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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

LIMITED REPLY BRIEF OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) ON ISSUES 2-B-I AND 2-C-I OF ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

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A. The Commission Is Vested with Broad Discretion to Interpret the Public Utilities Code, Including Section 451

All parties fundamentally agree in their respective Limited Opening Briefs that the Commission has the authority to approve SCE's proposed cross-subsidy if it is "just and reasonable" under Public Utilities Code Section 451.[1] Therefore, the crux of the matter is whether the Commission ***may interpret Section 451*** to find that the cross-subsidy is "just and reasonable." Because the Commission is vested with broad discretion to interpret all sections of the Public Utilities Code—including 451—the Commission has the authority to find that the cross-subsidy is "just and reasonable."[2]

The Commission's broad authority to interpret the Public Utilities Code has been granted by statute and affirmed by the courts. Specifically, Article XII of the California Constitution

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[1] *See* SCE Limited Opening Brief (Brief), p. 3 (citing Section 451); Catalina Parties Brief, p. 5 ("The Commission's authority is defined by three words, 'just and reasonable,' or their opposite 'unjust and unreasonable'") (citing Section 451); The Utility Reform Network (TURN) Brief, p. 3 ("Under Section 451 of the Public Utilities Code, all charges by SCE to its electric customers must be "just and reasonable."); Public Advocates Office (Cal Advocates) Brief, p. 3 ("For rates to be lawful, however, the Commission must determine that they are just and reasonable") (citing Section 451).

[2] In addition, TURN very briefly argues that the cross-subsidy is not permitted under Section 453 because it grants a "preference or advantage." TURN Brief, pp. 3-4. However, as set forth more fully in SCE Brief (pp. 10-12), this argument should be rejected because, as both the California Supreme Court and the Commission have long and repeatedly held, Section 453 only prohibits *unreasonable* discrimination, which the cross-subsidy does not constitute.

confers broad regulatory authority to the Commission,[3] and Public Utilities Code Section 701 authorizes the Commission to "do all things" that are "necessary and convenient" in the exercise of its power, including interpretations of the Public Utilities Code in the exercise of its regulatory powers.[4] Furthermore, in the seminal case *Greyhound*, the California Supreme Court held:

> There is a ***strong presumption of validity*** of the commission's decisions and ***the commission's interpretation of the Public Utilities Code should not be disturbed*** unless it fails to bear a reasonable relation to statutory purposes and language.[5]

Following *Greyhound*, the California Court of Appeals has long afforded "considerable deference" to the Commission's interpretation of the Public Utilities Code.[6] For decades, the courts have operated under this strong presumption of validity, acknowledging the Commission's administrative expertise and that "the Commission has a special familiarity and expertise" with the regulatory issues that informs its interpretation of the Public Utilities Code.[7] Furthermore, courts have found that the Commission's interpretation of the Public Utilities Code bears a "reasonable relation" to a statute's purposes and language where the Commission's interpretation effectuates the broad statutory purposes.[8]

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3 *See* CAL. CONST., Art. XII.

4 Cal. Pub. Util. Code § 701 ("The commission may supervise and regulate every public utility in the State and ***may do all things***, whether specifically designated in this part or in addition thereto, which are ***necessary and convenient in the exercise of such power*** and jurisdiction") (emphasis added).

5 *Greyhound Lines, Inc. v. Pub. Util. Comm'n.* (1968) 68 Cal.2d 406, 410-11, 67 Cal.Rptr. 97.

6 *See, e.g.*, *Southern Cal. Edison Co. v. Pub. Util. Comm'n* (2004) 117 Cal.App.4th 1039, 1050-51, 12 Cal.Rptr.3d 441 (concluding that courts "must [] afford considerable deference to the PUC's interpretation of the statute" and finding that the Commission's interpretation bears a reasonable relation to the statute's purpose and language) (citing *Greyhound*).

7 *See, e.g., San Pablo Bay Pipeline Co. v. Pub. Util. Comm'n* (2015) 243 Cal.App.4th 295, 309, 196 Cal.Rptr.3d 609 ("This deference is based on the idea that the Commission has a special familiarity and expertise with the satellite legal and regulatory issues that informs its interpretation of the statutory provisions in question.").

