

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

Application of Southern California Edison
Company (U 338-E) to Establish the Wildfire
Expense Memorandum Account.

Application 18-04-001
(Filed April 3, 2018)

**SOUTHERN CALIFORNIA EDISON COMPANY'S
REPLY TO THE OFFICE OF RATEPAYER ADVOCATES' PROTEST**

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Pursuant to Rule 2.6(e) of the California Public Utilities Commission's (Commission or CPUC) Rules of Practice and Procedure, Southern California Edison Company (SCE) submits this reply to the Office of Ratepayer Advocates' (ORA) protest to SCE's Application to establish the Wildfire Expense Memorandum Account (WEMA).

I. INTRODUCTION

SCE has explained in its Application, Motion, and Reply to ORA's Response to the Motion that SCE faces an urgent situation regarding securing additional insurance in the wake of the December 2017 wildfires and 2018 Montecito mudslides. SCE is now securing insurance and, as expected, the costs are substantial and exceed amounts currently authorized in rates or forecast in SCE's 2018 General Rate Case (GRC) proceeding, Application (A.) 16-09-001. It is therefore necessary and appropriate for SCE to establish a WEMA to record these incremental wildfire insurance costs in order to maintain customer and shareholder indifference pending Commission review in a later cost recovery proceeding.

Rather than acknowledge SCE's stated reasons for requesting to establish a WEMA on an expedited basis, ORA, in both its response to SCE's Motion and its protest to SCE's Application, persists in ignoring them and arguing for stringent and unreasonable barriers to filing a WEMA. ORA summarily asserts that SCE's request is "premature" and that SCE has not established a

“need” for this account because SCE’s facilities have not been found to be responsible for the December 2017 wildfires.¹ The Commission should reject ORA’s argument because it is both illogical and without merit. Contrary to ORA’s unfounded assertion, the wildfire insurance market for California utilities is contracting and premium costs are rising. Commissioners have recognized this,² and SCE’s recent experience in procuring additional wildfire insurance reinforces the point.

ORA’s remaining arguments challenging SCE’s application are similarly flawed. For example, ORA wrongly asserts that SCE is requesting to record “any costs it deems related to wildfires,” when in fact the proposed scope of SCE’s WEMA is identical to the WEMAs previously approved for San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) in Decision (D.) 12-12-029. SCE’s proposed WEMA is also identical to the one pending approval for Pacific Gas & Electric Company (PG&E) in A.17-07-011. In A.17-07-011, Administrative Law Judge (ALJ) Allen and Assigned Commissioner Randolph have issued, respectively, a proposed decision (PD) and Alternate PD (APD) that would approve PG&E’s request for an ongoing WEMA and thus provide strong support for SCE’s request in this proceeding. Commissioner Randolph’s APD, in particular, determines that it is appropriate and lawful to establish the WEMA’s effective date as of the date PG&E filed its application: July 26, 2017.³ The Commission should similarly approve SCE’s request and make its WEMA effective as of the date SCE filed its Application: April 3, 2018. This effective date is particularly important in the context of SCE’s recent actions to secure wildfire insurance for 2018-19 at a cost reflecting the substantially higher premiums demanded in the current market.

¹ ORA Protest, p. 2.

² See Section II.A, *infra*.

³ APD at pp.11-12 (citing D.09-06-053). ALJ Allen’s PD proposes make PG&E’s WEMA effective as of the date of a final decision approving the account.

II. DISCUSSION

A. SCE's Application Establishes the Urgent Need for a WEMA to Record Incremental Wildfire Costs—Specifically Wildfire Insurance Costs

ORA continues to summarily assert that SCE's request to establish a WEMA is "premature" and that SCE has not demonstrated a "need" for this account.⁴ In making this argument, ORA ignores SCE's explanation in its Application that it must renew its wildfire insurance coverage for 2018-2019, or a significant portion of its insurance will otherwise expire on May 31, 2018. ORA similarly ignores that the market for California utilities to purchase wildfire insurance has been contracting and costs are now substantially higher than the amount currently authorized in rates or requested in SCE's pending 2018 GRC.⁵ ORA also ignores SCE's April 26, 2018 Reply addressing this same argument, which stated SCE was "currently securing coverage and anticipate[d] paying a substantial amount of the additional cost of renewing its insurance in mid-to-late May as its current policies expire on May 31, 2018."⁶ *SCE is now securing additional wildfire insurance and, as expected, the costs associated with renewing SCE's insurance are substantially above what is currently authorized in rates or forecasted in the 2018 GRC proceeding.* ORA's argument is therefore without merit and should be rejected—indeed, a contrary finding would severely and unfairly penalize SCE for acting expeditiously (and prudently) to renew its wildfire insurance amid a contracting insurance market for California utilities.

