

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**

Agenda ID #13290

Alternate to Agenda ID #13063

Ratesetting

September 10, 2014

TO PARTIES OF RECORD IN APPLICATION 10-11-009:

Enclosed is the Alternate Proposed Decision of Commissioner Catherine J.K. Sandoval to the Proposed Decision of Administrative Law Judge (ALJ) Linda Rochester previously mailed to you. The proposed decision is currently on the September 11, 2014 Commission's Agenda as Item 28. Due to the issuance of this alternate, these items will be held to October 16, 2014 Commission Meeting. This cover letter explains the comment and review period and provides a digest of the alternate decision.

When the Commission acts on this agenda item, it may adopt all or part of it as written, amend or modify it, or set aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Public Utilities Code Section 311(e) requires that an alternate to a proposed decision or to a decision subject to subdivision (g) be served on all parties, and be subject to public review and comment prior to a vote of the Commission.

Parties to the proceeding may file comments on the alternate proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3 opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Rochester at lrr@cpuc.ca.gov and Commissioner Sandoval's advisor Allison Brown at aly@cpuc.ca.gov. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ TIMOTHY J. SULLIVAN

Timothy J. Sullivan

Chief Administrative Law Judge (Active)

TJS:sbf

Attachment

ATTACHMENT

The proposed decision denies the joint motion to adopt an all-party settlement on revenue requirement and rate design. The decision authorizes establishing a Memorandum Account for the \$8.895 million rate base that will not be collected from electric customers. It requires that within 180 days of this decision parties file with the Commission a proposed alternate means of funding the \$8.895 million. If no alternate funding mechanism is agreed upon within the 160 days, parties are required to file an Advice Letter reflecting a \$3 million increase to the Santa Catalina Island Water rate base and a shareholder disallowance of the remaining balance.

Decision **ALTERNATE PROPOSED DECISION OF
COMMISSIONER SANDOVAL** (Mailed 9/10/2014)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison
Company (U338E) for Authority to, Among
Other Things, Increase its Authorized Revenues
For Santa Catalina Island Water Operations, and
to Reflect That Increase In Rates.

Application 10-11-009
(Filed November 15, 2010)

**DECISION DENYING THE ALL-PARTY SETTLEMENT
ON REVENUE REQUIREMENT AND RATE DESIGN ISSUES
FOR SOUTHERN CALIFORNIA EDISON COMPANY'S
SANTA CATALINA ISLAND WATER OPERATIONS**

Table of Contents

<u>Title</u>	<u>Page</u>
DECISION DENYING THE ALL-PARTY SETTLEMENT ON REVENUE REQUIREMENT AND RATE DESIGN ISSUES FOR SOUTHERN CALIFORNIA EDISON COMPANY’S SANTA CATALINA ISLAND WATER OPERATIONS	1
Summary	2
1. Settlement Standard of Review	4
1.1. The Settlement Is Not Reasonable Based on the Record	5
1.2. The Settlement is Not Consistent with the Law or With Commission Precedent	11
1.3. The Settlement is Not in the Public Interest	21
2. Next Steps	23
3. Procedural Background	25
4. Comments on Alternate	26
5. Assignment of Proceeding	26
Findings of Fact	26
Conclusions of Law	27
ORDER	28

**DECISION DENYING THE ALL-PARTY SETTLEMENT
ON REVENUE REQUIREMENT AND RATE DESIGN ISSUES
FOR SOUTHERN CALIFORNIA EDISON COMPANY'S
SANTA CATALINA ISLAND WATER OPERATIONS**

Summary

This decision denies the joint motion for adoption of a settlement between Southern California Edison Company (SCE), the Office of Ratepayer Advocates (formerly the Division of Ratepayer Advocates- ORA or DRA), The Utility Reform Network (TURN) and a group of protestants which constitutes a cross section of Santa Catalina Island Water Operations customers including the City of Avalon, the Chamber of Commerce, Catalina Island's principal land owners and condominium associations, and campgrounds. We find that the settlement's proposed SCE shareholder capital disallowance of \$2.485 million and \$4.130 million annual revenue requirement, an increase of \$288,000 or 7.5 percent over the present rate revenues of \$3.842 million dollars, are reasonable in light of the record, consistent with the law, and in the public interest. The improvements to the Catalina water system substantially improve system reliability and fire safety efforts. However, the proposed one-time rate increase of \$8.895 million to be imposed on SCE's electric customers that provides the basis for the \$4.130 million revenue requirement is rejected because it is not reasonable in light of the record, is contrary to the law, violates due process, and is not in the public interest.¹

¹ The full settlement can be found at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M076/K851/76851159.PDF>

Though SCE's electric customers may have been provided some notice and an opportunity to comment on the settlement nearly two-years after the close of evidentiary hearings, they were not given notice and opportunity to participate earlier in the proceeding before a hearing, nor given opportunity to become a party as California Public Utilities Code (Code) section 454(a) requires. Once notice was given to SCE's electric customers who the settling parties propose to charge \$8.895 million in rates, the Public Advisors Office received numerous comments strongly opposing the rate increase to SCE's electric customers, as discussed below.