8 *See*, *e.g.*, *Pac. Gas & Elec. Util. v. Pub. Util. Comm'n*. (2015) 237 Cal.App.4th 812, 854 (finding that the Commission's means of policing and enforcing control of its proceedings "unquestionably" bears a reasonable relation to the purposes and language of the statutes at issue.); *see also* Netterville, *Administrative "Questions of Law" and the Scope of Judicial Review in California* (1956) 29 SO.CAL. L.REV. 434, 451-53. ("As long as the agency's choice has evidentiary support in the record and the legal inferences and conclusions drawn therefrom show ***a reasonable relation to its task of effectuating the broad statutory purposes, the court will not interfere***. The commission, in such a case is in as good, if not better position than the court, to make the choice from among the possible and reasonable choices available.") (emphasis added).

Here, within this extensive framework of expressly conferred authority, the Commission clearly has the authority to interpret Section 451 and find that the cross-subsidy is "just and reasonable." The courts would not disturb the Commission's interpretation of Section 451 because it would bear a "reasonable relation" to Section 451's purpose and language. The purpose of Section 451 is to ensure that all rates paid by customers are "just and reasonable," as evidenced by the plain language of the statute which include these exact words. The cross-subsidy would bear a reasonable relation to Section 451's purpose and language because, as set forth more fully in SCE's Brief, the subsidy is just and reasonable by acting in the public interest, meeting a compelling need for rate relief on Catalina, advancing explicit state policies including the right to safe and affordable water and climate change mitigation, and representing a small rate increase for electric customers (about $0.26 per month) while preventing an unbearably high rate increase for Catalina water customers (about $379 per month).[9] The Commission's interpretation would also bear a reasonable relation to the statute's purpose and language because SCE electric customers receive benefits in tourism, education, research, and conservation, and it is just and reasonable to pay about $0.26 per month for these benefits.[10]

Because of the broad deference afforded to the Commission's interpretation of the Public Utilities Code, the Commission has the authority to approve the cross-subsidy under Section 451.

B. In this Limited Briefing, the Commission Is Only Considering Whether It May Approve the Cross-Subsidy, Not Whether It Should or Should Not

The Commission should not reach any final determination on the cross-subsidy or otherwise rule on the reasonableness of SCE's cost recovery proposal. For instance, TURN recommends that "[t]he Commission should find that ***even if it had the authority*** to assign water utility costs to electric utility customers, SCE has failed to present a compelling reason to do so here."[11] This recommendation should be rejected because the sole issue before the Commission

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[9] *See* SCE Brief, pp. 3-14; SCE Supplemental Testimony (SCE-08), pp. 19-22 ($0.26 and $379 estimate figures concern non-CARE residential customers in Attrition Year 2025).

[10] *See id*.

[11] TURN Brief, p. 4 (emphasis added).

in this limited briefing is whether the Commission has the authority to approve the cross-subsidy. If the Commission were to find it had this authority as TURN suggests (which the Commission does), the Commission should acknowledge that authority and take no further action at this stage.

Similarly, Cal Advocates asserts that "[b]ased on the evidence available to-date, SCE has failed to provide a sound justification for its cost-shifting proposal", "SCE's justification for the cost transfer [] is not supported by evidence", and "SCE has failed to demonstrate a cost-causation relationship."[12] These remarks miss the mark. In this limited briefing, the Commission is not deciding whether SCE met its evidentiary burden of proof in demonstrating the reasonableness of its cost-recovery proposal. The Commission should decline to make any findings of fact or conclusions of law relating to the reasonableness of SCE's cost recovery proposal or SCE's alleged failure of meet its burden of proof, especially given that there is no formal record before the Commission.

It bears repeating that the Commission, at this early stage in the proceeding, is <u>not</u> deciding whether the specific cross-subsidy is "just and reasonable" under Section 451, or whether the Commission should approve or deny SCE's cost-recovery proposal. Attempting to answer either of these questions would be premature and improper because they present mixed questions of both fact and law. Here, the record is incomplete: there has been no intervenor or rebuttal testimony, evidentiary hearings, or exhibits entered into evidence. The Commission should only answer these questions relating to the reasonableness of SCE's cost recovery proposal where there is a full evidentiary record to consider as a whole.[13] The only question before the Commission now is whether it *has the authority* to approve the cross-subsidy. As discussed above, the Commission has the authority to interpret the Public Utilities Code and find the cross-subsidy is just and reasonable under Section 451.