Beyond insurance, SCE's Application also demonstrates that SCE faces a real possibility of incurring substantial wildfire liability-related costs stemming from both the December 2017 wildfires and possibly the January 2018 mudslides.⁷ Among other things, SCE's Application

⁴ ORA Protest, p. 2.

⁵ SCE Application, pp. 1-2.

⁶ SCE Reply to ORA's Response to SCE's Motion for an Order Setting the Effective Date of the WEMA, p. 2.

⁷ SCE reserves all rights to defend against any such claims.

states that approximately 40 lawsuits have been filed against it related to the December 2017 wildfires, including several designated class actions.⁸ Further, a number of these lawsuits allege that SCE was responsible for the Thomas Fire and further allege that the Thomas Fire proximately caused the Montecito mudslides. Even ORA acknowledges that the potential exposure facing SCE is substantial.⁹ Both the ALJ's PD and Commissioner Randolph's APD in PG&E's pending WEMA proceeding, A.17-07-011, find that the claims against PG&E in relation to the 2017 wildfires present a sufficient possibility of claims costs as to justify the creation of a WEMA to record them if and as such costs are accrued. SCE is in the same position and is already incurring substantial legal expenses related to the pending litigation against it.

Furthermore, the Commission should also reject ORA's argument as a matter of policy, in particular ORA's claim that SCE cannot request a WEMA unless, and until, CalFire issues a report identifying SCE facilities as the cause of the Thomas Fire. ORA's position, if adopted, would impose an unnecessary and artificial barrier to SCE's ability to record substantial wildfire-related costs associated with procuring insurance in the wake of devastating wildfires. The Commission has previously determined that payments made for wildfire insurance are eligible to be recorded in WEMA,¹⁰ and Commissioners have also acknowledged that it is becoming harder for SCE and other utilities to obtain wildfire insurance.¹¹ Although ORA ignores these facts, it is evident that the wildfire insurance market for California utilities continues to contract even though CalFire or other agency reports on the causes of the October

⁸ There are now approximately 60 lawsuits that have been filed against SCE related to the December 2017 wildfires.

⁹ ORA Protest, p. 3.

¹⁰ See D.12-12-029, p. 17 (leaving SDG&E's and SoCalGas' existing WEMAs open).

¹¹ President Picker recently commented that the Commission was "already seeing that it's hard for the utilities to obtain insurance to be able to cover the risk of fire both to their infrastructure and from their infrastructure." See Commissioner Informational Webinar on Impacts of Climate Change and Resulting Resiliency Challenges (February 7, 2018) at 48:25. The recorded webinar is available at <http://www.adminmonitor.com/ca/cpuc/other/20180207/>.

and December 2017 wildfires have not yet been issued. In fact, if SCE were to adopt ORA's approach, SCE would still need to file this request in light of the increased costs associated with obtaining additional wildfire insurance, regardless of the findings in CalFire's or another agency's report. This is because SCE incurs insurance costs (and insurance markets are affected) independent from whatever CalFire or another agency includes in a report.

B. SCE's Request Is Consistent With Prior Commission Decisions Authorizing Memorandum Accounts

ORA's remaining arguments for denial of SCE's application as "premature" either misunderstand, or misstate, prior Commission decisions authorizing memorandum accounts. For example, ORA attempts to distinguish D.10-12-026 and D.15-01-051 by arguing they involved "Commission-authorized programs and policies," as opposed to wildfires.¹² ORA misses the point about why those decisions are instructive in this context, *i.e.*, not because of the programs, but rather because in those decisions the Commission authorized establishing a memorandum account even though there was uncertainty about whether or not the underlying fees/costs would actually materialize. Here, as discussed above, there is much greater certainty surrounding SCE's request to establish a WEMA following renewal of its wildfire insurance for 2018-2019.

Furthermore, the Commission has authorized, in D.12-12-029, memorandum account relief in the context of increasing wildfire liability-related costs. ORA attempts to distinguish this decision, which continued a WEMA for SDG&E and SoCalGas, by noting that: 1) SDG&E facilities had been identified by CalFire as the cause of wildfires within its service area; and 2) that the amount recorded in SDG&E's WEMA "pales in comparison to the exposure from SCE's 2017 wildfire events."¹³ Both points actually support SCE's request. Regarding ORA's first point, ORA fails to acknowledge that, in D.12-12-029, the Commission approved continuing

¹² ORA Protest, p. 3.

¹³ *Id.*

SoCalGas' WEMA even in the absence of a request by SoCalGas to recover costs associated with any particular wildfire. And ORA's second point illustrates the serious situation that SCE faces in the wake of the December 2017 wildfires and the very real possibility that SCE will incur substantial wildfire-liability related costs, thus justifying a WEMA.

