

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



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Application of Southern California Edison Company (U 338-E) for Authority to Increase Rates for its Class C Catalina Water Utility and Recover Costs from Water and Electric Customers.

Application 20-10-018
(Filed October 30, 2020)

OPENING BRIEF OF THE UTILITY REFORM NETWORK



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OPENING BRIEF OF THE UTILITY REFORM NETWORK

I. Introduction

Pursuant to the *Amended Commissioner's Scoping Memo and Ruling* of April 8, 2022, The Utility Reform Network (TURN) respectfully submits this opening brief regarding the application of Southern California Edison Company (SCE) regarding the authorized revenue requirement and cost recovery for its Catalina Island water utility services. TURN's brief uses the common briefing outline adopted for this proceeding but focuses exclusively on the cost recovery issues associated with SCE's proposal to have its electric utility customers bear costs associated with the water utility service SCE provides to Catalina Island.

II. Evidentiary Standards and Burden of Proof

The Commission is charged with ensuring that “[a]ll charges demanded or received by any public utility, ... shall be just and reasonable” and cannot approve a rate change “except upon a showing before the commission and a finding by the commission that the new rate is justified.”¹ In the test year 2009 GRC for SCE's electric utility operations, the Commission succinctly described the utility's burden of proof that follows from these statutory mandates:

As the applicant, SCE must meet the burden of proving that it is entitled to the relief it is seeking in this proceeding. SCE has the burden of affirmatively establishing the reasonableness of all aspects of its application. Other parties do not have the burden of proving the unreasonableness of SCE's showing. As the applicant in this rate case, SCE has the burden of proving that each of its proposals is reasonable.²

The Commission must be attentive to important corollaries of the fundamental point that the utility bears the burden of proof. First and foremost, “[t]he presumption is that the existing

¹ Cal. Pub. Util. Code Sections 451 and 454.

² D.09-03-025, p. 8; *see also* D.12-11-051 (SCE test year 2012 GRC), p. 8.

rates are reasonable and lawful.”³ If the utility does not provide adequate support for its requested increase with regard to any element of its revenue requirement, the current amount should remain in effect. It is not up to intervenors to establish that the utility’s forecast or any other element of its proposal is unreasonable unless the Commission first determines that the utility has met its burden of proof regarding each element of its proposal.

Second, in placing the burden of proof on utilities with respect to reasonableness issues, the Commission is mindful of the huge information advantage they enjoyed in such proceedings:

There is a natural litigation advantage enjoyed by utilities in that we must rely in significant part on their evidence and experts; this advantage reinforces the importance of placing the burden of proof in ratemaking applications on the applicant utilities.⁴

As is usually the case in utility rate cases, SCE enjoys an overwhelming advantage compared to the other parties concerning knowledge of its utility system operations, including the efficiency – or lack thereof – of its operations. As the Commission has recognized, this “litigation advantage” underscores the fairness of imposing and strictly enforcing the burden of proof on SCE.

Finally, the Commission currently requires utilities to meet the “preponderance of the evidence” standard of proof in rate cases.⁵ Under that standard, the applicant must establish the reasonableness of every aspect of its request with evidence that, “when weighted with that opposed to it, has more convincing force and the greater probability of truth.”⁶

³ D.00-02-046 (PG&E test year 1999 GRC), 2000 Cal. PUC LEXIS, *57, citing *Southern Counties Gas Company* (1952) 51 CPUC 533; *Citizens Utilities Company* (1953) 52 CPUC 637; *Park Water Company* (1955) 54 CPUC 498.

⁴ D.05-12-020, p. 5.

⁵ D.14-12-025, p. 21.

⁶ D.08-12-058, p. 19 (citing Witkin, *Calif. Evidence*, 4th, Vol. 1, 187).

III. Revenue Requirement

TURN is not addressing this topic in its opening brief. Based on what the other active parties say in their opening briefs, TURN may address the topic in its reply brief.

IV. Recovery from Electric Customers

The Commission should reject SCE's proposal to have its electric utility customers subsidize costs of providing water utility service on Catalina Island, both because it lacks authority to impose such a cross-subsidization, and because of the proposal's general lack of reasonableness under the circumstances here.

It is particularly important that the Commission establish clear guidelines and limitations for SCE at this time, in light of the utility's indication that the cost recovery issues it presents in this proceeding are likely to be mere down payments as compared to the greater amounts of cross-subsidization the utility indicates it is likely to propose in the near future. Despite the utility's characterization that the requested subsidy by SCE electric utility customers is necessary to recover "one-time exceptional costs" of \$32.63 million,⁷ that figure appears to be just the initial recovery installment SCE will seek from those customers. SCE's rebuttal refers to "serious affordability and cost recovery challenges at Catalina that will continue to occur in future proceedings."⁸ The current estimate for just one of those known challenges is \$70 million for pipeline environmental remediation and service replacement projects.⁹ SCE has made it clear

⁷ Ex. SCE-10 (SCE Rebuttal Testimony), p. 3.

⁸ Ex. SCE-9 (SCE Supplemental Testimony), p. 20.