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[12] Cal Advocates Brief, pp. 3, 5.

[13] *See Ames v. Pub. Util. Comm'n*. (2011) 197 Cal.App.4th 1411, 1419, 128 Cal.Rptr,.3d 702 (requiring that the Commission's findings are "supported by substantial evidence ***in light of the whole record.***") (emphasis added); Commission Rule of Practice and Procedure 13.14 (a) ("A proceeding shall stand submitted for decision by the Commission after the taking of evidence, the filing of briefs, and the presentation of oral argument as may have been prescribed.")

C. The Commission May Approve a Cross-Subsidy That Supports Explicit State Policy

In D.14-06-029, the Commission adopted ten Rate Design Principles (RDP) for use in evaluating residential rate design changes.[14] As Cal Advocates notes, two RDPs adopted were "3. Rates should be based on cost-causation principles" and "7. Rates should generally avoid cross-subsidies, unless the cross-subsidies appropriately support explicit state policy goals."[15]

While Cal Advocates argues that SCE's cost-recovery proposal "violates the rate design principle of cost-causation" under RDP 3,[16] Cal Advocates fails to consider that the subsidy would be fully consistent with RDP 7 because the subsidy supports explicit state policy goals, including the right to "safe, clean, affordable, and accessible water"[17] by alleviating the compelling need for water rate relief in Catalina, and climate change mitigation[18] through the research and conservation conducted at Catalina.[19] Consistent with RDP 7, the Commission has the authority to find that a cross-subsidy that supports explicit state policy is "just and reasonable" under Section 451.

D. Cost-Causation Is Only a Single Factor Among Many the Commission Must Consider

Contrary to Cal Advocates' assertion that cost-causation was "[k]ey among the Commission's RDP," the Commission adopted ten total RDPs, with cost-causation constituting only one of the ten RDPs.[20] In fact, in D.15-07-001, which Cal Advocates cites, the Commission specifically noted the *declining importance of cost-causation* when determining "just and reasonable" rates under Section 451, and instead emphasized the increasing importance of

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14 D.14-06-029, p. 11-12; Order 4.

15 *See* Cal Advocates Brief, p. 4 (citing D.15-07-001).

16 Cal Advocates Brief, p. 4.

17 *See* Cal. Water Code § 106.3(a) ("It is hereby declared to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.")

18 *See*, *e.g.*, Cal. Health & Safety Code §§ 38500 et seq. (California Global Warming Solutions Act) (codifying state policy of climate change mitigation through greenhouse gas emission reduction)

19 *See* SCE Brief, pp. 7-10.

20 *See* D.14-06-029, pp. 12, Order 4 (providing ten total RDPs relating to cost of service, affordability, conservation, and customer acceptance).

protecting the environment and vulnerable customers who cannot afford new energy technologies.[21] Furthermore, when adopting the RDPs, the Commission reiterated the importance of ensuring "equitable and affordable" rates in any rate design structure.[22]

Altogether, the Commission has made clear that cost-causation is only one of multiple factors that the Commission considers.[23] Therefore, even assuming the cross-subsidy violated cost-causation principles (which it does not, as discussed below), the Commission would still have the authority to approve the cross-subsidy because it ensures equitable and affordable rates for vulnerable Catalina water customers. The Commission's long-standing use of cross-subsidies that act in the public interest and protect affordability for customers further demonstrates this authority.[24]

E. SCE's Proposed Cross-Subsidy Does Not Violate Cost-Causation Principles

Finally, the Commission should not find that the cross-subsidy violates cost-causation principles. The Commission broadly applies cost-causation as a set of guiding principles, not as a strict, bright line rule.[25] Construed too strictly, cost-causation would require customers to pay *only and exactly* the costs each customer specifically incurs, eviscerating basic ratemaking

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[21] *See* D.15-07-001, pp. 2-3 ("By statute, the Commission is tasked with ensuring that utility rates are 'just and reasonable.' ***Historically***, the determination of just and reasonable has emphasized cost-causation. ***In recent years***, changes in energy use to protect the environment have become increasingly important … These changes have also shifted costs to a subset of customers who are unable to employ new technologies. ***This makes protection of vulnerable customers of particular importance in any new rate design***.") (emphasis added).

[22] D.14-06-029, p. 2 ("the Commission was, and continues to be, interested in exploring improved residential rate design structures in order to ***ensure that rates are both equitable and affordable*** while meeting the Commission's rate and policy objectives") (emphasis added).

