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San Diego Gas & Electric Company

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN DIEGO

14 In Re: 2007 Wildfire Litigation

Honorable Richard E. L. Strauss  
Department C-75

15 **SAN DIEGO GAS & ELECTRIC**  
16 **COMPANY'S STATUS CONFERENCE**  
17 **STATEMENT AND MOTION FOR A**  
18 **CASE MANAGEMENT ORDER**

19 This Document Relates To:

Status Conf.: June 19, 2013  
Time: 10:00 a.m.

20 In Re: 2007 Wildfire Individual Litigation –  
21 Witch Creek/Guejito Fires

Case No. 2008-00093080 CU-NP-CTL

22 In Re: 2007 Wildfire Individual Litigation –  
23 Rice Canyon Fire

Case No. 2008-00093081 CU-NP-CTL

1 TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on June 19, 2013, at 10:00 a.m., or as soon thereafter as the  
3 matter may be heard in Department C-75 of the above-entitled Court, located at 330 West  
4 Broadway, San Diego, California, Defendant San Diego Gas & Electric Company ("SDG&E")  
5 will, and hereby does, move the Court for a Case Management Order. This Motion is based on  
6 this Notice, the attached Status Conference Statement and Memorandum of Points and  
7 Authorities, the exhibits being filed concurrently herewith, the Court's prior orders in this  
8 litigation, other items filed in this litigation, all other matters of which the Court may take judicial  
9 notice, and such further argument and other matters as may be presented at or before the hearing.

10 Pursuant to Department C-75 policies and procedures and California Rule of Court 3.1308,  
11 counsel may obtain the tentative ruling on this motion after 4:00 p.m. on the day prior to the  
12 scheduled hearing. Tentative rulings may be obtained by calling (619) 531-3690, or on the San  
13 Diego Superior Court website. No notice of intent to appear is required to appear for oral  
14 argument.

15 DATED: May 28, 2013

QUINN EMANUEL URQUHART &  
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By 

Kenneth R. Chiate  
Attorneys for Defendant  
San Diego Gas & Electric Company

**STATUS CONFERENCE STATEMENT**  
**AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
**SDG&E'S MOTION FOR A CASE MANAGEMENT ORDER**

**Preliminary Statement**

The mediation program has continued to be remarkably successful in the last 90 days: SDG&E has now settled 2,064 cases. Although there are still many cases left to make their way through the mediation program, in order to expedite this litigation to final resolution, SDG&E requests that the Court enter the attached proposed Case Management Order, which will both (1) start the process of scheduling damages trials for the few cases that cannot be settled in the mediation program, and concurrently (2) allow the parties to continue focusing on resolving the remaining cases in the mediation pipeline. Specifically, SDG&E requests that the Court enter the following Proposed Trial Setting Schedule:

- June 19: Court orders all parties to meet and confer on selecting 16 specific cases/properties and four trial dates for damages-only trials. Each damages-only trial will include four cases.
- July 19: All parties submit to the Court a stipulated list of cases and proposed trial dates. If the parties cannot agree, each side shall submit their own proposed trial candidates and proposed damages-only trial dates.
- August 9: Parties submit to the Court oppositions to any contested issues regarding the identity of trial plaintiffs and/or the trial dates.
- August 23: Parties submit replies regarding trial plaintiffs and trial dates.
- August 30: Trial Setting Conference. The Court sets dates and plaintiffs for four separate damages-only trials, with a liability trial to follow the four damages trials should it be necessary. The Court also sets related deadlines for summary judgment motions, discovery cutoffs, expert exchanges, etc.

As explained below, successive damages-only trials give the parties and the Court the best opportunity to move this entire litigation to final resolution.

1 **Mediation Progress Update**

2 SDG&E has now settled 2,064 cases through the mediation program, and hopes to settle as  
3 many more as possible in that program. There are only 24 cases that have been to a mediation,  
4 have not settled, and do not have another day of mediation scheduled at this time. This makes for  
5 a success rate of almost 99%. There are 6 cases in which mediation demands have not been  
6 submitted. (As discussed below, SDG&E requests that the Court issue an Order to Show Cause  
7 why these cases should not be dismissed.) There are 180 additional cases with demands submitted  
8 that have not yet resolved.<sup>1</sup> These 180 cases are at various stages of the process:

- 9 • 8 cases where the mediation submissions are incomplete.
- 10 • 1 case where SDG&E is analyzing the submission to prepare a document request.
- 11 • 45 cases where SDG&E has sent a document request and is awaiting a response (or  
12 is waiting for other additional information from plaintiffs).
- 13 • 54 cases where SDG&E has recently received responses to its document requests  
14 and is analyzing them to prepare an offer.
- 15 • 72 cases where SDG&E has sent an offer. SDG&E expects the majority of these to  
16 settle through discussions between counsel without the need for a mediation.