⁹ Ex. TURN-01E (TURN Direct Testimony), p. 1 and Attachment 1.

that it perceives its proposed cross-subsidization by electric utility customers as the answer “in this and future proceedings.”¹⁰

A. Commission Authority

The Commission Should Conclude, Consistent with Section 451 of the Public Utilities Code and its Prior Decisions, That It Lacks Authority to Permit SCE to Charge its Electric Utility Customers Costs That Are Unrelated to Providing Electric Utility Service.

The rates charged to SCE’s electric utility customers must be based on costs that have a reasonable nexus to the provision of electric utility service. The costs of providing water utility service to SCE’s Catalina customers lack such a reasonable nexus. Therefore, the Commission lacks authority to include water utility service costs in the rates charged for electric utility service.

This topic was the subject of an earlier round of briefing in this proceeding. The resulting ruling declined to make a definitive determination, and instead directed the utility to present proposals “for one or more additional alternatives to provide additional cost recovery options/methods.”¹¹ SCE’s post-ruling supplemental showing included nothing that should alter the Commission’s determination on its lack of authority to adopt such a cross-subsidy. Therefore, TURN urges the Commission to definitively rule on its authority (or lack thereof) to adopt the requested cross-subsidy. TURN’s arguments on these issues largely reiterate the positions taken in the earlier stage of the proceeding, consistent with the failure of SCE’s supplemental showing to present any evidence or argument that might warrant a revision to those positions.

¹⁰ Ex. SCE-09 (SCE Supplemental Testimony), p. 20 [Emphasis added].

¹¹ *Administrative Law Judge’s Ruling on Limited Issues Briefed* (May 27, 2021), pp. 9 and 12.

The Commission has directly and unequivocally stated that it lacks authority to assign to electric utility customers costs that are not associated with electric utility service. In the PG&E application addressing cost recovery for its Diablo Canyon nuclear generating plant under electric industry restructuring in the mid-1990s, the County of San Luis Obispo had sought to have PG&E ratepayers pay for reductions in property tax revenues that would result from the accelerated recovery of Diablo Canyon depreciation. In D.97-05-088, the Commission rejected the proposal as being beyond its authority.

The County's proposal that ratepayers pay for property taxes that PG&E does not incur is not permitted under either general ratemaking principles or public utility law. Section 451 of the PU Code requires:

“All charges demanded or received by any public utility . . . for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.”

A utility cannot charge ratepayers costs that are unrelated to the provision of any product or commodity or service, and the Commission cannot lawfully order such charges.¹²

Additionally, the Commission should determine that requiring SCE's electric utility customers to subsidize costs of SCE's Catalina water utility service is inappropriate for reasons similar to its past determination that costs of other utility affiliate operations should not be charged to electric utility customers. The Commission has consistently found that SCE's costs incurred due to the operations of the utility's affiliates (such as the cost of complying with the affiliate transaction rules) should be assigned to the utility's affiliates rather than collected in regulated rates, since “requiring ratepayers to bear these costs would amount to a subsidy of

¹² D.97-05-088 (1997 Cal. PUC LEXIS 453, *99; 72 CPUC2d 560, 602) (Emphasis added).

those operations by ratepayers.”¹³ Similarly, the Commission has concluded that a regulated utility “has a responsibility to protect its own ratepayers by ensuring that its parent and affiliate organizations only pass costs onto the regulated utility that the utility should bear pursuant to cost causative principles.”¹⁴ From the perspective of SCE’s electric utility ratepayers, the water utility operations on Catalina Island are indistinguishable from the operations of any other affiliate of SCE’s electric utility. None of the costs that SCE here seeks to recover from its electric utility customers are costs the utility incurs due to those customers taking electric utility service from SCE. The Commission should recognize the inappropriateness of an outcome that would require the electric utility customers to subsidize the operations of the water utility, consistent with its past recognition of the need to prohibit recovery from those customers of costs associated with an SCE affiliate.

The circumstances present here are substantially similar to those present when the Commission previously determined that it lacks authority under state law to require electric utility customers to bear costs not associated with providing electric utility service. SCE has not contended that any of the costs that it seeks to recover from electric utility customers are associated with SCE’s provision of electric utility service to those customers. While the ALJ’s Ruling did not “rule out” SCE’s cross-subsidy proposal based on the preliminary briefing, it saw fit to “emphasize[] the significant barriers to its approval.”¹⁵ TURN submits that based on the record developed in this proceeding, the Commission should conclude that those barriers have

¹³ D.09-03-025 (SCE 2009 GRC), p. 161 (2009 Cal. PUC LEXIS 165, *248); D.12-11-051 (SCE 2012 GRC), pp. 505-506 and Finding of Fact 868.

¹⁴ D.04-09-061 (NRF Audit of Pacific Bell), p. 158, Conclusion of Law 45 (2004 Cal. PUC LEXIS 477, *230).