[23] *See* D.04-05-054, p. 5 ("While cost-causation is a useful principle for allocating costs, and the Commission has used it with some frequency, it is certainly ***not the only basis*** for cost allocation.") (emphasis added).

[24] *See* SCE Brief, pp. 4-5 (providing examples of cross-subsidies across various contexts).

[25] *See, e.g.,* D.03-02-036 ("As for the alleged inconsistency in the application of 'cost causation' principles, as we explained before, TURN fails to understand that ***the Commission looked to broad concepts of cost causation*** in determining which large classes of customers should pay the bond charge, but ***rejected the use of strict cost causation principles*** to determine exactly how much particular classes of customers have to pay.") (emphasis added).

operations such as average rates and cost allocation. Therefore, what constitutes a "violation" of cost-causation principles must be construed in light of the whole record and the policies at issue.

Here, 1,887 Catalina customers pay for water to support over a million visitors a year.[26] Hundreds of thousands of those visitors are SCE electric customers.[27] The incremental costs of providing water to these visitors (beyond only Catalina residents) are significant. Catalina customers would not incur these significant incremental costs but for the large number of visitors who use water when touring the island. Therefore, at its most basic level, visitors who tour the island cause the incremental increase in costs that Catalina water customers are facing. Further, there is a strong nexus between the costs of water and the benefits electric customers receive, including tourism, education, research, and conservation. Electric customers who do not visit the island themselves also benefit from the educational, research, and conservation benefits that Catalina provides. Even the fact that Catalina is available as a tourism and vacation venue to SCE electric customers is, in and of itself, a benefit that electric customers receive from Catalina.

In its cost-causation argument, TURN cites to D.97-05-088, a decision on PG&E's application regarding its Diablo Canyon nuclear generating plant, arguing that assigning costs to electric utility customers that are not associated with electric utility service is impermissible.[28] In this decision, however, San Luis Obispo was attempting to impose on customers a *property tax* that the Commission found "entirely unrelated" to utility service.[29] Here, the water costs at issue are not "entirely unrelated" because SCE electric customers both cause *and* benefit from these costs. D.97-05-088 is inapposite and cannot be applied to the facts in this proceeding.[30]

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[26] *See* SCE Brief, pp. 7-8.
[27] *See* SCE Brief, p. 8.
[28] TURN Brief, p. 3.
[29] D.97-05-088, p. 69 (1997 WL 465261).
[30] In addition, TURN and Cal Advocates cite to the dissent of then-Commissioner Sandoval in D.14-10-048 for a purported lack of nexus between water costs and electric customers. *See* TURN Brief, p. 12; Cal Advocates Brief, p. 5. By raising the sole dissent, however, it becomes apparent that the four other Commissioners ***had considered the exact same nexus issues in light of Section 451*** and concluded, through a final decision, that the settlement containing the cross-subsidy was "consistent with law," "does not contravene or compromise any statutory provisions or Commission decision" and "in the public interest" D.14-10-048 (Conclusions of Law 5-6). The Commission had the authority then to find the cross-subsidy as lawful and still has the authority now, especially here

TURN also analogizes the Catalina water utility to an SCE affiliate, arguing that the Commission should treat Catalina costs consistently with its treatment of SCE's affiliates' costs.[31] This analogy is flawed because the Catalina water utility is neither similar to nor operates like an SCE affiliate. Unlike generic corporate affiliates, Catalina is a *regulated* water utility directly under the jurisdiction of the Commission[32] with costs that are therefore subject to the regulatory compact.[33] Also contrary to TURN's assertions, for SCE electric customers, Catalina's operations are distinguishable because mainland electric customers share a consolidated electric rate with Catalina customers, and common costs are shared between the energy, water, and gas utilities on Catalina unlike the costs shared by SCE and its affiliates. The Commission should not treat the costs of the Catalina water utility the same as it would typically treat affiliate costs because the Catalina water utility is markedly different than any SCE affiliate.