17 The numbers bear out that the mediation process continues to be the most efficient and  
18 proven method to resolve claims for as many plaintiffs as possible as quickly as possible. SDG&E  
19 will continue working aggressively to resolve in the mediation program both the cases that have  
20 not yet been to mediation and the handful of cases that have so far been unsuccessful in mediation.  
21 Indeed, dozens of cases that were at first unsuccessful in mediation ultimately settled when the  
22 parties revisited them.

23 That said, a clearer picture is emerging of the few cases that are unlikely to settle in the  
24 mediation program and what prevents those cases from settling: disputes over damages.  
25 SDG&E's Proposed Case Management Order allows the parties to resolve these disputes by  
26

27 <sup>1</sup> There are also 100 additional cases, almost all of which related to properties outside the fire  
28 boundaries, that SDG&E expects to be dismissed or limited based on SDG&E's latest demurrers  
regarding the Court's statute of limitations rulings.

1 directing the parties to meet and confer to decide trial dates and select sixteen unsettled cases for  
2 successive damages-only trials to begin in the near term. The meet and confer period will also  
3 give the parties sufficient breathing room to resolve as many remaining cases as possible in the  
4 mediation program.

## 5 Discussion

### 6 **I. SUCCESSIVE DAMAGES-ONLY TRIALS ARE THE FASTEST AND MOST** 7 **EFFICIENT WAY TO FULLY RESOLVE THE LITIGATION**

#### 8 **A. Damages-Only Trials Will Address the Disputed Issues that Have Prevented** 9 **Settlements**

10 As the parties have recognized, there are likely to be some cases that cannot settle in the  
11 mediation program without a determination of the plaintiffs' damages. And although there are  
12 very few of these cases (barely 1% of all cases in the mediation program), their identity is  
13 becoming clearer as the mediation program nears conclusion. The question now is how to most  
14 efficiently resolve these cases, keeping in mind that 1) the litigation as a whole will not conclude  
15 until all of the damages have been determined for all of the remaining cases; and 2) any method of  
16 resolution must account for the parties' and the Court's limited time and resources. Directing the  
17 parties to meet and confer on a schedule for successive damages-only trials followed by a liability  
18 trial is the most efficient way to move the litigation as a whole to final resolution.

19 Starting with damages-only trials has two primary benefits over starting with an all-issues  
20 or liability trial. First, and most importantly, damages-only trials will take far less time and  
21 resources (both for the parties and the Court) to prepare for and to conduct. This means that more  
22 cases can be tried and resolved more quickly; liability issues would only divert the parties' and the  
23 Court's attention and delay resolution. As explained below, SDG&E expects that an all-issues  
24 trial as proposed by plaintiff would take, at an absolute minimum, a full year to prepare for and  
25 conduct, including a 6+ month trial. The issues in a damages trial are far more streamlined: there  
26 are fewer fact and expert witnesses, less written discovery and depositions are required, and any  
27 dispositive motions would be narrower and less complicated. This means that not only will the  
28 parties take less of the Court's time in trial, but also that the parties will need less lead time before

1 they are ready for the first damages trial, and each successive damages trial after the previous one  
2 concludes. Damages-only trials are also equally accessible for any plaintiffs' counsel (regardless  
3 of whether counsel is now prepared to try liability) and for any unresolved case, big or small. As  
4 stated above, SDG&E recommends that the parties meet and confer regarding a schedule for  
5 successive damages-only trials, but it fully expects that *all* of the unresolved cases can get to (and  
6 through) trial far faster with successive, streamlined damages trials than they could if liability  
7 issues took up time at the front end.