¹⁵ *Administrative Law Judge’s Ruling on Limited Issues Briefed* (May 27, 2021), p. 11.

not been surmounted here, and that it lacks authority to provide the cross-subsidy sought by SCE. On that basis, the Commission must deny rate recovery from SCE's electric utility customers of any amount associated with the costs the utility incurs to provide water utility service on Catalina Island.

B. Should the Commission Allow Recovery from Electric Customers?

To the Extent SCE Cannot Achieve Cost Recovery Through Reasonable and Affordable Water Utility Rates, It Has Presented Inadequate Justification for Recovering Such Costs Through a Subsidy Imposed on SCE's Electric Utility Customers.

Even if the Commission determines that it has authority to allow recovery of water utility costs from electric utility customers, it should still decline to do so here. SCE's proposal is premised on the assumption that the utility has an entitlement to cost recovery that outranks the interest its electric utility customers have in paying only costs associated with electric utility service. The utility also ignores the fact that its shareholders have the strongest nexus of interest as between SCE's electric utility and water utility operations, and instead asserts without sufficient support that the nexus between electric customers and Catalina Island tourism warrants the requested subsidy. The Commission should determine that SCE has failed to demonstrate the reasonableness of assigning water utility service costs to 100% of its electric utility customers because a small portion of those customers might visit Catalina Island.

1. SCE's Subsidization Proposal Is Premised on An Incorrect and Unsupported Assumption That Its Entitlement to Cost Recovery Outweighs the Need to Collect from Electric Utility Customers Only Costs Associated with Providing Electric Utility Service.

SCE's proposal to recover water utility costs from electric utility customers relies in part on a bold and utterly baseless position, that is, that it would be reasonable to require electric utility customers to serve as guarantors of the utility's ability to recover its water utility costs,

including its authorized rate of return on its costs. In SCE's view, subsidization by its electric utility customers is warranted because, even where the costs of providing water utility service exceed the amount that can be recovered through reasonable or affordable rates charged to water utility customers, SCE should "nevertheless be authorized to recover these costs."

Simply put, SCE prudently incurs costs to ensure the safe and reliable provision of drinking water to Catalina customers under extremely challenging and costly conditions. As a result, costs of operating water utility service on Catalina cannot be collected solely from Catalina water customers at rates that are affordable to them. Under cost of service ratemaking, SCE should nevertheless be authorized to recover these costs, including a fair rate of return.... SCE currently earns a negative rate of return in the water utility. The proposed costs to be recovered from SCE electric customers will result in a de minimis increase in average company-wide electric rates and make SCE whole for the exceptional costs it has incurred to operate the Catalina water utility since the 2011 GRC.¹⁶

TURN submits that SCE has it half right – Catalina water utility customers should pay rates no higher than are affordable and reasonable, and the revenue requirement authorized in this proceeding should reflect as much. But the notion that SCE has some sort of entitlement to be "made whole" for any costs incurred but not reflected in that revenue requirement, even if it means charging electric utility customers for costs of water utility service that will never serve the vast majority of them, is misplaced, to put it mildly.

The Commission should reject SCE's subsidy proposal in part because it reflects an inappropriate sense of utility entitlement to cost recovery, rather than an approach consistent with the "regulatory compact" or any other principle of cost-of-service ratemaking. As between the utility's shareholders and its electric utility customers, there can be no doubt as to who appropriately bears the impact of a shortfall as between water utility costs and revenues collected

¹⁶ Ex. SCE-01, pp. 21-22.

from water utility customers. After all, SCE's electric utility customers do not realize the appreciation in share value, nor receive dividends when paid by the utility and its holding company; those benefits flow to shareholders. And it is SCE's shareholders, rather than its electric utility customers, that have made an investment with the knowledge that said investment brings with it not just the promise of dividends and share value appreciation, but also a risk of reduced returns or even loss under adverse circumstances. If there is a shortfall in cost recovery to be borne here, as between SCE's electric utility customers and its shareholders, the shortfall should solely be borne by SCE's shareholders.¹⁷ Rather than present any clear exposition of why its shareholders should not be required to bear any cost recovery shortfall here, SCE asks the Commission to reject such an outcome out of hand, and refused to even consider it as an option.¹⁸

2. The Adopted Outcome Here Should Be Consistent with The Far Greater Nexus Between SCE's Shareholders and Catalina Water Utility Service.

SCE contends that there is a "strong nexus between SCE's electric customers and those who benefit from water service provided on Catalina."¹⁹ In Section IV.B.3 below, TURN explains why the purported nexus between electric customers and SCE's Catalina water utility service is too attenuated to support the subsidy the utility seeks here. Importantly, though, SCE fails to acknowledge or meaningfully address the much stronger nexus that exists between the

¹⁷ Ex. TURN-01E, pp. 4-5.

¹⁸ Ex. SCE-09 (Supplemental Testimony on Alternatives), p. 3 ("Except for shareholder funding of costs, which SCE rejects as a feasible option and would lead to higher costs to customers, the additional alternatives are included in the discussion below.")

¹⁹ Ex. SCE-09 (Supplemental Testimony on Alternatives), p. 10; *see also* SCE Limited Opening Brief, p. 7.

utility's shareholders, the electric utility service SCE provides throughout its extensive service territory, and its Catalina Island water utility service.

