BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Application of Southern California Edison Company (U 338-E) for Authorization to Recover Costs Related to the 2007 Southern California Wind and Firestorms Recorded in the Catastrophic Event Memorandum Account (CEMA)	A.10-04-026 (Filed April 22, 2010)

PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES

Pursuant to Rule 2.6 of the Commission's Rules of Practice and Procedure, ALJ Bushey's Ruling dated May 21, 2010, and ALJ Bushey's email dated June 28, 2010, the Division of Ratepayer Advocates (DRA) submits its Protest to the "Amended Application of Southern California Edison Company for Authorization to Recover Costs Related to the 2007 Southern California Wind and Firestorms Recorded in the Catastrophic Event Memorandum Account (CEMA) (Application).[1]

In the Application, SCE requests that the Commission find reasonable $6.837 million in Operations and Maintenance (O&M) expenses and $9.487 million in capital expenditures, that SCE asserts are incremental.[2] Regarding capital, SCE notes that $5.546 million of capital additions excluded the cost of removal.[3] SCE further seeks authorization to continue to record the monthly capital-related revenue requirement regarding "capital additions found reasonable in this proceeding until the effective date of

[1] SCE originally filed the Application on April 22, 2010. The Amended Application was filed on June 2, 2010.

[2] Application at 1-2.

[3] Application at 2, fn.1.

a final Commission decision in SCE's 2012 General Rate Case (GRC) Phase 1 proceeding."[4] Thus, SCE's request has a potential monetary impact on ratepayers.

I. IDENTIFIED ISSUES

A. Any Costs Within this Application that are Associated with the Malibu Canyon Fire Should Either be Disallowed or Held in Abeyance Until the Commission Resolves the Currently-Pending OII Regarding the Malibu Canyon Fire [I.09-01-018]

According to California Public Utilities Code section 454.9(b):

> "The costs, including capital costs, recorded in the accounts set forth in subdivision (a) shall be recoverable in rates following a request by the affected utility, ***a commission finding of their reasonableness***, and approval by the commission."[5]

The code thus states the fundamental reasonableness analysis that the Commission must conduct in order to find recorded costs for CEMA-eligible events recoverable in rates. In its Testimony, SCE identified the "Canyon Fire", an alternate name for the Malibu Canyon Fire, as one of the fires linked to costs included in its CEMA Application.[6] DRA has conducted discovery on this issue and is compiling data about the estimated cost impacts per fire from SCE.

As a context to this Application, DRA notes that SCE is currently a Respondent to the Malibu Canyon Fire OII.[7] In that proceeding, the Commission is investigating SCE's role in Malibu Canyon Fire, which has been allegedly linked to SCE's facilities and practices. Understanding the nature of the linkage between SCE's facilities and practices and the ignition of the Malibu Canyon Fire is a critical prerequisite to any meaningful CEMA reasonableness analysis of the Malibu Canyon Fire–related costs. If SCE were found in violation of any rules or requirements regarding the facilities linked to the

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[4] Application at 2.

[5] Cal. Pub. Util. Code § 454.9(b) (E*mphasis added*).

[6] See SCE Amended CEMA Testimony at Page 7, Table I-1.

[7] See I.09-01-018.

Malibu Canyon Fire, this clearly factors into the reasonableness analysis involved in potentially awarding the CEMA-coverage requested by SCE.

Thus, any costs within this Application that are associated with the Malibu Canyon Fire should either be disallowed or held in abeyance until the Commission resolves the currently-pending OII regarding the Malibu Canyon Fire.

B. SCE Should Not Be Permitted to Engage in *Ex Parte* Contacts in this Proceeding Regarding the Malibu Canyon Fire

The issues that are being considered in the Malibu Canyon OII are subject to an *ex parte* contact ban. The close interconnectedness between the issues to be resolved in the OII and the Malibu Canyon Fire component of this Application presents a danger regarding potentially conflicting *ex parte* rules. Permissible contacts regarding this proceeding could devolve into impermissible contacts related to the OII. It is essential to protect the integrity of the regulatory process and prevent that possibility.

C. SCE has the Burden of Proving the Reasonableness of its Requested Recovery

Putting aside the Malibu Canyon Fire, DRA believes that other fires included in the Application, such as the Grass Valley Fire, are the subject of pending governmental investigations and lawsuits.[8] While the Commission has not opened up any formal OIIs into such matters, DRA does believe that these other investigations and lawsuits related to SCE's alleged practices regarding fire causation may be instructive as to the reasonableness of certain costs for which recovery is sought. DRA notes that as a basic regulatory proposition, SCE has the burden of proving the reasonableness of its costs prior to being authorized recovery.[9] This is true regardless of whether or not SCE is

[8] See *United States of America v. Southern California Edison Company; The County of San Bernadino*, Civil No. 09-02597 VBF (CTx), Document 14, First Amended Complaint, Filed: June 3, 2009, United States District Court, Central District of California, Southern Division.

[9] See, e.g., D.90-09-088, 37 CPUC 2d 488, 499. ("The burden rests heavily upon a utility to prove … that it is entitled to the requested rate relief and not upon the Commission, its staff, or any interested party to prove the contrary.")

alleged to have started a given fire. If SCE incurred costs from a fire that it started, that fact would argue strongly against SCE receiving any recovery for those specific costs.

D. DRA Will Audit this Application in a Manner Consistent with Prior CEMA Applications

Aside from the issues described above, DRA would audit this Application by:

- Reviewing the sufficiency of the disaster declarations to ensure that they comply with Commission precedent;
- Reviewing the recorded and/or requested costs to determine whether they were related to CEMA-eligible events;
- Reviewing the recorded and/or requested costs to determine whether they were incurred in territories with competent disaster declarations, in a manner consistent with Commission precedent;
- Reviewing the allocation of costs between the Federal Energy Regulatory Commission and the California Public Utilities Commission;
- Examining the appropriateness of including certain categories of labor costs in the CEMA;
- Reviewing the accounting to determine whether the recorded and/or requested costs were to restore utility services to customers; to repair, replace, or restore damaged utility facilities; and/or were in compliance with governmental agency orders in connection with events declared disasters by competent state or federal authorities;
- Reviewing SCE's decision-making regarding the fires, including decisions regarding insurance;
- Reviewing the accounting (for both capital and expenses) in order to determine the reasonableness of the recorded costs;
- Reviewing other aspects of SCE's requested relief for reasonableness; and
- Investigating any other issues that may arise in connection with this matter.

II. PROCEDURAL MATTERS

DRA agrees with SCE that this proceeding is appropriately classified as rate-setting.[10]

At this time, DRA expects that evidentiary hearings may be necessary. The primary issues to be considered are those discussed in Section I, although additional issues may arise during discovery. Facts related to those issues may be presented at evidentiary hearings.

III. PROPOSED SCHEDULE

Guided in part by the identified issues, DRA reserves the right to propose a schedule at the upcoming PHC.

Respectfully submitted,

/s/ EDWARD MOLDAVSKY

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[10] Application at 9.

CERTIFICATE OF SERVICE

I hereby certify that I have this day ***reserved*** a copy of **PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES** to the official service list in **A.10-04-026** by using the following service:

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Executed on July 15, 2010 at San Francisco, California.

/s/ NANCY SALYER

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A.10-04-026

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