8         Second, a damages trial is the only thing required to address the reason the parties have  
9 reached an impasse preventing settlement of some cases. By way of example, the damages  
10 disputes preventing settlement include the proper valuation of a destroyed avocado grove, or of a  
11 nascent business, or of a family's annoyance and inconvenience arising from an evacuation. The  
12 disputes also include whether plaintiffs have a genuine desire to restore real property for a  
13 personal reason, or whether replacement costs are reasonable in light of a property's diminution in  
14 value. And while the parties have different positions on countless liability issues (addressed  
15 below), not a single case has failed to settle because of disputes regarding any question of liability  
16 (e.g., cause and origin, maintenance practices, weather histories, fire progression, etc.). The goal  
17 of any trial should be to resolve the roadblock to a mediated resolution in a given case, not to  
18 unnecessarily waste judicial resources and delay mediated resolutions of scores of other cases in  
19 the mediation pipeline. Starting with damages-only trials achieves this; starting with liability  
20 issues does not.

21         The primary issues in the unresolved cases that have prevented them from settling all relate  
22 to damages. This means that regardless of whether the parties try liability issues at the beginning  
23 or the end of the process, damages trials likely will be necessary for all of the unresolved cases to  
24 decide the most important areas of dispute – damages. SDG&E recommends addressing these  
25 determinative issues first. It makes the most sense to get right to these issues and move through  
26 them successively for all of the cases that do not resolve through the proven mediation program.

1           **B.     An All Issues Trial Would Require Enormous Time and Resources but Would**  
2                   **Provide No Benefit**

3           It is of course true that the parties have countless disputes about complicated liability  
4 issues. But none of these liability disputes have stood in the way of a single settlement. No  
5 mediation has fallen apart because the parties are at loggerheads regarding SDG&E's recloser  
6 policy or the foreseeability of the wind speeds in October 2007. Importantly, this means that even  
7 if the parties and the Court took the great time, effort, and expense to prepare for and conduct a  
8 trial of liability issues before damages, it would not bring a single case any closer to resolution  
9 because *all* of the true roadblock issues (i.e., damages) would remain unresolved.

10           The time and effort required for an all-issues or tort liability trial is hard to overstate.  
11 Trying (and preparing to try) tort liability issues means presenting witnesses and evidence  
12 concerning the construction, maintenance, inspection, and repair of SDG&E's electrical system. It  
13 requires evidence regarding standard of care, wind and weather patterns, foreseeability, and  
14 progression of the fires. It requires evidence regarding government regulations and SDG&E's  
15 operations and procedures. It requires more substantial involvement from different cross-  
16 defendants (Cox and/or Davey). A tort liability trial would be a near-endless parade of hundreds  
17 of fact witnesses, thousands of documents, and dozens upon dozens of expert witnesses from both  
18 sides in every conceivable category. These issues are multiplied when it is realized that fully  
19 resolving liability issues for all of the unresolved cases means repeating this exercise for each of  
20 the three fires.

21           How long would this take? Plaintiffs have previously argued that the parties can be  
22 prepared for such a trial in nine months (SDG&E believes it would take longer), and have  
23 attempted to squeeze various arbitrary deadlines into this schedule. But these estimates and  
24 deadlines have not provided a detailed budgeting of time for the actual tasks that need to be  
25 completed before an all-issues or tort liability trial – from expert discovery (which has not even  
26 begun), to written discovery and depositions on liability and damages, to dispositive (*e.g.*,  
27 Summary Judgment) motions.

1           Scheduling for trial preparation and trial with these tasks in mind paints a very different  
2 picture. Just by way of illustration, when the Court asked the parties in early 2010 to submit lists  
3 of the discovery necessary for such a trial, counsel for plaintiffs' Witch/Guejito Cause and Origin  
4 Discovery Group listed 168 witnesses it needed to depose, including experts in 14 different  
5 subjects. See Notice of Lodging ("NOL") Ex. 1 (noting that only 31 of the depositions had been  
6 completed). Counsel for plaintiffs' Witch/Guejito Design, Construction, Inspection, and  
7 Maintenance Discovery Group submitted an *additional* list of 7 PMK deposition topics for the  
8 Witch fire, 16 PMK deposition topics for the Guejito fire, and 11 specific employees or groups of  
9 employees they wished to depose. See NOL Ex. 2. Other discovery groups identified even more  
10 witnesses, deposition topics, and necessary experts. These lists barely touch on written discovery.  
11 And then there is the time needed for the trial itself. Although plaintiffs' recent briefing has not  
12 ventured to guess how long it would take, plaintiffs' counsel at a hearing in late 2011  
13 optimistically estimated that an all-issues trial for 30 cases would take about *eight months*. See  
14 NOL Ex. 3. Although plaintiffs attempted to distance themselves from their prior estimates at the  
15 last status conference hearing, they did not provide any alternative discovery plan, trial plan, or  
16 schedule that meaningfully reduced these estimates.