SCE's shareholders earn a return based on the totality of the utility's operations, of which the water utility operations on Catalina Island are one small component.²⁰ No shareholders own stock solely in the water utility, or solely in the electric utility – each share of SCE stock connotes an ownership interest in both.²¹ SCE does not report a separate return or financial performance for its water utility operations on Catalina Island. As the 2019 Annual Report filed with the Commission makes clear, SCE treats its “Catalina Water Operations” as part of the utility's generation unit, rather than as a separate legal entity.²² There is no separate cash account maintained for Catalina utility operations; instead, expenses incurred are paid out of an SCE general cash account.²³ And SCE does not maintain separate retained earnings accounts for its Catalina water utility operations, but instead comingles its Catalina retained earnings with those from SCE's other operations.²⁴ In sum, SCE's shareholders hold an undifferentiated interest in its water utility operations as well as its electric utility operations.

For similar reasons, the Commission should ignore SCE's contention that it earns a “negative rate of return” from its water utility operations.²⁵ Per the utility's rebuttal testimony, the amount it seeks to recover from its electric utility customers as “one-time exceptional costs”

²⁰ Barcinas, SCE, 2 RT 205, ll. 8-16.

²¹ *Id.*, ll. 17-21.

²² Ex. SCE-01-WP (Workpapers to SCE-01), pp. 164 and 205, Footnote #1.

²³ *Id.*, Footnote #3.

²⁴ *Id.*, Footnote #4.

²⁵ Ex. SCE-01, p. 21.

of providing water utility service on Catalina Island is \$32.623 million.²⁶ In a 10-K report filed with the Securities Exchange Commission, SCE and Edison International (the utility's holding company) reported "Core Earnings" for 2020 of \$1.825 billion.²⁷ The \$32.623 million figure represents approximately 1.8% of the reported Core Earnings for a single year. Clearly, requiring SCE to absorb the above-authorized Catalina Water utility costs would not produce a "negative rate of return." When considering the impact on SCE's shareholders of requiring them, rather than electric utility customers, to absorb such costs, the Commission should view the impact on the utility's overall performance, consistent with how SCE treats the water utility operations for financial reporting purposes.

3. The Fact that A Small Percentage of SCE's Electric Customers Visit Catalina Island as Tourists Is an Insufficient Nexus to Water Utility Operations to Support Recovery of Water Utility Costs in Electric Utility Rates.

SCE seeks to rely on a purported nexus between SCE's electric customers and water service provide on Catalina Island. In the utility's view, because some of SCE's electric utility customers can reasonably be expected to be among the visitors to Catalina Island, and the demands on the water utility system are largely driven by Catalina's tourist industry, the entire body of SCE's electric utility customers should be required to pay for Catalina's water costs.²⁸

SCE relies in part on the flawed logic that, because many visitors to Catalina Island are presumably SCE electric utility customers, the utility's operation of its Catalina water utility should be treated as benefiting all SCE's electric customers.²⁹ The Commission must recognize

²⁶ Ex. SCE-10 (SCE Rebuttal Testimony), pp. 3-4.

²⁷ Ex. TURN-01E (TURN Direct Testimony), pp. 5-6, and TURN Testimony Attachment 4.

²⁸ Ex. SCE-01 (SCE Direct Testimony), p. 23.

²⁹ Ex. SCE-01, p. 23.

that of the 15 million people who receive electric utility service from SCE, only 6% would reasonably be expected to visit Catalina Island even if all visitors were from SCE's service territory.³⁰ If the calculation were performed based on the assumption that each and every visitor to Catalina Island is an individual SCE electric utility customer (rather than merely being served by the utility), less than 20% of those customers visit Catalina Island.³¹ Thus, even with the most favorable assumption that all Catalina Island visitors receive electric utility service from SCE, the utility's logic does not hold. It is undisputed that the vast majority of electric utility customers do not visit the island, yet under SCE's proposal 100% of those customers (including its CARE-enrolled customers) would pay higher rates due to using electric rates to subsidize costs from Catalina water utility service.³²

Furthermore, SCE's approach would require SCE's electric utility customers to subsidize the wealthier households of actual Catalina Island tourists.³³ The study SCE relies upon calculates a 2016 median annual household income of \$87,100 for Catalina Island visitors; when asked for the corresponding figure for its electric utility customers, SCE provided a figure of \$62,500.³⁴ The Commission can reasonably assume that the 2016 median annual household income level for SCE's CARE customers is significantly lower than this figure.

³⁰ *Id.* SCE relies on a 2016 figure of 910,800 visitors to Catalina Island, and states it provides electric service to approximately 15 million people. 910,800 divided by 15 million is approximately 6.1%.

³¹ Ex. TURN-01E (TURN Direct Testimony), p. 7. 910,800 annual visitors in 2016, divided by 5 million SCE customers, is 18.2%.

³² *Id.*

³³ *Id.*, pp. 7-8.

