



**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 No. A.20-10-018
(Filed October 30, 2020)

**OPENING BRIEF OF CATALINA PARTIES
RE SCOPING ISSUES 2-B-i and 2-C-i**

CATALINA PARTIES:

**CITY OF AVALON
CATALINA ISLAND CHAMBER OF COMMERCE
SANTA CATALINA ISLAND COMPANY
SANTA CATALINA ISLAND CONSERVANCY
GUIDED DISCOVERIES
HAMILTON COVE HOMEOWNERS ASSOCIATION**

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March 5, 2021

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INTRODUCTION

In its Scoping Memo, the Commission ordered the parties to brief the following Issues:

- B. With respect to SCE's proposal to recover \$29 million dollars in water utility costs from its electric utility customers:
 - i. Does the Commission have the authority to charge SCE's water utility service costs to SCE's electric utility customers who do not receive said water service?
- C. Which cost recovery approach for Catalina Island Water utility costs should be adopted?
 - i. What cost recovery approaches should be considered other than SCE's proposal to recover water utility costs from Catalina Island water utility customers and SCE's electric utility customers;

With regard to whether the Commission has the authority to charge SCE water utility service costs to SCE's electric utility customers who do not receive said water service, the Catalina Parties contend that the Commission has such authority **if warranted by the facts and the reasonable inferences drawn from the facts**. Until such time as the Commission has received evidence, reviewed the evidence, made findings and conclusions of law, and issued a decision based upon the findings and conclusions, the Commission's authority cannot be measured against the applicable Public Utility Code provisions. Not until then can it be determined whether the decision is "just and reasonable." In other words, the Commission's broad authority in a given situation is dependent on the particular facts and the reasonable inferences drawn from the facts. The Catalina Parties have been unable to locate any opinion that holds a Commission's decision was unjust and unreasonable as a matter of law.

With regard to the second issue, "what cost recovery approaches should be considered other than SCE's proposal to recover water utility costs from Catalina Island water utility customers and

SCE's electric utility customers." Catalina Parties are not aware of any feasible source other than governmental entities already explored.

1. **THE COMMISSION'S AUTHORITY**

This discussion as to the limits on the Commission's authority to solve the dilemma that SCE's water utility presents is not new. The Utility Reform Network (TURN) vigorously asserted that the Commission did not have authority to allow SCE to charge its electric ratepayers for some of the costs of its water utility in the Prior GRC (A.10-11-009). In approving the All Party Settlement that ended the Prior GRC, which included such a charge, the Commission rejected TURN's arguments.

The Commission's authority is defined by three words, "just and reasonable," or their opposite "unjust and unreasonable," which appear throughout the Public Utility Code. These three words are used in Public Utility Code Section 451, the basis of the Commission's authority:

All charges . . . shall be **just and reasonable**. Every **unjust or unreasonable** charge . . . is unlawful.

Every public utility shall furnish and maintain such adequate, efficient, **just, and reasonable** service, instrumentalities, equipment, and facilities, . . . to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

All rules . . . shall be **just and reasonable**. (Emphasis added)

The concept of "just and reasonable" is the largest grant of authority in the law. It appears throughout the law and it is the most elusive concept to pin down. There is no agreed upon definition. In an effort to define reasonable, the word itself is often used. For example, "reasonable" is defined as what a **reasonable** person would do. The one definition everyone seems to agree upon is dutifully recited in case after case - what is reasonable is a question of fact. "Just and reasonable" has to be determined on a case-by-case basis and one case is not necessarily precedent for another.

TURN takes a very restrictive view of the authority granted to the Commission. The courts, however, do not share TURN's restrictive view.

The PUC, respondent herein, is the state agency charged with regulating public utilities pursuant to article XII of the California Constitution and the Public Utilities Act (§ 201 et seq.). (*Clean Energy Fuels Corp. v. Public Utilities Com.* (2014) 227 Cal.App.4th 641, 648, 174 Cal.Rptr.3d 297 (*Clean Energy*). **Statutorily, the PUC is authorized to supervise and regulate public utilities and to “do all things ... which are necessary and convenient in the exercise of such power and jurisdiction”** (§ 701); this includes the authority to determine and fix ‘just, reasonable [and] sufficient rates’ (§ 728) to be charged by the utilities.” (*Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 792, 3 Cal.Rptr.3d 703, 74 P.3d 795.) **Its power to fix rates and establish rules has been liberally construed.** (*Ibid.*) (Emphasis added) (*Ponderosa Telephone Co. v. CPUC* (2010) 36 Cal.App. 5th 999 at 204.)