Finally, TURN argues that it "is aware of no example of the Commission determining it has the authority to pursue a similar course where the utility service provided in one district is different than the utility service in the other district."[34] However, TURN fails to take into full account that Catalina is unique without a similar situation elsewhere in California. No other utility provides both energy and water services in the same geographic area,[35] and certainly not on an island, supporting a million visitors annually, with very limited water resources. The fact that there is no prior example does not mean the Commission should decline to act here. A compelling need for rate relief exists on Catalina, and the Commission may look to "broad

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where there is more evidence of a nexus than in the previous rate case. As a signatory to this prior settlement, TURN represented to the Commission that the cross-subsidy was lawful under all applicable statutes, including Section 451. Like before, the cross-subsidy is lawful now, notwithstanding TURN's reversal on this issue today.

31 TURN Brief, p. 4.

32 *See* D.06-12-029, Appendix A-3, p. 1 (specifically excluding regulated subsidiaries as affiliates).

33 *See, e.g.*, D.20-01-002, p. 10 (confirming that a regulated utility may recover its prudent costs pursuant to the regulatory compact).

34 TURN Brief, p. 5.

35 Catalina Parties Brief, p. 8, Appendix A.

concepts of cost causation,"[36] consistent with its broad regulatory authority, to find that SCE's proposed cross-subsidy does not violate cost-causation principles.

F. The Commission Should Not Consider Cost Recovery Alternatives That Are Not Viable or Practicable

With respect to the second scoping issue, the Commission should not consider cost recovery alternatives that are not viable or practicable. TURN presents a list of alternatives,[37] but many are infeasible or not even cost-recovery mechanisms at all.[38] For example, TURN mentions grant funds and third-party contributions, but these sources of funding have already been exhausted and accounted for in SCE's requested revenue requirement. Neither represents an actual cost-recovery proposal, only a recap of SCE's prudent efforts to date. Similarly, TURN also suggests a collection over an extended period,[39] but SCE's current proposal already calls for a five-year phase-in period. In addition, TURN suggests a tax citing a lodging tax in 2016, but levying a tax is outside of the Commission's jurisdiction, can only be performed by the Legislature, and impracticable given COVID-19's impact on the economy.[40] A securitization transaction is also impracticable and would represent an "extraordinary" ratemaking device as TURN acknowledges.[41] Finally, TURN suggests that SCE shareholders could absorb these costs, but this fails to constitute an actual alternative because absorption of costs is the opposite of a cost *recovery* proposal and violates the foundational cost of service ratemaking principle.[42]

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36 *See* D.03-02-036 ("As for the alleged inconsistency in the application of 'cost causation' principles, as we explained before, TURN fails to understand that the Commission ***looked to broad concepts of cost causation*** in determining which large classes of customers should pay the bond charge, but ***rejected the use of strict cost causation principles*** to determine exactly how much particular classes of customers have to pay.") (emphasis added).

37 *See* TURN Brief, p. 16.

38 As set forth in SCE's Brief, a visitor boat fee is not viable by itself but could potentially work as partial solution. SCE Brief, pp. 16-17.

39 TURN Brief, p. 16.

40 *Id.*

41 *Id.*

42 This suggestion is further inappropriate because under long-standing regulatory law, SCE is entitled to recovery of its prudent costs of a used and useful resource. *See*, *e.g.*, D.20-01-002, p. 10.

When narrowed by viability, it is evident that the cross-subsidy and a consolidation of Catalina costs and rate bases are the two most reasonable cost recovery options before the Commission.

Finally, TURN improperly renews its recommendation of a two-phased proceeding, an issue outside the scope of this limited briefing.[43] This time, TURN reverses its recommended order of issues, and now requests that the Commission consider the reasonableness of costs first, then how the costs should be recovered.[44] The Commission should deny this recommendation because the Commission recently considered and decided *this exact issue* during the Prehearing Conference, and the single-phased schedule already set forth in the Commission's Scoping Ruling efficiently and appropriately addresses the issues in this proceeding.

Respectfully submitted,

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[43] TURN Brief. pp. 17-18.

[44] *Compare* TURN Brief, pp. 17-18 ("TURN proposes a two-stage approach to this proceeding. The first stage would determine the reasonable cost of providing water … The second stage would address how the reasonable costs of Catalina water utility service are to be recovered.") *with* TURN's Position in Joint PHC Statement, pp. 10-11 ("TURN recommends that the Commission establish an initial phase of this proceeding that would address whether there are viable alternatives for SCE to recover or absorb costs of providing water utility service … TURN does not agree that addressing cost recovery issues in a later phase [] would serve the interests of the Commission.").