³⁴ *Id.*, Attachment 5 -- "Visitors Report", p. 58; Attachment 7 -- SCE Response to TURN Data Request 2-3.

Finally, the Commission must ignore SCE's suggestion that assigning such costs to its electric utility customers is acceptable because "the rate impact will be de minimis."³⁵ SCE's latest estimate shows an average non-CARE electric utility customer would pay \$2.52 in 2022 for costs of providing Catalina water utility service; for electric utility customers whose household income qualifies them for the CARE discount, the average customer would pay \$1.68.³⁶ The Commission already faces the challenge of achieving and maintaining affordability for electric utility rates even when those rates are limited to recovering costs of providing electric utility service to electric utility customers. It must reject the notion that it can add to those affordability challenges by requiring electric utility customers to pay for water utility costs, even though the vast majority of them do not take water utility service, just because the average bill impact is relatively small when viewed in isolation.³⁷

In sum, SCE's "nexus" logic may support reliance on a mechanism that would recover a substantial portion of its Catalina water utility service costs from actual visitors to Catalina Island. It does not, however, support treating all SCE electric utility customers as if they serve as a reasonable proxy for actual visitors to Catalina Island.

4. SCE's Catalina Water Utility Service Is Not Comparable to a "High Cost" District of Electric Utility Service.

SCE contends that its water utility "is akin to a high-cost district within a large, multi-district utility, the principal difference being that the other district serves electric power to

³⁵ Ex. SCE-01, pp. 18 and 21-22.

³⁶ Ex. SCE-08 (Supplemental Testimony), p. 19. These are figures based on "average" electricity usage; for the 40% of non-CARE and 34% of CARE customers who use more than the average amount, the bill impacts will be higher. Ex. TURN-01, p. 5.

³⁷ Ex. TURN-01E, p. 5.

customers rather than water.”³⁸ TURN submits that the SCE-identified “principal difference” is the essential characteristic here and prevents the Commission from treating SCE’s Catalina water utility as a “high-cost district” of SCE’s electric utility operations. The Commission has only permitted a regulated utility to charge rates based on costs covering a multi-district service territory to the extent the regulated utility in question provided the same service across that service territory. This is what the Commission did in D.82-03-059, when it approved SCE’s proposal to charge its electric utility customers on Catalina Island the same electricity rates as it charges equivalent customers in the rest of its electric utility service territory.³⁹ SCE does not dispute that there is no historical example of the Commission approving a cross-subsidy where the utility service provided in one district is different than the utility service in the other district.⁴⁰ TURN was able to cite an example where such cross-subsidies were prohibited.⁴¹ Even where a utility such as PG&E provides two different utility services within largely the same service territory, the Commission has taken pains to ensure that the electric utility rates are limited to costs associated with the utility providing electric service, and the gas utility rates reflect only costs of providing gas service.⁴² The same principle should be enforced here,

³⁸ Ex. SCE-01, pp. 18-19.

³⁹ D.82-03-059, cited in Ex. SCE-01, p. 29.

⁴⁰ *Administrative Law Judge’s Ruling on Limited Issues Briefed* (May 27, 2021), p. 10; *see also* Ex. TURN-01E (TURN Direct Testimony), Attachment 1 -- SCE Response to TURN Data Request 1-6(b).

⁴¹ Ex. TURN-01E (TURN Direct Testimony), p. 2.

⁴² D.08-11-032 (Ruby Pipeline decision). PG&E sought authority to contract for long-term capacity on the proposed Ruby Pipeline and demonstrated that the additional natural gas supply would provide separate benefits to its gas customers and its electric customers (by providing fuel for the gas-fired power plants in the utility’s generation portfolio). The Commission found the arrangement reasonable, so long as it was consistent with the “general principle [that] PG&E is not authorized to recover from core gas customers any costs associated with capacity reserved [for its electric operations].” The same general principle was applied in reverse – “PG&E is not

ensuring that SCE’s electric utility customers pay rates reflecting only costs of providing electric utility service, without additional costs of providing water utility service that the vast majority of the electrical customers do not receive from SCE.

5. The Commission Should Determine that the SCE Has Failed to Establish That the Proposed Cross-Subsidy is Necessary to Ensure the Residents of Catalina Island Have Access to Safe, Clean, Affordable and Accessible Water Service.

The *ALJ’s Ruling on Limited Issues Briefed* observed that “rate design principles allow the Commission to consider ‘explicit state policy goals’ in determining whether a cross-subsidy is appropriate.”⁴³ Citing the state’s Water Code provision requiring that Catalina Island residents have access to “safe, clean, affordable, and accessible water,” the ruling states, “[t]here arguably exists an explicit state policy goal in support of the cross-subsidy, in so far as it would allow the residents of Catalina Island access to affordable water.”⁴⁴ Under the circumstances here, the Commission should conclude that SCE’s proposed cross-subsidy has not been demonstrated to be needed in order to achieve any state policy goal.