In *Toward Utility Rate Normalization v. Public Utilities Commission* (1978) 22 Cal.3d 529, TURN urged that it was unjust and unreasonable on its face to allow contiguous telephone companies to have different rates. The Supreme Court held:

Clearly, the Commission in the present case has done far more than describe its bare-bones conclusory findings in the manner which we held insufficient in *Greyhound Lines, Inc. v. Public Utilities Com.* (1967) 65 Cal.2d 811, 56 Cal.Rptr. 484, 423 P.2d 556, and *California Motor Transport Co. v. Public Utilities Com.* (1963) 59 Cal.2d 270, 28 Cal.Rptr. 868, 379 P.2d 324. **On the contrary, in the present case we have been apprised of the reasoning behind and the basis for the Commission's decision to order implementation of SMRT.** We conclude that the Commission's decision was well founded in practicality, being based upon the reasonable policy that those most heavily using the telephone network should pay proportionately more for their service, a principle that is almost uniformly applied in the rate designs for gas, electricity, and water service. (Emphasis added) *Id.* at 541.

A determination that a Commission decision is within its authority, in other words, that it is “just and reasonable,” is made based upon “the reasoning behind and the basis for the Commission's decision” not before the Commission has even heard evidence and made findings.

The California Supreme Court has made it eminently clear what the primary purpose of the Public Utility Code is:

The primary purpose of the Public Utilities Act, Gen.Laws, Act 6386, is to insure the public adequate service at reasonable rates without discrimination. *Pacific Telephone & Telegraph Co. v. Eshleman*, 166 Cal. 640, 663, 137 P. 1119, 50 L.R.A., *Pacific Telephone & Telegraph Co. v. Eshleman*, 166 Cal. 640, 663, 137 P. 1119, 50 L.R.A., N.S., 652, Ann.Cas.1915C, 882; *Atchison, T. & S. F. Ry. Co. v. Railroad Comm.*, 173 Cal. 577, 582, 160 P. 828, 2 A.L.R. 975; *Southern Pac. Co. v. Railroad Comm.*, 16 Cal.2d 89, 118, 87 P.2d 1055. **The Act grants to the commission broad regulatory powers, which may conveniently be divided into two classes. The commission has been given broad powers to regulate the relationship of the utility to the consumer; thus it can determine the services that must be provided by the utility and the rates therefor. It has also been given certain specific powers to regulate the manner in which the utility provides the required services to safeguard the utility's ability to serve the public efficiently at reasonable rates***.** (Emphasis added) (*Pacific Telephone & Telegraph Co. v. Public Utilities Commission of State of California* (1950) 34 Cal. 2d 822 at 827-8)

“Adequate service at reasonable rates.” TURN has urged in the past that the Public Utility Code requires that people only pay for what they use, and that since only some of SCE’s electric customers ever visit Catalina Island, it is unreasonable to charge all of SCE’s electric customers for any of SCE’s costs to provide water service. “Only pay for what you need” is a Liberty Mutual Insurance Company slogan, not a policy of government or a policy applied to public utilities. Taxpayers pay for roads they never travel, for schools they never attend and for services they never utilize. The roads, the schools, the public services are there for them **if they ever choose to use them.**

The Commission is required to “insure the public adequate service at reasonable rates,” not adequate service if it can be provided at reasonable rates. Nor can the Commission approve inadequate service because that is all reasonable rates can pay for. It is clearly a difficult challenge facing the Commission in the instant GRC considering the conditions that exist on Catalina Island.

To meet its obligation the Commission needs every tool available to it, particularly in the case of SCE's water operation on Catalina Island. Prejudging that a tool is not available without determining the facts and the reasonable inferences to be drawn from the facts is not the way to achieve adequate water service on Catalina Island at reasonable rates.

2. FACTS THAT THE COMMISSION MIGHT CONSIDER

There are myriad facts and reasonable inferences that can be drawn from them that the Commission may consider before deciding as to alternative sources:

a) SCE's water utility is an anomaly. There is no similar situation in California. **No other public utility provides electricity and water to the same geographical area.**¹ The only precedent set by charging some of SCE's costs to its electric ratepayers is that the Commission will use whatever tools are available to it to assure "adequate service at reasonable rates." No other electrical/water utility serving the same geographical area will come forward demanding the same treatment.

b) SCE's water utility is tiny compared to its electric operation. It provides 0.000294% of SCE's revenue.² It is not even a department. It has just 13 employees **who cover both water and gas.**³ It has no office to serve water customers on the Island. While day-to-day water matters are handled by SCE's electrical generation and distribution office on the Island, decisions of consequence regarding the water operation are made at SCE's headquarters in Rosemead, California, by people trained in electric generation and distribution.

c) SCE's water utility is run like an electric utility, not a water utility. Read the qualifications of the SCE employees who have provided testimony so far in this proceeding. They

