

**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)

**CONCURRENT LIMITED REPLY BRIEF OF THE UTILITY REFORM NETWORK**



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## CONCURRENT LIMITED REPLY BRIEF OF THE UTILITY REFORM NETWORK

Pursuant to the Assigned Commissioner’s Scoping Memo and Ruling of January 29, 2021, The Utility Reform Network (TURN) respectfully submits this concurrent limited reply brief regarding the application of Southern California Edison Company (SCE) on the authorized revenue requirement and cost recovery for its Catalina Island water utility services. TURN here replies primarily to arguments raised in the opening brief of SCE and the “Catalina Parties.”<sup>1</sup> The positions taken in the opening brief of the Public Advocates Office (Cal Advocates) were generally consistent with those set out in TURN’s opening brief.

- 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?**
  - A. The Commission’s Authority On Ratemaking Matters Is Broad But Not Boundless, and Requiring a Utility’s Customers to Subsidize Costs of a Different Utility Service Would Exceed That Authority.**

SCE and the Catalina Parties contend that the subsidization of Catalina water utility customers by SCE’s electric utility customers is permissible in light of the Commission’s broad authority over such ratemaking matters. SCE asserts there is no law, statute or other precedent that precludes the Commission from charging a portion of its water utility service costs to its electric utility customers.<sup>2</sup> In the utility’s view, so long as the outcome “serves the public good,” then there is no apparent limitation on the means the Commission can deploy to achieve that outcome.<sup>3</sup> The Catalina Parties similarly describe a Commission of near limitless opportunity to treat as “just and reasonable” any outcome not specifically prohibited as unjust or unreasonable.<sup>4</sup>

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<sup>1</sup> The City of Avalon, Catalina Island Chamber of Commerce, Santa Catalina Island Company, Santa Catalina Island Conservancy, Guided Discoveries, and Hamilton Cove Homeowners Association are participating in this proceeding as “Catalina Parties.”

<sup>2</sup> SCE Opening Brief, p. 2.

<sup>3</sup> *Id.*, p. 3.

<sup>4</sup> Catalina Parties Opening Brief, pp. 5-8.

TURN does not dispute the Commission's broad authority over ratemaking matters; however, it is essential that the agency acknowledge that there are still limits to that authority, and act in a manner consistent with those limits. SCE's subsidization proposal exceeds those limits.<sup>5</sup> It would require all of SCE's electric utility service customers to pay costs that are entirely associated with SCE's costs of providing water utility service to Catalina customers, an outcome that is neither just nor reasonable for the electric utility customers.

**B. The Commission's Past Acknowledgement That Some Cross-Subsidies Among Customers of a Given Utility Service May Be Reasonable Does Not Mean All Cross-Subsidies Are Reasonable.**

TURN recognizes that the Commission has in previous decisions acknowledged and, in some cases, maintained cross-subsidies among different segments of ratepayers. To TURN's knowledge, and consistent with each of the examples cited by SCE and the Catalina Parties, the Commission has only done so where the cross-subsidy is associated with costs of providing a utility service to different subsets of customers, all of whom receive that utility service. The proposal here goes further than that and, in doing so, crosses a line the Commission must respect and enforce. It is not "just and reasonable" to have customers of one utility service pay costs of a different utility service for which they are not customers. And nothing in the SCE and Catalina Parties arguments counters this fundamental point.

SCE and the Catalina Parties seem to have been unable to find a single instance where a previous Commission or California court decision crossed that line. None of their cited decisions specifically approved or addressed the reasonableness of a subsidization that would cause customers of one utility service to pay costs of a different utility service they do not receive. Instead, their briefs cite decisions that address subsidization occurring within the bounds of a single, specific utility

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<sup>5</sup> TURN Opening Brief, pp. 2-13.

service – for example, one subset of PG&E gas customers subsidized another subset of PG&E gas customers for pipeline-related costs,<sup>6</sup> or one subset of telephone service users subsidized another based on types of phone calls made (from back in the days when phone service was subject to cost-of-service ratemaking).<sup>7</sup> SCE’s and the Catalina Parties’ claims about the breadth of the Commission’s authority in such matters are not supported with examples where the agency has asserted or even suggested that its authority permits approving a subsidy of one utility service by customers of a different utility service, much less set forth the reasoning in support of such an assertion.

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<sup>6</sup> D.04-05-061 (rehearing decision on PG&E Gas Transmission and Storage (GT&S) market structure). The Commission’s discussion focused on the directive to PG&E to develop proposals for a new backbone level rate structure. The decision acknowledged the existence of cross-subsidies among PG&E’s gas customers, and illustrated it by referencing the necessity of “rate averaging” for ratesetting purposes. D.04-05-061, pp. 21-22. But there was nothing to indicate the Commission contemplated PG&E’s gas customers subsidizing PG&E’s electric customers, or customers of any other utility service.