There is no evidence in the record that would demonstrate that Catalina Island water customers would be at risk of losing adequate access to affordable water even if SCE’s cross-subsidy is denied, so long as the Commission limits the authorized revenue requirement to a level that achieves affordable water rates for Catalina customers. To the extent SCE has incurred or will incur costs that are in excess of the authorized revenue requirement, the utility would, at most, suffer a small reduction in the return available to pay its shareholders. (See Section

authorized to recover from bundled electric service customers any costs for capacity reserved on the Ruby Pipeline for Core Gas Supply.” D.08-11-032, pp. 41-42.

⁴³ *ALJ’s Ruling on Limited Issues Briefed* (May 27, 2021), p. 10, citing D.15-07-001, p. 28.

⁴⁴ *Id.*, citing California Water Code Section 106.3(a).

IV.B.2, above, for a comparison of the \$32.6 million subsidy SCE seeks here, and the \$1.825 billion of “Core Earnings” the utility reported for 2020.) There is no reason to think that such an outcome would jeopardize the utility’s ability to continue to provide safe and reliable water utility service under the circumstances.

C. Deferred Revenue Requirement Tracking Account

TURN would not object to retaining the Deferred Revenue Requirement Tracking Account at this time. TURN’s position on the Deferred Revenue Requirement Tracking Account is linked to its positions on Alternative Cost Recovery Approaches, as discussed in the section that follows. There TURN recommends that the Commission not adopt any alternative cost recovery approach at this time, but rather make clear that any approach that would require SCE’s electric utility customers to bear costs of providing water utility service on Catalina Island will not be treated as a viable alternative. SCE could then be given an opportunity to reevaluate the alternatives that do not rely on such cross-subsidization. Retaining the Deferred Revenue Requirement Tracking Account would signal the Commission’s willingness to consider other proposals SCE might choose to put forward, and to consider having a reasonable proposal apply to amounts in excess of what the utility can collect through the revenue requirement adopted here as reasonable and affordable for SCE’s Catalina Water utility customers.

V. Cost Recovery

The Commission should limit the cost recovery authorized in this proceeding to the revenue requirement to be collected from Catalina water utility customers, based on a determination that the revenue requirement is reasonable and affordable to those customers. To the extent SCE has incurred costs that are not recoverable in such a revenue requirement, the Commission should deny recovery at this time. If the Commission deems it appropriate, it could

provide SCE with another opportunity to develop and pursue alternative means of cost recovery, so long as those means do not include any form of subsidization of its water utility costs by its electric utility customers.

As noted at the outset of this brief, the Commission's resolution of the cost recovery issues presented in this proceeding can be expected to have implications for future cost recovery requests associated with SCE's water utility service on Catalina Island. While SCE describes its proposal as applying to "one-time exceptional costs," it also foretells that it expects to face similar circumstances in future proceedings.⁴⁵ Unless the Commission adopts an outcome here that requires a more effective effort by SCE to develop reasonable and permissible cost recovery alternatives, it can expect the utility to again seek further and substantially-increased subsidization of its water utility operations by its electric utility customers.

A. Alternative Cost Recovery Approaches

1. The Commission Should Find That the Alternative Cost Recovery Approaches Are Not Sufficiently Developed or Supported to Warrant Adoption or Rejection at This Time.

SCE's application and direct testimony proposed to have electric utility customers subsidize its water utility operations on Catalina Island in order to make the utility whole for costs incurred to provide water utility service, but in excess of amounts that could be recovered in a reasonable revenue requirement collected solely from water utility customers. After initial limited briefing on questions regarding the Commission's authority to permit such a cross-subsidy, ALJ Toy issued a ruling directing SCE to "devise and propose one or more additional

⁴⁵ Ex. SCE-10 (SCE Rebuttal Testimony), p. 3; Ex. SCE-09 (SCE Supplemental Testimony), p. 20.

alternatives to provide additional cost recovery options/methods,”⁴⁶ but without reaching a final determination as to whether subsidization options were off the table.

As a result, SCE identified and addressed alternatives that it would compare to its preferred outcome of subsidization. SCE also developed a “policy framework” that purported to assess each alternative against cost recovery “components” of SCE’s own creation.⁴⁷ And, not surprisingly, after creating its own grading curve, SCE reached the conclusion that none of the cost recovery alternatives is superior to its preferred approach of requiring its electric utility customers to subsidize costs of providing water utility service that the vast majority of those customers do not receive, either directly or indirectly. To remove any doubt about the limits of the analysis it was willing to undertake, SCE simply “rejects as a feasible option” any alternative that would have its shareholders bear any portion of the costs in question.⁴⁸

The upshot of the utility’s effort, unfortunately, is that the Commission is left without an adequately developed record that would support adoption of any of the alternatives at this time. As explained in preceding sections of this brief, the Commission must conclude that SCE’s preferred alternative of subsidization is not reasonable, both because it exceeds the Commission’s authority, and because it is based on faulty logic. TURN submits that the other alternatives remain insufficiently developed for the Commission to make a determination one way or the other based on the record here. The fault for this situation lies largely if not entirely with SCE; once ALJ Toy directed the utility to “devise and propose” additional alternatives for cost recovery, the burden was on SCE to develop workable alternatives that would be

⁴⁶ *ALJ’s Ruling on Limited Issues Briefed* (May 27, 2021), p. 11.