¹ See Testimony of Brian J. Brady, P.E., Appendix A

² *Id.*

³ SCE 02, p 6

cite education and training with regard to the business of an electric utility. No one cites any education or training with regard to operating a water utility. Additionally, SCE's water utility is operated by members of the International Brotherhood of **Electrical** Workers (IBEW). Rates paid on Catalina Island are the rates negotiated for the operation of SCE's electric utility on the mainland (supplemented for having to work on the Island). Class B and Class C water utilities are typically operated by much less expensive non-union workers.⁴

d) To plan and forecast expenses, SCE uses the IHS Markit Power Planner "which provides nationwide projections of wage increases for **electric power** generation workers, transmission and distribution workers, managers and administrators, and professional and technical workers."⁵

e) If SCE were to seek all of the costs it seeks in its Application from its water customers, it would be a disaster. SCE details the result in its Supplemental Testimony filed February 26, 2021. One thousand five hundred and eighty-one (1,581) out of one thousand eight hundred eighty-eight (1,888) customers or 84 % have 5/8th inch connections.⁶ The monthly service fee for a 5/8th inch connections, which are primarily residential, would increase from \$43.21 to \$227.90 over five years, or an increase of 427%, and the volumetric rates would increase as follows: Tier 1 - 603%; Tier 2 - 599% and Tier 3 - 597%..⁷ In SCE-08: Supplemental Testimony filed on February 26, 2021, SCE proposes recovering its full revenue requirement from Catalina water customers and sets out the rates required to do so in Section V. B. 1, Table V-10.⁸ Noteworthy is the fact that SCE does not provide a Table

⁴ See Testimony of Brian J. Brady, P.E., Appendix A

⁵ WPSCE 06, p. 13

⁶ SCE 2019 Annual Report, p. 35. Fire protection connections excluded.

⁷ SCE 08, p. 18

⁸ *Id.* at p 21

reflecting the impact on the average bill. Eighty-four percent (84%) of SCE's 5/8th inch connections are primarily residential. Assume a residential customer uses 2,000 gallons of water a month or about 67 gallons a day, enough to fill a bathtub. The customer's current bill as reflected in Table V-10 would be \$92.03 per month in the summer months. In Year One it would be \$144.51 per month and in Year Five, \$568.92 per month. Catalina Parties' expert is unaware of any such costs for 2,000 gallons of water anywhere in California.⁹

f) That is not the end of it. As described in Catalina Parties' Protest, SCE has already informed the Commission that it anticipates spending \$28.9 million "on assessment, removal and disposal of decommissioned pipeline, both below and above ground."¹⁰ Just take the figures in the preceding paragraph and double them.

g) Who are SCE's water customers who would be required to pay the proposed rates? SCE analyzed the household income of its CARE and non-CARE customers. "Based on this analysis, residential-CARE customers have a weighted average household income of \$46,532 per year, and residential non-CARE customers have a weighted average household income of \$61,655 per [year]."¹¹ According to the Census ACS 1-year survey, the median household income for California was \$80,440 in 2019.

3. COST RECOVERY APPROACHES OTHER THAN A CHARGE TO SCE ELECTRIC CUSTOMERS

SCE is an investor-owned utility. As such, the potential for shifting water costs to governmental entities is limited. Catalina Parties, in conjunction with SCE, have reached out to both the County of Los Angeles and various other governmental organizations seeking

⁹ Testimony of Brian J. Brady, P.E Appendix A

¹⁰ Catalina Parties' Protest, p. 6

¹¹ SCE 07, p. 27

help. Only a small area of the Island is governed by the City of Avalon. The County of Los Angeles governs most of the Island. Los Angeles County Supervisor Janet Hahn, whose area includes Catalina Island, has been made aware of the problem.

The City of Avalon faces its own financial problems that have been greatly exacerbated by the current pandemic, which has decimated the Island's principal business activity - tourism.

As documented by SCE, the Department of Water Resources (DWR) has granted funds for desalination which apparently have not yet been received. The County of Los Angeles and the City of Avalon advanced \$500,000 each in anticipation of the grant, but that money is to be returned.¹² DWR and the California State Water Resources Control Board issue grants, but not for the ongoing costs of providing water.

There are other public entities controlled by the Commission servicing Catalina Island including the ferry service, the freight service, and the telephone services. Requiring any of them to include a charge for water would be a radical departure.

In meetings with SCE, Catalina Parties expressed concern that an increase in the cost of taking a boat to the Island would be detrimental to tourism. Catalina Island is not a luxury resort. The number of hotel rooms available for overnight stay is very limited. Many of the tourists come over just for the day. The relatively small cost of doing so is one of the Island's attractions.

Catalina Parties are at a loss to identify any potential source to cover SCE's ongoing costs to provide water service other than the ones mentioned.

