a minimum of 24 hours on standby diesel generator power. Unnecessary risks are introduced when bringing a refueling truck safely into a de-energized area in order to fill the fuel tanks to keep the equipment running. If refueling is unsuccessful (for larger cable companies), the loss of a single distribution hub site could result in a total service outage for an average of 20, 000+ customers.

Back-up batteries within the power supplies that supply the cable nodes can run for approximately eight hours before they need recharging or an external gasoline

⁹ The "head-end" is the control center of a cable television system, where incoming signals are amplified, converted, processed and combined into a common cable along with any original cablecasting, for transmission to subscribers. The system usually includes antennas, preamplifiers, frequency converters, demodulators, modulators, processors and other related equipment.

powered generator is required, but cable employees must refuel these generators every six hours to assure continued service. In an event that involves eight to ten thousand SDG&E customers, cable operators in the area would need to service up to 30 nodes over the course of 72 hours, amounting to 360 refueling trips. Costs to operate these generators generally costs up to \$700 per day (depending on the cost of fuel), but use of generator power presumes cable companies have access to sufficient quantities of generators and fuel for an extended period of time. The diverted resources will also cause additional losses that have not been accounted for, and present potential risk as portable charging equipment is deployed to cover SDG&E's planned outages is not available for use in another area which may have an unplanned outage at the same time.

Power back-up capabilities of the customer premises equipment varies depending upon the type of service provided to that customer. For customers who subscribe to voice services, the cable modem located at the premises will, as previously mentioned, have a battery back-up capable of providing up to eight hours (depending upon off-hook use) of standby service to preserve dial-tone and to fully comply with the FCC's requirement to provide Registered Location information to the Public Safety Answering Point (PSAP) on 911 calls. While the cable industry continues working on advanced technology to sustain services through a prolonged event such as de-energizing, present technology and product availability effectively limits the capabilities of modem batteries today.

As a practical matter, even though the cable network may remain operational in an extended power outage, customer television and computer screens will remain dark because those devices draw power from AC sources. This would be true not only for cable TV subscribers, but for satellite and over-the-air viewers as well. Even those with portable televisions will find themselves without a signal since soon they cannot use analog signals and because Digital Television (DTV) converter boxes do not have battery back-up. While battery powered digital televisions are certain to be marketed once the digital transition is complete, there will remain a transition time when a battery powered television is not a reality for most. Even consumers with laptop computers will be unable to access the Internet, since Wi-Fi modems that would transmit to the laptops

will be without power. Only those with a data access plan through a wireless phone company will be able to access the Internet with a laptop assuming the cellular towers and other cellular equipment have sufficient back-up power.

The Commission must not overlook the fact that a number of cable customers use the cable data network to receive “over the top” services from third parties who are not part of this proceeding. Those parties include VoIP providers like Vonage, Skype, and Magic Jack. Moreover, use of these “over the top” services continue to grow, thereby making the future de-energizing events more devastating to the communications infrastructure.¹⁰

Finally, cable companies provide cable services to schools, libraries, and other public institutions throughout San Diego County and Orange County. Absent back-up power generation at the respective institution, those services would be unavailable in SDG&E’s contemplated de-energizing event. The Commission should consider this as it reviews SDG&E’s plans for providing support services to affected customers.

III. OTHER ISSUES

The ACR asks whether PG&E Tariff Rule 14 is an appropriate template for the proposed revisions to SDG&E’s Tariff Rule 14 given that PG&E’s Rule 14 was not drafted as part of a fire preparedness plan. From the cable industry’s perspective, the answer is “no.” SDG&E’s de-energization plan is unreasonable, and a tariff designed to make certain “the customer’s responsibility for losses in the event of an interruption of electricity delivery” is likewise unreasonable. The Commission must recognize that SDG&E’s proposed Tariff Rule 14, while protecting SDG&E, shifts costs, risks, and liabilities to others. As detailed in this pleading and in the various Protests previously submitted, SDG&E’s plan would shift cost to consumers, businesses, local government, relief agencies, schools, water districts and communication providers such as cable

¹⁰ A post in Telephony Online (March 4, 2009) reports that VoIP deployments have finally gone mainstream reporting that Infonetics Research forecasts a 25% compound aggregate growth in residential and SOHO [small office/home office] hosted VoIP subscribers through 2011, when they are expected to number over 187 million. <http://blog.telephonyonline.com/briefingroom/2009/03/04/>

companies who must scramble their own respective resources to fill the gap left by a SDG&E proactive power shut-off event.

