

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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Ratesetting

TO PARTIES OF RECORD IN APPLICATION 18-04-001:

This is the proposed decision of Administrative Law Judge Wildgrube. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's November 29, 2018, Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, ex parte communications are prohibited pursuant to Rule 8.2(c)(4)(B).

/s/ ANNE E. SIMONAnne E. Simon
Chief Administrative Law Judge

AES:jt2

Attachment

Decision PROPOSED DECISION OF ALJ WILDGRUBE (Mailed 10/29/2018)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (U338E) to Establish the Wildfire Expense Memorandum Account.

Application 18-04-001

DECISION AUTHORIZING SOUTHERN CALIFORNIA EDISON COMPANY TO ESTABLISH A WILDFIRE EXPENSE MEMORANDUM ACCOUNT**Summary**

This decision grants Southern California Edison's (SCE) request to establish a Wildfire Expense Memorandum Account to track incremental unreimbursed wildfire liability-related costs. This decision, however, does not grant SCE rate recovery resulting from any wildfire-related costs. Any such rate recovery requires express authorization from the Commission in a separate proceeding.

1. Background

Southern California Edison (SCE) filed this application on April 3, 2018, requesting authorization to establish a Wildfire Expense Memorandum Account (WEMA) to track "incremental unreimbursed wildfire liability-related costs." (Application at 1.) SCE states it is imperative for the company to establish a WEMA immediately, as it anticipates that the cost of renewing its wildfire insurance for 2018 to 2019 may substantially exceed the amount authorized in rates or requested in SCE's pending 2018 Generate Rate Case (GRC) for insurance costs. (*Id.* at 1-3.)

SCE is requesting an ongoing WEMA to record wildfire liability-related costs from multiple fires and, potentially, subsequent mudslides and flooding. (*Id.* at 2-6.) SCE intends to track all costs arising from the December 2017 Thomas Fire in Ventura County and Santa Barbara County Wildfires, the 2018 Montecito Mudslides, and future fires. (*Id.* at 2-7.) These incremental unreimbursed wildfire liability costs will reflect all amounts paid as a result of any wildfire and that were not authorized in its GRC, including: 1) payments to satisfy wildfire claims, including any co-insurance, deductibles and other insurance expense paid by SCE; 2) outside legal expenses incurred in the defense of wildfire claims; 3) payments made for wildfire insurance and related risk-transfer mechanisms; and, 4) the cost of financing these amounts. (*Id.* at 3.)

SCE is not requesting rate recovery in this proceeding for the wildfire liability-related costs of the December 2017 Wildfires and the subsequent Montecito Mudslides and future fires. (*Id.* at 2.) Rather, SCE intends to use the WEMA to support recovery of wildfire liability-related costs in a separate future application. (*Id.* at 15-16.)

The Commission's Public Advocate's Office (Cal PA) filed its protest to SCE's application, arguing that SCE's request should be denied. Cal PA asserts that the application seeks to establish an open-ended WEMA account, which "lacks specificity both as to the events covered and need." (Protest of Cal PA at 2.) Cal PA characterizes the request as impermissible, unwarranted, and premature. (*Id.* at 2.) Furthermore, Cal PA argues that, in the event that SCE has not identified the responsible party for the December wildfires and mudslides, the Commission should limit SCE's WEMA request to only current and future wildfire events where the responsible party has been identified. (*Id.* at 3.) SCE filed a reply to Cal PA's protest.

A prehearing conference (PHC) was held on June 7, 2018. At the PHC, the parties agreed that hearings were not necessary and this proceeding could be resolved via briefing. (Transcript, v. PHC at 3-8.) On July 2, 2018, the parties reported that due to the Commission's decision in Decision (D.) 18-06-029, granting a WEMA to Pacific Gas and Electric Company (PG&E) on a similar application, the parties agreed that briefing was unnecessary in this proceeding. On July 11, 2018, a Scoping Memo was issued setting forth the scope and schedule for this proceeding and agreeing briefing was unnecessary.

2. WEMA

2.1. Ongoing or Incident Specific WEMA

As a threshold question, the Commission must address SCE's request for a standing or an ongoing WEMA, rather than an incident-specific WEMA. The Scoping Memo identified the following issue: "The breadth or specificity of the proposed WEMA: specifically, should the Commission authorize a WEMA for all wildfire-related costs (potentially encompassing multiple wildfires), or should a WEMA be more specifically event or time limited." (Scoping Memo at 2.) SCE argues that the Commission should not limit the proposed WEMA to a specific event or time.