⁴⁷ Ex. SCE-09 (SCE Supplemental Testimony), p. 12, Table III-1.

⁴⁸ Ex. SCE-09 (SCE Supplemental Testimony), p. 3.

reasonable.⁴⁹ It chose not to, and instead opted for a course that seems premised on hoping the Commission would adopt SCE's subsidization proposal as the least unreasonable option on the table. The more appropriate approach is for the Commission to reject SCE's preferred alternative as unreasonable under the circumstances here and leave it to SCE to decide if it would prefer to develop other alternatives that the Commission could find reasonable, or absorb any costs not recovered through the authorized revenue requirement adopted here.

2. SCE's Analysis of a Potential "Boat Fee" Illustrates the Deficiencies of the Utility's Consideration of Alternative Cost Recovery Methods.

The alternative cost recovery method that received the most attention from the parties is a "boat fee," that is, a surcharge that would be added to the ticket price for the ferry service that runs between the mainland and Catalina Island and is the way most tourists reach the island. SCE concedes that there are elements of this proposal that make it well-suited for the utility's purposes here. First, to the extent there is merit to the argument that SCE incurs substantial water utility costs due to the demands Catalina Island's tourist visitors place on the system, a boat fee would collect those costs from actual visitors to the island.

A visitor boat fee supports the affordability of drinking water service by directly charging the broader population of visitors to the island, rather than the roughly 2,000 customers. As there is relative certainty this population benefits from SCE's water system, there is presumed to be a tighter nexus between user and ratepayer. A visitor boat fee would more closely recover costs from visitors placing demands on the water system.⁵⁰

Furthermore, SCE's testimony presented calculations that demonstrate if the collection were over an extended period such as twenty years, the boat fee could be as low as \$1.27 per ticket (an increase of approximately 3.5% to the ticket price) and still collect nearly \$31

⁴⁹ See, Section II ("Evidentiary Standards and Burden of Proof"), above.

⁵⁰ Ex. SCE-9 (SCE Supplemental Testimony), p. 16.

million.⁵¹ If the boat fee were set at approximately the \$2.51 level that SCE calculates as the average amount its cross-subsidy proposal would require electric utility customers to pay, the \$31 million could be collected in less than ten years.⁵² And the firms operating the Catalina Island ferries both have experience with a similar fee associated with supporting health services on Catalina Island,⁵³ and are under Commission jurisdiction, which could make it more straightforward to add a visitor boat fee for these purposes.⁵⁴

Still, SCE's analysis of the boat fee alternative highlighted the utility-perceived shortcomings of this approach. For example, SCE asserted that a boat fee of \$1 per passenger would yield only \$1 million in annual revenues, an amount the utility deems "an insignificant step to recover the full balance of costs for recovery."⁵⁵ But as noted above, this assertion is countered by SCE's own figures demonstrating that a boat fee that remains in place for more than a year will recover a greater balance of costs, and a fee of \$1.27 in place over 20 years would recover \$30.9 million.⁵⁶ Furthermore, the only reason SCE cited for using a \$1 fee as the basis for its analysis was its assumption that the fee would need to be "modest," without performing any analysis of what would constitute a "modest" fee under the circumstances, and without the ability to assess whether a \$3 fee or a \$5 boat fee would also be "modest" for purposes here.⁵⁷

⁵¹ *Id.*, p. 17, Table III-2.

⁵² According to Table III-2 in SCE's Rebuttal Testimony, a boat fee of \$2.37 would achieve recovery of \$30.9 million over a ten-year period.

⁵³ Barcinas, SCE, 1 RT 211, ll. 14-22.

⁵⁴ Ex. SCE-09 (SCE Supplemental Testimony), pp. 18-19.

⁵⁵ *Id.*, p. 16.

⁵⁶ *Id.*, p. 17, Table III-2.

⁵⁷ Ex. TURN-01E (TURN Direct Testimony), pp. 8-9.

SCE also cited the potential adverse impact a boat fee might have on Catalina Island's tourist industry.⁵⁸ But SCE performed no analysis to assess the reduction in the number of tourists that could result from a boat fee.⁵⁹ Furthermore, SCE's analysis relies in part on a study indicating that in 2016 visitors to Catalina Island spent an average of \$82-\$194 per day when visiting the island.⁶⁰ SCE should not be permitted to assert without further support that an additional fee of even several dollars per ferry ticket would result in a meaningful impact on the number of visitors choosing to go to Catalina.

SCE also argues that there may be due process implications if such a fee were to be adopted in a proceeding in which the ferry companies were not a party.⁶¹ But at least one of the Catalina ferry companies was included in the "stakeholder" discussions that SCE conducted prior to preparing its application, and one of the topics during those discussions was the prospect of a boat fee.⁶² Given these circumstances, the Commission should conclude that at least Catalina Express had sufficient notice of the possibility that a boat fee would be considered as an option in this proceeding, and still chose not to participate.