SDG&E must not be permitted to revise Tariff Rule 14 to escape liability for its actions if such protection means that other services, including cable service, is left uncompensated by SDG&E for the cost burdens and liabilities incurred when SDG&E shuts off power under its de-energization plan. For example, compensation may be in order if it is determined that cable companies are subject to fines imposed by the local cable franchise authority for service disruptions stemming from an SDG&E event. In the course of the technical workshops hosted by SDG&E, representatives from the County of San Diego indicated that the County did not view the proposed pro-active de-energization events as an emergency. This is a potentially troubling aspect for cable providers who hold local cable franchises within San Diego County. While approximately 50% of California cable companies, including Time Warner Cable, offer services in parts of their service territories through a state franchise pursuant to DIVCA, most (including many with DIVCA authority) continue to operate in at least some of their service area under local franchises that are negotiated between the local franchise authority, such as San Diego County, and the cable company. Those franchise agreements may contain performance standards. Where a cable company's video services are interrupted, the cable company could face penalties under the terms of the franchise agreement if SDG&E's actions are not recognized as an excused event. While a cable company would contend that SDG&E's decision whether to de-energize is outside the scope of its control, the local franchising authority could conclude otherwise, reasoning that the de-energization event is not an emergency *per se*, and therefore not a basis for a waiver of terms.

SDG&E Still Relies on Its Steel Pole Program to Help Justify Application

The ACR determined that the issue of replacing wood poles with steel poles is outside the scope of the proceeding.¹¹ Nevertheless, SDG&E's Informational Filing in response to that ACR continues to credential its de-energization proposal with descriptions of its wood to steel pole exchange program.¹² The inappropriateness and irrelevance of that reference was underscored by SDG&E itself when asked by a web-cast participant at the March 20 Workshop whether the presence of "hardened" facilities would make an area "less of a candidate" for a proactive de-energization event. SDG&E's response was that the presence of hardened facilities would not make the area less subject to the plan, and that hardened areas will be subject to proactive shut-offs. Because SDG&E appears to acknowledge that its wood to steel pole replacement program will not influence its decision regarding whether to implement a proactive power shutdown, and because the ACR has excluded the issue from this proceeding, thereby foreclosing the opportunity to challenge these SDG&E claims here, the Commission must disregard and strike from the record all SDG&E testimony and responses that rely on the company's wood to steel pole program to credential its request for approval of its proactive de-energization plan.

¹¹ ACR at 7.

¹² SDG&E Informational Filing in Response to Scoping Memo dated March 13, 2009, at 3.

VI. CONCLUSION

CCTA asks that the Commission deny the application for the reasons discussed above and grant the relief otherwise requested by CCTA.

DATED: March 27, 2009

Respectfully submitted,

California Cable & Telecommunications Association

Jerome F. Candelaria /s/

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Verification

Acting on behalf of the California Cable & Telecommunications Association, the undersigned, Jerome Fitch Candelaria, verify that I am authorized to make this verification on CCTA's behalf. The content of this document is true, except as to matters that are stated as general facts concerning the cable television industry. As to those matters, I believe them to be true and accurate to the best of my knowledge.

Jerome F. Candelaria /s/

Jerome F. Candelaria
Vice President, Legal & Regulatory Affairs
California Cable & Telecommunications Association

Executed this 27th day of March 2009 in Oakland California

CERTIFICATE OF SERVICE

I certify that I have this 27th of March, 2009, caused to be served the foregoing **OPENING COMMENTS OF CCTA and Time Warner Cable** upon all parties of record in this proceeding by sending a copy thereof to each such party by first-class mail, Email and/or hand delivery.

Executed this 27th day of March 2009 in Oakland California

 /s/ Antoinette J. Irwin
Antoinette J. Irwin