2.1.1. SCE Insurance May Be Insufficient to Cover Liabilities Associated with 2017 Wildfires and 2018 Mudslides Claims

SCE argues that it faces increasing aggregated liabilities resulting from current claims filed and possible future claims in relation to the December 2017 Wildfires and the 2018 Montecito mudslides. Approximately 40 lawsuits have been filed against SCE, and the utility company anticipates additional lawsuits related to the Montecito Mudslides will be filed. (Application at 4-6.) If it is determined that SCE is legally responsible for the losses caused by the Montecito

mudslides, SCE alleges its insurance coverage may be insufficient to cover such substantial liabilities. (*Id.*)

2.1.2. SCE Faces Increased Insurance Costs

SCE avers that it faces increased wildfire insurance costs. The availability and cost of obtaining wildfire insurance coverage depends on market conditions. (*Id.* at 6.) In its recent advice letter requesting Z-Factor recovery,¹ SCE explained that both the wildfire insurance and reinsurance markets are “hardening,” meaning that the number of insurance companies willing to provide wildfire insurance coverage is declining, the amount of coverage available is decreasing, and the cost of insurance premiums is increasing. (*Id.* at 6-7.)

2.1.3. SCE May Face Additional Costs in the Future if Additional Wildfires Occur

SCE argues that wildfire risk is ongoing and, consequently, SCE may face additional costs in the future.

Prolonged drought conditions and shifting weather patterns in California resulting from global climate change, as well as increased tree mortality rates, have increased the duration of the wildfire season and the risk of catastrophic wildfire events. Cal Fire reports that 5,143 fires occurred in 2015, burning about 307,598 acres. By 2017, those numbers had increased to 7,117 fires burning 505,956 acres. The Governor has referred to the recent wildfires as the new normal for California and something that could happen every year or every few years.²

¹ Application 18-04-001. On March 14, 2018, SCE filed Advice Letter 3768-E, requesting Z-Factor recovery (as permitted by D.15-11-021 for revenue adjustments for unexpected and uncontrollable events) of \$108 million (the CPUC revenue requirement on the \$120.9 million premium payment) associated with replenishment of its wildfire risk insurance in December 2017.

² Application at 7.

In response to SCE's application to establish a WEMA, Cal PA opposes the request. First, Cal PA argues SCE is seeking to establish "a broad, open-ended memorandum account." (Protest of Cal PA at 2.) Given that SCE has not been identified as the responsible party for the December 2017 wildfires and the subsequent Montecito Mudslides, Cal PA believes SCE's request to track incremental unreimbursed wildfire liability-related costs, at this juncture, lacks specificity and is impermissible, unwarranted, and premature. (*Id.* at 2-3.) Cal PA opposes any WEMA account tracking costs for an undefined and likely ongoing time and for events that lack a determination of liability or a completed investigation of the cause. (*Id.*)

Second, Cal PA disagrees with SCE's argument that the Commission has approved memorandum accounts in analogous circumstances. Cal PA argues that those accounts have only been authorized for costs of authorized programs and the only authorized WEMA was in the context of an interim Wildfire Expense Balancing Account, which was subsequently denied. (*Id.* at 3.) Pointing to, Cal PA also protests that the estimated exposure to SCE from the 2017 wildfire events of \$2 billion vastly exceeds the amounts considered in San Diego Gas & Electric's (SDG&E) WEMA. (*Id.*)

In D.18-06-029 we reviewed our decisions denying memorandum accounts when considering PG&E's application for a WEMA similar to the one requested by SCE in this proceeding. We noted, the Commission has recognized three reasons an application to establish a memorandum account will be denied: the costs are recoverable in a general rate case, are not substantial, or are speculative. (See, D.18-06-029 at 7.)

While the Commission agrees with Cal PA that the figures from the 2017 southern California wildfires are significantly greater in comparison to the amount recorded in SDG&E's 2007 WEMA; the Commission is to analyze SCE's request in the context of the tests found in D.18-06-029, D.16-01-009, and D.97-12-096, not whether the figures are small or large. Here, the first two reasons for denying a WEMA are not present; rather, the costs SCE seeks to record would not be recoverable in a general rate case and are potentially substantial.

As for the third reason, since SCE is asking for an ongoing WEMA, the questions remain as to whether future wildfire-related costs are speculative or premature. We have found when asking this question about PG&E, that the "potential for significant fire-related cost is not speculative." (D.18-06-029 at 7-8.) Given the events in SCE's territory and California's acknowledgement of a significant increase in the risk for additional fire events, we find that the answer is the same for SCE, the potential for significant fire-related costs is not speculative.

2.2. A WEMA Should be Established

First, it is not necessary or required to deny an ongoing WEMA while pending the determination of the responsible party for the Montecito Mudslides.

Second, the WEMA will track costs on an event-by-event basis, segregating costs by event, so that the Commission would be able to review costs separately for particular events. (D.18-06-029 at 6.) Costs that are not specific to a particular wildfire event, such as insurance premium costs, should be segregated by cost type, with notice to the Commission when new cost types are recorded to the WEMA. "To the extent that individual WEMAs could vary in their scope or

requirements, a single, standardized, ongoing WEMA will likely be administratively simpler” and cost-efficient. (*Id.*)

Third, tracking costs in an approved WEMA does not mean the Commission is granting SCE recovery of such expenses. Any rate recovery requires express authorization from the Commission in a separate proceeding.