C. The Scope and Duration of SCE's Proposed WEMA Are Reasonable, and SCE Faces Severe Prejudice If Its Request Is Denied

ORA wrongly asserts that SCE's proposed WEMA "lacks specificity" and that SCE is seeking to record "any cost it deems related to wildfires."¹⁴ SCE's proposed WEMA is directly modeled after the WEMAs previously approved for SCE and other investor-owned utilities in Resolution E-4311 and subsequently continued for SDG&E and SoCalGas in D.12-12-029. Specifically, the proposed account is limited to the following wildfire liability-related costs: (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. SCE is not, therefore, requesting sweeping authority to record all manner of wildfire costs in this account and ORA's argument to the contrary should be rejected. These same categories of costs would be approved under both the ALJ's PD and Commissioner Randolph's APD in PG&E's pending WEMA proceeding, A.17-07-011.

The Commission should also reject ORA's argument against creating an ongoing WEMA, as this also represents poor policy. SCE should be authorized to establish a single WEMA, as opposed to multiple, event-specific WEMAs, to track and record eligible incremental expenditures associated with one or more wildfire events. As SCE's Application illustrates, electric utilities are potentially exposed to significant liability from multiple wildfires because 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 Commission staff

¹⁴ ORA Protest, p. 2.

and all interested parties—to establish a stand-alone WEMA for each and every wildfire event. This is recognized as an important consideration in both the ALJ’s PD and Commissioner Randolph’s APD proposing to authorize an ongoing WEMA for PG&E in A.17-07-011.

The Commission’s authorization of a single, ongoing WEMA will not affect customer rates and will not result in events becoming intermingled or indistinguishable. In its Protest, ORA essentially concedes that customers will not be affected, simply observing that while establishing a memorandum account “does not guarantee rate recovery,” it is the “first step in exposing ratepayers to a request for recovery of amounts booked into the...account.” This is a nonargument, and does not justify the Commission’s rejecting SCE’s request given the serious situation facing the utility in the wake of unprecedented wildfires and amid a contracting wildfire insurance market. Given the increasing wildfire risk in California, it makes sense for the Commission to authorize an ongoing WEMA for SCE modeled after the SDG&E and SoCalGas WEMAs and the utilities’ established Catastrophic Event Memorandum Accounts.¹⁵

D. An Expedited Schedule Is Appropriate Under the Circumstances

SCE urges the Commission to expeditiously approve this Application. SCE has demonstrated that it must establish a WEMA to record incremental wildfire liability related costs, including substantial costs associated with securing wildfire insurance for 2018-2019. ORA opposes an expedited schedule, but provides no justification for its opposition other than to indicate that it will be requesting “adequate time for discovery and briefing” at the June 7, 2018 prehearing conference.¹⁶ ORA does, however, agree that evidentiary hearings are unnecessary.

There is no reason for the Commission to prolong this proceeding based on ORA’s vague and undefined request for “adequate” time to consider SCE’s Application. Again, SCE’s

¹⁵ ORA appears to argue against creating an ongoing WEMA by suggesting SCE has the ability to record wildfire-related costs in its CEMA. ORA Protest, pp. 3-4. The CEMA, however, is limited to system restoration and recovery costs and thus does not cover the costs at issue in this proceeding. Pub. Util. Code § 454.9(a).

¹⁶ ORA Protest, p. 4.

request is limited to establishing a memorandum account, *i.e.*, a WEMA, and the scope and duration of the requested account are the same as those approved for SDG&E and SoCalGas. SCE's proposed WEMA is also modeled after PG&E's proposed WEMA, which as noted above is pending approval under both the PD and APD.¹⁷ SCE is a party to PG&E's WEMA proceeding, which involved limited briefing—conducted over approximately six weeks—focused on a specific set of scoping issues. In light of that briefing and the PD and APD issued in that proceeding, there is no need for additional briefing in this proceeding. If the ALJ concludes otherwise, any additional briefing should be expedited.

III. CONCLUSION

For the foregoing reasons, as well as the reasons set forth in SCE's Application and concurrently-filed Motion, and its Reply to ORA's Response to the Motion, SCE respectfully requests that the Commission expeditiously approve SCE's application to establish the wildfire expense memorandum account with an effective date of April 3, 2018.

Respectfully submitted,

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¹⁷ Both the PD and APD would order PG&E to revise its proposed WEMA tariff to specify that only incremental costs may be recorded in the account, and that entries in the account will be segregated by wildfire event. APD, OP 3; PD OP 3. SCE will amend its proposed WEMA tariff to address the PG&E PD's and APD's proposed changes.