SCE asserts that in D.04-05-061, “the Commission also articulated its standard on whether to approve a cross-subsidy, providing that ‘in each of these cases the Commission weighed the benefits and the costs involved, and determined that rate averaging was in the public interest.’” SCE Opening Brief, p. 3. It is not clear from the decision whether the cited passage is properly attributed to the Commission, or to the party whose position the Commission was summarizing at that point of the decision. More importantly, the cited cross-subsidies were “inherent in the Commission’s ratemaking policies, such as urban subsidizing rural, long-time customers subsidizing new arrivals, and customers served by fully depreciated facilities subsidizing those who are served by newly constructed facilities.” D.04-06-051, p. 20. In other words, the decision discussed cross-subsidies that arise within a single utility service being provided to a number of differently-situated customers, all of whom are taking that specific utility service. Nothing in the decision supports the logic or policy of having SCE electricity customers subsidizing Catalina water utility customers.

<sup>7</sup> *Toward Utility Rate Normalization v. Public Utilities Commission* (1978) 22 Cal. 3d 529, as cited in Catalina Parties Opening Brief, p. 6. The quoted passage refers to the Court’s review of the Commission’s adoption of a single-message-rate timing (SMRT) pricing structure, to replace the then-effective pricing for local phone service. The Catalina Parties present the Court’s statement as if it pertained to a different argument, that is, whether it would be just and reasonable to permit telephone companies with contiguous service territories to have different rates. Catalina Parties Opening Brief, p. 6. This is incorrect, as the “contiguous utilities” reference appeared in a different section of the decision (addressing an equal protection argument), and is also inapposite (the “contiguous utilities” referred to were providing the same utility service, whereas here the question involves customers taking different utility service).

The proffered examples of other intra-utility service subsidies that the Commission permits do not advance the argument that a subsidy of one utility service by customers of another is permissible. SCE cites a variety of cross subsidies that have been accepted as a part of regulated ratemaking: cross subsidies by geography (such as high-cost districts subsidized by customers in low-cost districts paying the same rate), by product line (rates of long distance phone service subsidizing local calling), by income (the CARE and FERA programs for energy utility customers), and by “public purpose” programs (the costs of which are allocated to all customers regardless of whether they take full electrical service from SCE or obtain a portion of that service from a load-serving entity, with the remainder from SCE).<sup>8</sup> Again, the examples all arise within the context of a single utility service. For instance, there is no dispute that SCE’s electrical utility customers pay averaged rates and, as a result, customers in areas that are relatively low-cost to serve arguably subsidize customers in relatively high-cost areas. But the connecting thread remains intact throughout all of the examples – for each, all of the costs are associated with SCE’s electrical utility service, and all of the customers take electrical utility service from SCE.

**C. Neither The Settlement Adopted In D.14-10-048 Nor TURN’s Past Support For That Settlement Is Dispositive Of The Issues Regarding The Extent Of The Commission’s Authority Regarding Cross-Subsidies Across Utility Services.**

SCE and the Catalina Parties both seek to convince the Commission that its adoption of the proposed settlement in the previous Catalina water utility GRC, with its one-time payment from SCE’s electric utility customers, should be ascribed some precedential value for consideration if the issue here. TURN urges the Commission to read the actual decision, rather than the parties’

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<sup>8</sup> SCE Opening Brief, pp. 4-5. TURN assumes that SCE’s reference to “customers of other load serving entities” refers to “load serving entities” as defined in Section 380(k) (“an electrical corporation, electric service provider, or community choice aggregator.”) All such customers remain customers taking electrical service from SCE.

characterization thereof. As Cal Advocates notes, the Commission included a specific caution to SCE regarding future reliance on the decision:

SCE must not presume in any subsequent application that the Commission would deem the outcome adopted herein to be presumed reasonable and it must, therefore, fully justify every request and ratemaking proposal without reference to, or reliance on, the adoption of the settlement.<sup>9</sup>

What the Commission did not say in D.14-10-048 is that it “rejected TURN’s arguments,” as the Catalina Parties now assert without citation.<sup>10</sup> Nor did it include any language specifically addressing the cross-subsidy element of the settlement in terms of it being “consistent with law” or “in the public interest”<sup>11</sup> – indeed, the word “subsidy” does not appear anywhere in the decision. SCE goes so far as to cite a proposed decision from the earlier GRC, without explaining the probative value it believes the Commission should place in a document that, to TURN’s knowledge, was never voted on by the full Commission.<sup>12</sup>

Rather predictably, SCE emphasizes the undisputable fact that all parties, including TURN, joined in a motion that characterized the settlement as being consistent with law and in the public record.<sup>13</sup> In D.14-10-048 the Commission relied on that position to conclude that the overall settlement, including the one-time subsidy, did not contravene or compromise any statutory provisions.<sup>14</sup> As discussed in TURN’s opening brief, TURN no longer holds the position that enabled it to join in the proposed settlement and to make the representation regarding its consistency

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<sup>9</sup> D.14-10-048, p. 10; *see also* Cal Advocates Opening Brief, p. 2.

