

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

Application of Pacific Gas and Electric
Company (U 39 E) for Authority to Establish
the Wildfire Expense Memorandum Account.

Application 17-07-011
(Filed July 26, 2017)

**SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) AND
SAN DIEGO GAS & ELECTRIC COMPANY'S (U 902 E) JOINT BRIEF
ADDRESSING SCOPING MEMO ISSUES**

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Dated: **February 15, 2018**

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I. INTRODUCTION

Pursuant to the Assigned Commissioner and Administrative Law Judge’s Scoping Memo and Ruling issued on January 11, 2018 (“Scoping Memo”), Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) (collectively, the Joint Utilities)¹ respectfully submit this joint intervenor brief. The Joint Utilities address four issues, outlined in the Scoping Memo, concerning PG&E’s request to establish a Wildfire Expense Memorandum Account (WEMA): (1) scope and breadth of the WEMA; (2) eligible costs to be recorded in the WEMA; (3) whether or not this proceeding should establish a standard or criteria for rate recovery of the costs recorded in the WEMA; and (4) the effective date of the proposed WEMA.

As an initial matter, the Joint Utilities respectfully encourage the California Public Utilities Commission (Commission) to adopt PG&E’s proposal to establish a WEMA to record certain eligible incremental costs related to wildfires in PG&E’s service area. The Joint Utilities agree with PG&E that this relief should typically be granted as a matter of course because it

¹ Pursuant to Rule 1.8(d) of the California Public Utilities Commission’s Rules of Practice and Procedure, counsel for SDG&E has authorized SCE to file this brief on its behalf.

prevents retroactive ratemaking issues and does not affect customer rates. As PG&E notes, the Commission previously authorized SDG&E's request to establish a WEMA, in Decision (D.) 12-12-029, to record the same type of costs contemplated in PG&E's application. The Commission's authorization of a WEMA is also sound policy considering that California is entering a "new normal" of year-round catastrophic fire risk with serious financial implications for the state's investor owned utilities (IOUs).²

The Joint Utilities also share PG&E's concern that the Commission's current approach in applying the reasonableness standard to determine cost recovery for wildfire events where the utility was subject to inverse condemnation is seriously flawed. However, the Joint Utilities agree with PG&E that this issue is not ripe for consideration. Both PG&E and SCE are challenging the application of inverse condemnation in state court,³ and all three IOUs are seeking rehearing of the Commission's recent decision denying SDG&E's application to recover its costs associated with 2007 wildfires, D.17-11-033. Furthermore, state policymakers and key stakeholders are engaged in discussions about how to address the increasing wildfire threat and those discussions may have some bearing on this issue. The Joint Utilities agree with PG&E that the Commission should not address the proper cost recovery standard until it has all relevant facts and at a time when PG&E or another IOU submits its recorded costs for recovery.

II. JOINT UTILITIES' RESPONSES TO SCOPING MEMO ISSUES

The Scoping Memo's questions are included in bold below, followed by the Joint Utilities' answers.

² PG&E notes in its opening brief that Governor Jerry Brown has referred to the recent wildfires as "the new normal" for California. *See* PG&E Opening Brief, p. 3, fn. 9.

³ On February 1, 2017, SCE filed a motion in the Round Wildfire Case for a legal determination that it is not liable for inverse condemnation damages.

1. 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 WEMA be more specifically event or time limited?

The Joint Utilities agree with PG&E that the WEMA should be established as an “ongoing” account to address the incremental costs utilities incur due to wildfires. This means the IOUs should be authorized to establish a single WEMA, as opposed to multiple, event-specific WEMAs, to track and record eligible incremental expenditures associated with multiple wildfire events. PG&E correctly notes that the IOUs are potentially exposed to significant liability from multiple wildfires as a result of the “new normal” of increased year-round wildfire risk coupled with the current law of inverse condemnation. Given this, it would be administratively burdensome—for both the IOUs and Commission staff—to establish a WEMA for each and every wildfire event. It would also be of no value considering that the Commission’s authorization of a single, ongoing WEMA will not affect customer rates and will not result in events becoming intermingled or indistinguishable.

2. What costs are eligible to be recorded in the proposed WEMA? The answer to this question should also answer the following: What costs may (or may not) be recovered via another funding mechanism? What costs are “incremental?” Should financing costs be recorded in the proposed WEMA? Does the answer to this question vary with the answer to Question 1 above?

The Joint Utilities agree with PG&E’s categorization of costs to be recorded in WEMA (e.g., payments to satisfy wildfire claims, outside legal costs, insurance premium costs not in rates, etc.) that the Commission previously approved for SDG&E’s WEMA in D.12-12-029.⁴ Financing costs should be included to the extent they are incremental. The Joint Utilities further agree with PG&E that costs recorded to the WEMA would not be recoverable through Catastrophic Event Memorandum Account (CEMA) or the General Rate Case (GRC). PG&E correctly characterizes incremental costs as those costs not collected elsewhere in rates or from third parties such as insurers. PG&E is also correct that this determination requires a fact-

⁴ See also Resolution E-4311.

specific inquiry best reserved for the actual proceeding in which these costs are sought to be recovered.

The Joint Utilities also strongly agree with PG&E that it is inappropriate to characterize the utilities' anticipated costs associated with the recent catastrophic wildfire events as a GRC-related "forecast error." The appropriate forum for addressing such costs is the memorandum account review process (e.g., CEMA and WEMA) or the Z-factor process.⁵

- 3. Should the Commission establish in this proceeding a standard or criteria for rate recovery of the costs recorded in the WEMA, or should that be addressed in the proceeding in which rate recovery is sought? Does the answer to this question vary with the answer to Question 1 above? If the standard or criteria is established in this proceeding, what should the standard or criteria be?**

The Joint Utilities agree with PG&E that the Commission should not use this proceeding to try and establish a cost recovery standard for costs recorded in the WEMA. This effort would be time consuming and of limited value considering that various aspects of wildfire financial risk are being addressed in the state courts and at the Commission. In the California courts, both PG&E and SCE are challenging the application of inverse condemnation to IOUs following the Commission's recent decision in the SDG&E WEMA proceeding denying cost recovery associated with 2007 wildfires, D.17-11-033. And the Commission is currently considering requests for rehearing of D.17-11-033 filed by all three IOUs. Finally, there are ongoing statewide discussions about how to address the growing wildfire threat, which may inform the Commission's understanding and analysis of this issue.

- 4. What should be the effective date of the proposed WEMA?**

The Joint Utilities agree with PG&E that the effective date of the proposed WEMA should be the date of the original filing.

⁵ In addition, if the utilities were to seek cost recovery in the GRC for incremental costs triggered by a given catastrophic event, it seems likely that ORA, TURN, and others would argue that recovery should be barred in the GRC on grounds that the costs are non-recurring.

III. CONCLUSION

The Joint Utilities appreciate the Commission's consideration of these comments.

Respectfully submitted on behalf of
Southern California Edison Company, and
San Diego Gas & Electric Company

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