17           And for the enormous cost and time required for a tort liability trial, what benefit? Even  
18 after a hypothetical liability trial, all of the parties' work would still be ahead of them. As  
19 discussed above, liability determinations will not address damages issues such as the reasonable  
20 valuation of each plaintiffs' landscaping or lost income. At one time or another, damages trials  
21 most likely will be necessary to resolve all of the cases that have not settled in mediation.  
22 Regardless of when liability is tried, these cases are unlikely to resolve until damages issues are  
23 addressed in trial. Given this fact, frontloading a liability trial does nothing but delay final  
24 resolution of the cases.

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1 C. **A Meet and Confer Period for the Parties to Agree on Trial Plaintiffs and**  
2 **Dates Would Provide Additional Time to Resolve the Remaining Cases and**  
3 **Could Narrow Issues for the Court**

4 SDG&E's Proposed Case Management Order calls for a roughly 30-day window for the  
5 parties to meet and confer on which cases will be selected for damages trials, the order in which  
6 they will be tried, dates for each of the trials, and related dates such as summary judgment  
7 deadlines, discovery cutoffs, and expert exchanges. If the parties can agree on these issues, they  
8 can begin preparing for damages trials right away without the need for further briefing to the  
9 Court. If not, SDG&E proposes an additional roughly 45-day period to brief the disputed issues  
10 for the Court in advance of a Trial Setting Conference on August 30, 2013.

11 During this meet and confer period (and, if necessary, additional briefing period), the  
12 parties will continue to work through the ever-decreasing number of remaining cases in the  
13 mediation pipeline, nearly all of which are likely to settle in mediation. As SDG&E has stated  
14 previously, plaintiffs are welcome to continue to conduct limited, focused liability discovery  
15 during this period, so long as it does not interfere with resolving cases in mediation and  
16 conducting discovery regarding the damages trials. Over the last several months, plaintiffs have  
17 been propounding written discovery and deposition notices on SDG&E, and SDG&E has been  
18 answering the discovery requests and producing documents and witnesses. SDG&E sees no  
19 reason this limited discovery cannot continue in reasonable doses.

20 SDG&E requests that the Court enter SDG&E's Proposed Case Management Order, which  
21 directs the parties to meet and confer regarding proposed trial cases and trial dates for damages-  
22 only trials.

23 **II. THE COURT SHOULD ISSUE AN ORDER TO SHOW CAUSE WHY INACTIVE**  
24 **CASES SHOULD NOT BE DISMISSED**

25 At the prior status conference, the Court set a May 1, 2013 deadline for all remaining cases  
26 to submit mediation demands and supporting materials. See NOL Ex. 4. A handful of cases,  
27 listed on Exhibit 1 to SDG&E's [Proposed] Case Management Order, still have not submitted  
28 demands and supporting materials. Notably, most of these cases were also subject to (and missed)

1 the Court's prior October 1, 2012 deadline for submission of mediation demands and supporting  
2 materials. Even with a seven-month extension from October to May, these plaintiffs have failed to  
3 abide by two Court orders requiring diligent prosecution of their case through submission of a  
4 mediation demand and supporting materials. SDG&E therefore requests that the Court issue an  
5 Order to Show Cause why these cases should not be dismissed, as the Court did before.

6 **Conclusion**

7 SDG&E is still hopeful that all remaining cases in this litigation will be resolved in the  
8 ongoing mediation program, and that those that cannot be amicably resolved in that program will  
9 have a damages trial next year that should allow those cases to be resolved as well. SDG&E's  
10 proposed Case Management Order gives the parties and the Court the best chance at achieving this  
11 goal.

12 DATED: May 28, 2013

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14 By

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