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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN DIEGO

14 In Re: 2007 Wildfire Individual Litigation –  
15 Witch Creek/Guejito Fires

Master Case No. 2008-00093080-CU-NP-CTL

16  
17 Honorable Richard E. L. Strauss  
Department C-75

18 **SAN DIEGO GAS & ELECTRIC**  
19 **COMPANY'S OPPOSITION TO PCG-1'S**  
20 **MOTION RE THE COMBINED**  
21 **WITCH/GUEJITO TRIAL**

22 Date: June 19, 2013  
Time: 10:00 a.m.

**Preliminary Statement**

PCG-1's proposed all-issues trial for a handful of cases is misguided and inefficient and would only delay ultimate resolution of this litigation. Rather than shifting the parties' focus to preparing for and conducting such a trial, the Court should enter SDG&E's Proposed Case Management Order, directing the parties to (1) meet and confer on selecting cases and dates for successive damages trials next year, to be followed by a liability trial only if necessary; and (2) continue working through the remaining cases in the mediation pipeline. The record in the proven mediation program – well over 2,000 cases resolved at an almost 99% success rate – shows there is no need to set a trial of liability issues to settle cases. It is true that there may be some cases that do not resolve in mediation, although SDG&E is not convinced that all of PCG-1's proposed trial cases are in this group; indeed, one of the proposed trial cases settled in mediation earlier this week. But for any cases that are ultimately unable to settle in mediation, it will be disputes over damages that stand in the way of settlement. Because these damages issues will have to be resolved for *all* cases that do not settle in mediation, SDG&E's proposal to try the determinative damages issues first and in succession is more efficient and will bring this entire litigation to final resolution more quickly than PCG-1's proposal.

The cases at issue in PCG-1's motion present no compelling reason to set a date now for a counterproductive all-issues trial in ten months. These cases have not been languishing for years in the mediation program. In fact, all of the plaintiffs at issue, even those who filed complaints in 2008, submitted mediation demands in 2012; the majority submitted demands in the second half of 2012. And most of the cases have only had one full day of mediation, which occurred either this year or in late 2012. One unsuccessful day of mediation does not always mean the parties are at an impasse. Scores of cases that were unsuccessful in their first day of mediation – including most of the cases PCG-1 proposed as trial cases in prior briefing, and one case PCG-1 proposed in its current motion – settled when the parties revisited them in additional days of mediation with new information and an open mind. Nor are PCG-1's proposed trial cases uniquely situated. Many other plaintiffs who filed complaints near the beginning of the litigation are still making their way through the mediation program, either because of the complexity of the cases or for other reasons.

1 The vast majority of these and other cases remaining in the mediation pipeline – including  
2 perhaps more of PCG-1’s proposed trial candidates – will most likely settle in the mediation  
3 program; to the extent they do not, it will be disputes over damages that separate the parties.  
4 Accordingly, the parties should use the coming months to set a schedule for resolving these true  
5 roadblock issues in damages trials, and to work through the cases still in the mediation pipeline  
6 that are likely to be resolved there. Preparation for an all-issues trial would be counterproductive.

### 7 Discussion

#### 8 **I. THE MOVING PLAINTIFFS HAVE NOT ESTABLISHED A NEED FOR AN** 9 **INEFFICIENT AND COUNTERPRODUCTIVE ALL-ISSUES TRIAL**

10 The moving plaintiffs in the ten cases<sup>1</sup> have not established any need for an all-issues  
11 Witch/Guejito trial in ten months. To the extent these cases have been waiting for resolution, it is  
12 because plaintiffs waited so long to file their complaints or submit mediation demands, not  
13 because they have been languishing in the mediation program or because there is no trial date. As  
14 set forth in SDG&E’s moving papers, the mediation program has been, and continues to be,  
15 extremely successful: Well over 2,000 cases have been settled, with an almost 99% success rate.  
16 In fact, four of the cases that PCG-1 proposed for trial in its last round of briefing (Pacific Bell,  
17 Aasted, Ruiz, and Coffman), and one of the cases proposed in this round (Cebe) have settled.  
18 Those cases, just like all of the others, settled without a looming all-issues trial.