In sum, SCE's positions regarding the "boat fee" alternative for recovering amounts that exceed what can be recovered in a reasonable revenue requirement charged to Catalina water utility customers illustrate the key shortcoming of the approach taken in this proceeding. Given

⁵⁸ Ex. SCE-09 (SCE Supplemental Testimony), p. 18 and Appendix B, p. B-6.

⁵⁹ Ex. 01 (TURN Direct Testimony), Attachment 10 -- Response to TURN DR 3-8.

⁶⁰ *Id.*, Attachment 5 -- "Visitors Report," p. 15.

⁶¹ Ex. SCE-09 (SCE Supplemental Testimony), pp. 19-20.

⁶² Ex. SCE-01 (SCE Direct Testimony), p. 4 (referring to SCE's outreach activities undertaken since October 2014); Ex. TURN-2 (Excerpt of SCE Workpapers), pp. 362-363 (showing Catalina Express was included in SCE's stakeholder engagement activities, and one of the topics discussed with Catalina Express was the prospect of a boat fee); Barcinas, SCE, 1 RT 212, l. 4 to 215, l. 22.

a choice between a boat fee and cross-subsidization by electric utility customers, SCE clearly prefers the cross-subsidy. As a result, SCE claims it is clearly inferior as compared to recovering such amounts from its electric utility customers, and focused its analysis on reasons why it should not be adopted, even as it conceded that such a fee would be a better fit in terms of cost causation. TURN submits that the Commission can reasonably expect the utility would take a very different view of this option if its analysis were performed in the context of “boat fee versus no recovery at all,” rather than “boat fee versus recovery from electric utility customers.”

B. What Cost Recovery Approach Should the Commission Adopt?

The Commission Should Adopt a Reasonable Revenue Requirement Consistent with Achieving Affordability for Catalina Water Utility Customers, Deny Any Subsidization by Electric Utility Customers, and Leave it to SCE to Develop and Pursue Reasonable Proposals as Necessary and Appropriate.

TURN recommends that the only cost recovery approach the Commission should adopt at this time is the authorized revenue requirement for Catalina water utility customers, set consistent with the need to keep those customers’ rates and bills affordable. As explained in preceding sections, the Commission should conclude here that recovery of any amount of costs from SCE’s electric utility customers is not reasonable under the circumstances and should not be treated as a viable option going forward. For cost recovery options that do not entail subsidization of SCE’s water utility operations by the utility’s electric utility customers (such as a potential boat fee or other mechanisms targeting actual visitors to Catalina Island or other potential non-utility funding sources), the Commission should not take any action at this time. Instead, it should make clear that SCE has an opportunity to bring forward such options for further consideration and review.

This proposed outcome is not only fully supported by the record developed in this proceeding, but can reasonably be expected to improve the quality of SCE's efforts in exploring alternatives by providing a more effective incentive to the utility. To now, SCE has clearly but inappropriately viewed its task as demonstrating why none of the options measures up to the standards the utility believes would be met by its preferred subsidization proposal. Even in the face of a ruling that "emphasize[d] the significant barriers to its approval," and directing the utility to pursue additional alternatives to "enhance the record and provide the Commission with a reasonable range of options and increase the likelihood of approval in this Application,"⁶³ the utility opted to double down on its cross-subsidy proposal. Clearly, so long as SCE believes that its preferred cross-subsidy may be a viable option, the utility has insufficient incentive to develop or seek approval for any other option.

By making clear in its decision here that cross-subsidization proposals will not be adopted, the Commission will increase the likelihood that SCE will develop a reasonable alternative for future consideration. Therefore, the Commission's decision here should: 1) set a reasonable and affordable revenue requirement to be borne by Catalina Water utility customers; 2) reject cross-subsidization by electric utility customers as an alternative cost recovery approach for water utility costs; and 3) signal to SCE that, absent an acceptable alternative cost recovery approach, the utility and its shareholders are at risk of bearing costs in excess of the reasonable and affordable revenue requirement for Catalina Water utility customers. TURN submits that such an approach will better encourage SCE to more seriously explore and, as appropriate, develop alternative cost recovery approaches.

⁶³ *ALJ's Ruling on Limited Issues Briefed* (May 27, 2021), p. 11.

VI. Proposed Rates for Test Year and Escalation Years

TURN is not addressing this topic in its opening brief. Based on what the other active parties say in their opening briefs, TURN may address the topic in its reply brief.

VII. Transition from Water Revenue Adjustment Mechanism (WRAM) to Monterey-Style, Incremental Cost Balancing Account (ICBA)

TURN is not addressing this topic in its opening brief. Based on what the other active parties say in their opening briefs, TURN may address the topic in its reply brief.

VIII. Any Other Issues Relevant to Commission's Review and Disposition

TURN is not addressing this topic in its opening brief. Based on what the other active parties say in their opening briefs, TURN may address the topic in its reply brief.

IX. Conclusion

For the reasons described above, the Commission should deny SCE's proposal to require its electric utility customers to subsidize its water utility service provided on Catalina Island.

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Respectfully submitted,

By: _____/s/_____
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