Fourth, on a process level, an ongoing WEMA saves the utility, the Commission, and ratepayers time and money. On a substantive side, a key consideration is whether requiring separate applications for individual WEMAs will result in a different outcome compared to an ongoing WEMA. If the Commission were to grant SCE a WEMA for the December 2017 Thomas Fire in Ventura County, then to receive another SCE request for a similar individual WEMA for the Santa Barbara County Wildfires, followed by additional WEMA applications, the result would be a series of applications requesting WEMAs. Each application triggers a Commission proceeding that will most likely receive an approval, and given the similar outcomes, “there is no good reason to require more time, energy, and resources from the utility, Commission, and ratepayers” when a one-time process to establish an ongoing WEMA exists. (*Id.* at 8.)

Finally, following the rationale from our decision to grant PG&E’s request to establish an ongoing WEMA, “given the current state law [on utility liability for wildfires]³ and its effect on utilities, coupled with a lack of certainty about how, when, and if it may change,” it is reasonable to support the authorization of an ongoing WEMA. (*Id.* at 5.) If necessary, the Commission can order SCE to

³ Senate Bill 901 (2017-2018 Reg. Sess.) §27, which addresses applications to recover costs and expenses arising from, or incurred as a result of, a catastrophic wildfire with an ignition date in the 2017 calendar year does not impact the establishment of WEMA requested in A.18-04-001.

discontinue the WEMA should at some point the law or facts changes in a way that significantly reduces the risk to SCE of unreimbursed liability for wildfire-related events.

2.3. WEMA's Effective Date

In determining whether to grant an effective date as the date of the filing, the Commission will examine the scope of SCE's WEMA and the precedent(s) established in authorizing a memorandum account with an effective date prior to the Commission's authorization.

SCE requests that the WEMA be effective on the date of filing the application, April 3, 2018. (Application at 2.)

In D.18-06-029, we established the date of filing of the application as the effective date for PG&E's WEMA. Public Utilities Code Section 1731(a) states that the Commission "may set the effective date of an order or decision prior to the date of issuance." (D.18-06-029 at 14-15.) The Commission finds that granting SCE's WEMA effective as of the application's filing date does not constitute retroactive ratemaking. In light of the above statutory authority and Commission precedent, it is clear that the Commission has the authority to permit costs incurred prior to the date of adoption of this decision to be included in the WEMA.

As a result, approval of the WEMA is occurring now, with this decision, and we approve the recording of costs incurred as of the date SCE filed its application. Accordingly, the effective date of SCE's WEMA is the date it filed its application to establish a WEMA: April 3, 2018.

2.4. Tariff Language

The proposed tariff language is modeled after the language approved in Resolution E-4311.⁴ (Application at 9.)

3. Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Wildgrube was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

4. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Eric Wildgrube is the assigned ALJ in this proceeding.

Findings of Fact

1. SCE has incurred costs and is likely to incur costs related to the December 2017 Thomas Fire in Ventura County and Santa Barbara County Wildfires, and the subsequent 2018 Montecito Mudslides.
2. SCE has incurred or is likely to incur costs related to subsequent wildfire-related events.
3. SCE has received, and anticipates it will receive, additional lawsuits alleging that the Thomas Fire proximately caused the Montecito Mudslides.
4. SCE's wildfire-related costs may be substantial, and may not be recoverable in a GRC or through the utility's insurance coverage.

⁴ Resolution approving with modifications utilities' proposals to establish Wildfire Expense Memorandum Accounts.

5. Approving one ongoing WEMA is less resource-intensive than approving multiple individual WEMAs.

6. An ongoing WEMA can segregate costs associated with multiple wildfire events.

7. The substantive effect of approving one ongoing WEMA is likely to be similar to the effect of approving multiple individual WEMAs.

8. SCE's proposed tariff language is modeled after the approved language in Resolution E-4311.

Conclusions of Law

1. SCE's request for an ongoing WEMA should be approved.

2. The Commission may make the WEMA effective as of the date of SCE's application.

3. Costs recorded in the WEMA should be segregated by wildfire event, with notice to the Commission of each event. Costs that are not specific to a particular wildfire event, such as insurance premium costs, should be segregated by cost type, with notice to the Commission when new cost types are recorded to the WEMA.

4. The recovery of costs recorded in the WEMA should be addressed in separate rate recovery proceedings.

5. The Commission may order SCE to discontinue the WEMA due to changes of law or facts significantly reducing the risk to SCE of unreimbursed liability for wildfire-related events.

O R D E R

IT IS ORDERED that:

1. Southern California Edison is authorized to establish a Wildfire Expense

Memorandum Account.

2. Southern California Edison shall file its tariff implementing the Wildfire Expense Memorandum Account via Tier 2 Advice Letter no later than 60 days from the date of this decision.

3. The Wildfire Expense Memorandum Account tariff language must specify that only incremental costs may be recorded in the account, and that entries in the account will be segregated by wildfire event, or by cost type for costs not specific to a wildfire event.

4. For each new wildfire event or each new cost type not specific to a wildfire event to be included in the Wildfire Expense Memorandum Account, Southern California Edison shall file a Tier 1 Advice Letter.

5. Application 18-04-001 is closed.

This order is effective today.

Dated _____, at San Francisco, California.