19 The moving plaintiffs attempt to distance themselves from the remaining cases that filed  
20 complaints “shortly before expiration in mid-2012 of the statutes of limitations.” See Motion at  
21 6:23-24. But four of the cases proposed for trial are themselves in this group; plaintiffs in the  
22 Mesa Grande, Lee, Moinzadeh, and Clotfelter cases filed their complaints in 2012. Nor are all the  
23 other (non-PCG-1) cases still in the mediation pipeline all late filings. By SDG&E’s count there  
24 are 31 non-PCG-1 cases that filed complaints in 2008 or 2009 that are still working their way  
25 through the mediation pipeline with an expectation of mediated resolutions. This does not mean  
26 the mediation program has broken down for these cases. It is simply inevitable that certain cases  
27 will take this long to make their way to resolution when there are well over 2,000 cases for the

28 <sup>1</sup> PCG-1 initially proposed eleven trial cases, but one of those cases settled earlier this week.

1 parties to get through. SDG&E is confident that the vast majority of the cases remaining in the  
2 mediation program will settle in the mediation program without the need for an all-issues trial.

3 More importantly, and contrary to PCG-1's assertion, the actual time that plaintiffs have  
4 been waiting to resolve their cases is better measured from when plaintiffs submitted mediation  
5 demands. Until plaintiffs submitted mediation demands and supporting materials, SDG&E had no  
6 knowledge of the particulars of their cases and thus no way to resolve them. And these dates tell  
7 quite a different story: Plaintiffs in all of the proposed trial cases submitted demands for the first  
8 time in 2012; plaintiffs in six of the ten remaining cases submitted their demands in the second  
9 half of 2012.

10	Proposed Trial Case	Complaint Filed	Mediation Demand Submitted
11	1. Terebessy	4/11/2008	9/25/2012
12	2. Cebe ( <b>Settled</b> )	8/4/2008	First demand: 3/19/2012 Amended demand: 9/21/2012
13	3. Romero/Andersen	10/3/2008	7/18/2012
14	4. Shields	10/21/2008	5/17/2012
15	5. E.A. Ranches	10/18/2010	5/21/2012
16	6. Henry Ranch	12/7/2011	7/10/2012
17	7. Mesa Grande	3/23/2012	11/2/2012
18	8. Lee	3/23/2012	6/20/2012
19	9. Hensley/Murray	10/21/2008	First demand: 5/4/2012 Additional demand: 7/24/2012
20	10. Moinzadeh	5/17/2012	First demand: 7/24/2012 Amended Demand: 2/20/2013
21	11. Clotfelter	6/4/2012	9/27/2012
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23			

24 The moving plaintiffs have not demonstrated that they are specially situated or the most  
25 appropriate cases to take to trial first, let alone that their trial should be an all-issues trial that, as  
26 described below, would impose a great cost on the parties and the Court and provide almost no  
27 benefit to anybody other than the trial plaintiffs (who themselves may still be able to settle in  
28 mediation). The better way to resolve *all* of the remaining cases is to require the parties to meet

1 and confer on dates and cases for successive damages trials, and, in the mean time, allow the  
2 parties to finish working their way through the remaining cases in the mediation program.

3 **II. AN ALL-ISSUES TRIAL IS UNNECESSARY AND WOULD NEGATIVELY**  
4 **IMPACT RESOLUTION FOR THE VAST MAJORITY OF PLAINTIFFS**

5 Setting an all-issues trial would delay resolution of the vast majority of outstanding claims.  
6 As stated above and in SDG&E's Motion for a Case Management Order, there are still many cases  
7 working their way through the mediation program. If the parties must immediately shift their  
8 efforts to preparing for an all-issues trial for ten cases just ten months from now, the final cases in  
9 the mediation program are unlikely to resolve in the near term. For these cases, most of which  
10 will otherwise settle without the need for any trial at all, the trial's only impact would be to delay  
11 mediation and resolution of their claims for more than a year while the trial plaintiffs' and  
12 SDG&E's attorneys, experts, and witnesses devote their attention and resources to preparing for  
13 and conducting a trial and thereafter appeals for the few cases requesting to be tried ahead of the  
14 others. It makes no sense to delay resolution of all these cases for over a year just because ten  
15 PCG-1 cases that recently entered the mediation program have now decided that resolution  
16 through a lengthy, all-issues trial is of the utmost importance.

17 But even the cases that may *not* resolve in the mediation program (possibly including some  
18 of the proposed trial cases) are not served by PCG-1's proposed all-issues trial. For both the ten  
19 proposed PCG-1 trial cases and the handful of others that have thus far been unsuccessful in the  
20 mediation program, the issues that have brought the parties to a stalemate all relate to damages. It  
21 is of course true that the parties have complicated disputes over myriad liability issues, but PCG-1  
22 does not argue in its motion that these are the disputes standing in the way of settlement. Indeed,  
23 PCG-1's description of the proposed trial cases (see Motion at 4-6) illustrates the primary issues in  
24 these cases. The central disputes in these cases relate to, for instance, the proper valuation of  
25 unique business losses or vegetation losses, or causation issues with respect to various personal  
26 injuries or other non-economic claims. Nowhere in PCG-1's motion are liability disputes  
27 highlighted, mentioned, or even implied as a reason that the ten proposed trial cases (or any other  
28 cases) have failed to settle to date. Given that this is the case, liability issues should not be tried

1 first just for their own sake. To the extent trials are necessary, they are necessary to resolve  
2 damages disputes, and should be focused on addressing those issues first.