<sup>10</sup> Catalina Parties Opening Brief, p. 5.

<sup>11</sup> SCE Opening Brief, p. 14.

<sup>12</sup> *Id.*, p. 13.

<sup>13</sup> *Id.*

<sup>14</sup> D.14-10-048, p. 9 and Conclusion of Law 3.

with the Public Utilities Code.<sup>15</sup> Just as the Commission and, one would hope, a regulated utility such as SCE would have their current positions informed by past experience and benefiting from ongoing reexamination of the basis for past positions, TURN has reached a different conclusion based on its current review of facts and the applicable statutory provisions. TURN submits that its reconsideration and reevaluation of the earlier position that enabled it to join the settlement is very consistent with the language the Commission included in D.14-10-048 emphasizing that the reasonableness of any similar ratemaking proposal in the future would need to be assessed on a *de novo* basis.<sup>16</sup>

**D. SCE's Wider Net of Benefits Still Fails to Establish A Sufficient Nexus Between Catalina Island Water Utility Service and Its 5 Million Electric Utility Customers.**

The Commission should assign no weight to SCE's new and expanded arguments attempting to establish a meaningful nexus between its water utility service provided on Catalina Island and its electric utility customers. Regarding the tourism nexus from its prepared testimony, SCE claims, "It is just and reasonable to recover a portion of Catalina water costs from SCE electric customers who directly benefit from this water service, and a cross-subsidy in SCE's electric rates is a reasonable means of doing so."<sup>17</sup> The Commission needs to step back and consider the logic of the utility's position – because a very small portion of SCE's electric customers will visit Catalina Island and, in that way, directly benefit from SCE's water utility service, SCE should be permitted to collect Catalina water utility service costs from ALL SCE electric customers. Cal Advocates correctly labeled the argument as relying on a deductive fallacy, that is, a conclusion that is not supported by

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<sup>15</sup> TURN Opening Brief, pp. 12-13.

<sup>16</sup> D.14-10-048, p. 10.

<sup>17</sup> SCE Opening Brief, p. 8.



its premise.<sup>18</sup> If the point is to collect Catalina water costs from tourists who directly benefit from this water service when they visit Catalina Island, the appropriate mechanism is a fee charged to such visitors, and NOT a fee charged to literally millions of non-visitors.

SCE's brief raises new arguments that seek to establish a nexus based on benefits realized by any SCE electric utility customer, whether or not they visit Catalina Island itself, citing education and scouting and research facilities located on the island, and touting the importance of conserving the unique features of Catalina Island.<sup>19</sup> TURN does not challenge the societal value of school camps and research facilities, and agrees that Catalina Island is a special portion of the California landscape worthy of preservation and protection. But that creates no more of a nexus with SCE's electric utility customers than do the school camps and research facilities located throughout the utility's extensive service territory. And while Catalina Island is, by all accounts, a natural treasure, the same can be said about numerous other portions of SCE's service territory. The new factors SCE raises in its brief are not a meaningful basis for assigning Catalina water utility costs to electric utility customers.

**E. The Commission Has Sufficient Information To Determine Now Whether The Proposed Cross-Subsidization Is Permissible.**

The Catalina Parties contend the Commission should not "prejudge" the proposed cross-subsidization by SCE's electric utility customers, and argue that further facts and reasonable inferences therefrom might change the outcome.<sup>20</sup> The Commission should reject this argument. There is no dispute regarding the essential facts here; SCE's proposal would have its electric utility customers subsidize tens of millions of dollars of costs associated with the utility's provision of Catalina water utility service, costs that have nothing to do with providing electric service. If the

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<sup>18</sup> Cal Advocates Opening Brief, p. 5.

<sup>19</sup> SCE Opening Brief, pp. 8-10.

<sup>20</sup> Catalina Parties Opening Brief, p. 8.