¹² SCE 08, pp. 4-5

CONCLUSION

The water problems on Catalina Island are not new. Catalina Parties went to great lengths in the Prior GRC to bring them to the Commission's attention. The All Party Settlement that ended the Prior GRC did not solve the underlying problems, which have only gotten worse. The Commission is faced with a very difficult task to "insure [people on Catalina Island] adequate water at reasonable rates" by making decisions that are "just and reasonable."

Nothing contained herein should be interpreted that Catalina Parties accept any amount SCE seeks to pass on to its electrical customers as "just and reasonable." That is for the next Phase.

DATED: March 5, 2021

Respectfully submitted,

BISHTON • GUBERNICK

By: /s/ Norris J. Bishton, Jr.
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APPENDIX A

TESTIMONY OF BRIAN J. BRADY, P.E., RE: ALTERNATIVE COST RECOVERY APPROACHES

I have over 35 years of engineering and management experience in both the public and private sectors of Western electric and water utilities. My qualifications are described in detail in Exhibit 1.

1. Southern California Edison Company (SCE) is a major electricity generating and distribution company with 2019 Revenue of \$12.31 billion. SCE operates a Class C water utility on Catalina Island with 2019 revenue of \$3,629,454. SCE's water utility supplies 0.000294% of SCE's revenue.

2. SCE's water utility is an anomaly. No other public utility in California provides electricity and water to the same geographical area.

3. Golden State Water Company provides both electricity and water through different subsidiaries or affiliates but not in the same geographical area.

4. Liberty Utilities, which is a subsidiary of Algonquin Power & Utilities Corp., provides both electricity and water through different subsidiaries or affiliates but not in the same geographical area.

5. The employees of most Class B and Class C Water Utilities are non-union. SCE's union employees are paid much more than similar non-union employees of water utilities on the mainland.

6. I reviewed SCE-08: Supplemental Testimony filed on February 26, 2021. SCE proposes recovering its full revenue requirement from Catalina water customers and sets out the rates required to do so in Section V. B. 1, Table V-10. Noteworthy is the fact that SCE does not provide a Table reflecting the impact on the average bill. Eighty-four percent (84%) of SCE's 5/8th inch

connections are primarily residential. Assume a residential customer uses 2,000 gallons of water a month or about 67 gallons a day, enough to fill a bathtub. The customer's current bill as reflected in Table V-10 would be \$92.03 per month in the summer months. In Year One it would be \$144.51 per month and in Year Five \$568.92 per month. I am unaware of any such costs for 2,000 gallons of water anywhere in California.

7. The sources available from which an investor-owned water utility can seek revenue other than from ratepayers is limited. The sources I have seen are governmental, such as the municipality or the county where the water utility operates. State agencies such as the Department of Water Resources and the California State Water Resources Control Board sometimes provide grants but not to cover the ongoing costs of providing water.

EXHIBIT 1

Brian J. Brady, P.E.

Brian J. Brady has over 35 years of engineering and management experience in both the public and private sectors of Western electric and water utilities. He maintains an independent management consulting practice, focusing on water resource assessment, asset valuation (including water rights) and strategic operations of water utilities.

Dr. Brady most recently served as General Manager of the Fallbrook Public Utility District (FPUD), and partnered with Camp Pendleton Marine Base to develop critically needed local water supplies (Santa Margarita River Conjunctive Use Project). He also served as a member of the Board of Directors of the San Diego County Water Authority.

From 2008-2011 he was the General Manager of the Imperial Irrigation District (IID), a water and power authority encompassing 6,500 square miles in Southern California. IID is the largest irrigation district in the United States at 3.1 million acre-feet in annual deliveries and is also the third largest public sector electric utility in California (1,000 MW peak demand).

From 2003 to 2007, as General Manager of Rancho California Water District (RCWD), Dr. Brady directed the operations of the Temecula-based water, wastewater and reclamation divisions. Prior to RCWD, he served as general manager of the Water Replenishment District of Southern California (WRD), and was responsible for groundwater protection, enhancement and replenishment over a 400-square mile region of Los Angeles County.

From 1995 to 2000, he was Chairman and CEO of the Dominguez Water Company, an investor-owned utility in Long Beach, California. Under his leadership, Dominguez became the dominant broker of groundwater rights in Los Angeles County. Additionally, Dr. Brady led the expansion of Dominguez operations into Sonoma, Marin and Lake Counties in Northern California through the negotiated purchases of private and mutual water systems.

He is past President of the Board of Directors of the Irvine Ranch Water District (IRWD), and a former board member of the Orange County Sanitation District (OCSD).

Dr. Brady is a registered Civil Engineer with a BSE degree in Water Resource Engineering from Loyola Marymount University. His MBA, with an emphasis in Finance, is from the University of Southern California. And he earned his doctorate, an Ed.D with an emphasis in Organizational Leadership, from Pepperdine University.