3 Not only are damages disputes the primary ones standing in the way of settlement for a  
4 small handful of cases, they are also far easier and faster for the parties and the Court to prepare  
5 for trial and try. PCG-1 proposes spending the next ten months preparing for an all-issues trial for  
6 ten cases. Even assuming the parties could be ready this quickly, which SDG&E disputes, this  
7 preparation period would be so busy that it would leave hardly any time to resolve the remaining  
8 non-PCG-1 cases in the mediation program. The only pre-trial dates plaintiffs even mention are  
9 expert exchanges and motions in limine. To be sure, expert discovery (which has not even begun)  
10 for an all-issues trial would be a monumental task, involving dozens of experts on each side in a  
11 wide range of disciplines. But PCG-1 makes no mention of the enormous amount of fact  
12 discovery that remains, and that will largely precede expert discovery. Fact discovery includes not  
13 just written discovery and depositions regarding liability and progression issues for SDG&E, but  
14 also written discovery and depositions related to plaintiff-specific liability and damages issues.  
15 Nor does PCG-1 account for summary judgment motions, which must be filed at least 105 days  
16 before trial, and likely after the close of discovery. Even assuming the parties could squeeze this  
17 into ten months, it still leaves the time for the trial itself, which SDG&E predicts would take 6  
18 months at an absolute minimum (PCG-1 does not venture a guess). Granted, at the end of this  
19 process the ten proposed trial cases would be resolved at the trial court level, but all of the  
20 remaining cases would be no closer to completion.

21 Plaintiffs assert that, after an all-issues trial, all of the remaining cases “will either settle or  
22 undergo brief damages trials.” Motion at 8:13-14. But none of the cases that have failed to settle  
23 have been unsuccessful because they need liability issues to be resolved at trial. A liability trial  
24 will not eliminate true roadblock issues, which all relate to damages, and will not bring the parties  
25 any closer to resolution. Only a damages trial will accomplish that. PCG-1’s prediction that these  
26 cases could resolve following “brief damages trials” is likely true, but actually *supports* SDG&E’s  
27 position. If the cases only need “brief damages trials” to resolve, these issues should be tried first  
28 and in succession for all of the cases in which trial is necessary, not as an afterthought following

1 almost a year-and-a-half (at least) spent preparing for and conducting an all-issues trial that brings  
2 the non-trial cases no closer to resolution. PCG-1 also makes much of the fact that it believes  
3 itself to be the only attorney group ready and capable of trying liability in the near term. Even if  
4 true, this is only further support for SDG&E's proposal to begin with damages trials – in which all  
5 plaintiffs and plaintiffs' counsel can participate – for the cases that cannot resolve in mediation.

6 If the goal is to bring about finality in this litigation as a whole as quickly and efficiently as  
7 possible, the best solution is to begin the process for setting a schedule for damages trials for the  
8 cases that cannot settle, while at the same time using the coming months to finish working through  
9 the remaining cases in the mediation program.


10 **Conclusion**

11 For the above reasons, SDG&E respectfully requests that the Court deny plaintiffs'  
12 motion, and instead enter SDG&E's Proposed Case Management Order.

13 DATED: June 6, 2013

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

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16 By

  
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On June 6, 2013, I served true copies of the following document(s) described as **SAN DIEGO GAS & ELECTRIC COMPANY'S OPPOSITION TO PCG-1'S MOTION RE THE COMBINED WITCH/GUEJITO TRIAL** on the parties in this action as follows:

**BY ELECTRONIC MAIL TRANSMISSION:** By submitting a PDF format copy of such document via file transfer protocol (ftp) to CaseHomePage through the upload feature at [www.casehomepage.com](http://www.casehomepage.com) on June 6, 2013. The document(s) was transmitted by file transfer protocol (ftp) without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Rebecca A. Ramos



***Service List***  
**In Re: 2007 San Diego Wildfire Litigation**

***May 22, 2013***

**San Diego County Superior Court - Honorable Richard E. L. Strauss, Dept. C-75**

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