Commission agrees with TURN that it cannot require electric utility customers to pay costs associated with a different utility service, then no further development of the factual record regarding the proposed subsidization is required. On the other hand, if the Commission were to determine that it has the authority to require such a subsidization of one utility service by customers of another, then there would be follow-on questions on whether and to what degree the Commission should exercise that authority under the circumstances here. Further record development as needed to address those questions can take place after the Commission's determination here.

**F. SCE's Brief Clarifies that its Proposed Subsidy Would Benefit Its Shareholders As Well As Catalina Water Utility Customers.**

The parties' opening briefs clarify that the proposed subsidization is more about requiring SCE's electric utility customers to subsidize the utility's shareholders. Both SCE and the Catalina Parties make clear that SCE's costs of providing water utility service on Catalina Island are so high that they "are greater than what its residents can afford to pay."<sup>21</sup> If SCE faced this situation as a stand-alone Class C water utility serving Catalina Island, its owners would bear the fall-out from this inability to recover the full cost of utility service from the utility's customers. That is, if SCE were unable to recover its full costs of providing safe and reliable water service from Catalina Island customers, the shortfall would become a loss sustained by the utility and, by extension, its owners. Thus, SCE's proposal here is better understood as relying on its electric utility customers to protect its shareholders from any underrecovery of water utility costs. Rather than failing to recover anything less than the full costs (and a return thereon), SCE seeks to take advantage of its status as a Class C water utility attached to an electric utility with 5 million customers to insulate its owners from such an outcome, by instead recovering the costs from the electric utility customers.

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<sup>21</sup> SCE Opening Brief, p. 5; *see also* Catalina Parties Opening Brief, p. 9.

## **II. 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?**

It is critically important for the Commission to take steps now to ensure a wide range of cost recovery approaches will be fully analyzed, developed and presented by the parties best-positioned to give effect to such approaches. The Catalina Parties describe a number of approaches that they suggest to be unworkable, and then claim to be “at a loss” as to any other potential options.<sup>22</sup> SCE's preferred alternative approaches are best understood as subsidization-on-steroids -- consolidation of costs and rate bases between the Catalina water utility and SCE's electric utility would achieve a more permanent subsidization.<sup>23</sup> SCE also expresses somewhat muted support for a boat fee as a partial solution, and even goes so far as to characterize it as a different form of cross-subsidization of Catalina water utility costs by SCE's electric utility customers.<sup>24</sup> And SCE relies on its scare tactic of an alternative revenue requirement that assumes all costs would be collected solely from Catalina water utility customers in a relatively short period, an approach that even the utility concedes would result in costs “[t]he small number of Catalina water customers simply cannot pay.”<sup>25</sup>

TURN submits that the most appropriate and most effective step toward achieving a more robust range of cost recovery approaches would be for the Commission to make clear now that a cross-subsidy from SCE's electric utility customers is not permissible. So long as SCE perceives a subsidy-based option to be in play, it has little incentive to consider or promote alternatives.

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<sup>22</sup> Catalina Parties Opening Brief, pp. 10-11.

<sup>23</sup> SCE Opening Brief, pp. 15-16.

<sup>24</sup> *Id.*, pp. 16-17. To be clear, charging a boat fee to an SCE electric utility customer that is choosing to visit Catalina Island has none of the hallmarks of a cross-subsidization of utility services. Rather, it would represent cost recovery on a cost-causation basis, to the extent Catalina visitors are driving the need for spending on Catalina water utility service.

<sup>25</sup> *Id.*, pp. 5-6.

Even if the Commission disagrees with TURN's argument that subsidy-based options should be taken off the table at this time, it should still take steps to improve the likelihood of achieving development of a record supporting a wider range of cost recovery alternatives. To this end, TURN recommends that the Commission make clear that subsidization of SCE's water utility operations by its electric utility customers must be treated as a last resort. SCE's approach to date has treated its subsidy proposal as the be-all and end-all of alternatives; if SCE gets its requested subsidy or, worse, one of its subsidization-on-steroids options, it needs no other alternative. From the utility's perspective, subsidies are the path of least resistance; absent some countervailing force, SCE will seek to stay on that path. The Commission needs to get the utility to change its approach, so that any subsidy would be the last of the alternatives relied upon, rather than the first and perhaps only option meaningfully considered.

Furthermore, in order to give the utility a stronger incentive to be open to all non-subsidy alternatives, including any it may have previously written off, the Commission should send a clear signal now that any option involving subsidization would only be available to the extent SCE's shareholders bear at least an equal amount of the water utility costs. SCE should not be allowed to rely on a subsidy from its electric utility customers without at least an equal amount of the burden falling on its shareholders, and the potential for shareholder costs if SCE relies on subsidization could more fully and successfully motivate the utility to seek and rely on other alternatives.

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Respectfully submitted,

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