The date when SCE notified its electric ratepayers of the proposed settlement and \$8.895 million charge to SCE electric customers in rates for Catalina Island water facilities is not clear in the record because no corresponding compliance, required pursuant to Rules 3.2 and 13.1 of the Commission's Rules of Practice and Procedure (Rules), was filed and the notice is not in the record. Some notice of the settlement was sent to SCE electric customers, as evidenced by several informal comments SCE electric ratepayers sent to the CPUC Public Advisors in late 2013. The lack of a record of the date of the notice and the absence of the actual notice sent increases the difficulty in evaluating the notice and its timing. Since the hearings regarding the Catalina Island Water case were conducted in September 2011, it appears that SCE sent notice to its electric customers of the proposed charge after the hearings, briefs, initial Proposed Decision, and comment period, depriving those customers of the opportunity to actively participate. This violates Code Section 454(a) which requires notice of proposed rates before a hearing, and that the notice explain the opportunity to participate in the proceeding, as discussed more fully below.

This decision also grants parties' March 18, 2014, motion for admission of additional evidence into the record. All other outstanding motions in this proceeding are denied. This proceeding remains open to allow the parties to propose a settlement that conforms to the legal parameters discussed below.

1. Settlement Standard of Review

As the applicant, Southern California Edison Company (SCE) bears the burden of proof to show that the regulatory relief it requests is just and reasonable, consistent with the law and procedural due process, in the public interest, and that the related ratemaking mechanisms are fair.

In order for the Commission to consider any proposed settlements in this proceeding as being in the public interest, the Commission must be convinced that the parties had a sound and thorough understanding of the application, and all of the underlying assumptions and data included in the record. This level of understanding of the application and development of an adequate record is necessary to meet our requirements for considering any settlement. These requirements are set forth in Rule 12.1(a)² which states:

Parties may, by written motion any time after the first prehearing conference and within 30 days after the last day of hearing, propose settlements on the resolution of any material issue of law or fact or on a mutually agreeable outcome to the proceeding. Settlements need not be joined by all parties; however, settlements in applications must be signed by the applicant....

² All referenced Rules are the Commission's Rules of Practice and Procedure. (http://docs.cpuc.ca.gov/WORD_PDF/AGENDA_DECISION/143256.PDF)

When a settlement pertains to a proceeding under a Rate Case Plan or other proceeding in which a comparison exhibit would ordinarily be filed, the motion must be supported by a comparison exhibit indicating the impact of the settlement in relation to the utility's application and, if the participating staff supports the settlement, in relation to the issues staff contested, or would have contested, in a hearing.

Rule 12.1(d) provides that:

The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.

Rule 12.5 limits the future applicability of a settlement:

Commission adoption of a settlement is binding on all parties to the proceeding in which the settlement is proposed. Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.

In short, we must find whether the settlement comports with Rule 12.1(d), which requires a settlement to be reasonable in light of the whole record, consistent with law, and in the public interest. We address below why the proposed settlement fails to meet these three requirements.

1.1. The Settlement Is Not Reasonable Based on the Record

The record consists of all filed documents, the testimony, the proposed settlement and the motion for its adoption.

The crux of this settlement is a one-time \$8.895 million payment in rates assessed to SCE electric ratepayers to pay for facilities that serve SCE' Catalina Island water ratepayers. The settling parties and Proposed Decision's justification for this imposition of rates on SCE ratepayers is that the upgrades to

the Catalina Island water system primarily benefit visitors, who outnumber residents by approximately 200 to 1. The parties to the settlement argue that those who benefit most from the upgrade, the visitors, should contribute.

The parties' proposal to have SCE assess \$8.895 million in rates on its SCE electric customers is not supported by the record evidence. The record fails to identify a nexus between visitors to Catalina Island and SCE electric customers.

The proposal to assess SCE electric customers \$8.895 million in rates is based solely on the oral testimony of Protestant's witness Mr. Milton Dinkel³ in the evidentiary hearings wherein Mr. Dinkel testified that approximately 75 percent of total visitors to Catalina Island come from Southern California.⁴ Mr. Dinkel's testimony highlighted certain aspects of monthly reports from the Catalina Chamber of Commerce regarding visitors, but did not submit the full content of any of these monthly reports into the record. The absence of these reports from the record and the presence of only hearsay testimony about the report's findings raise due process concerns. This absence is pivotal since the entire justification for the proposed settlement and assessment of \$8.895 million in rates to be imposed on SCE electric customers is based on the alleged data, contained in a report not submitted into the record, about the proportion of visitors to Catalina Island that hail from Southern California. The inability to review the report, its methodology, findings, limitations, and the basis for and granularity of its conclusions, prevents the Commission from ascertaining what

³ Mr. Dinkel is the Chief Operating Officer and Treasurer of the Catalina Conservancy, a member of several committees formed by the city council, including a stakeholder group with SCE, the Chamber of Commerce, and city council members.

⁴ EH 711, lines 8-11.

weight, if any, the Commission should afford these assertions about the report's findings mentioned in the hearsay testimony about the report. The hearsay testimony about the report, a report neither submitted to the record, nor made available to the Commission for its consideration, does not provide evidence of the asserted link between the SCE electric ratepayers and costs for the separate Catalina Island water system. It is legal error to base the imposition of \$8.895 million in rates on SCE electric ratepayers solely on testimony about the general conclusions of a report never submitted to the record that the Commission cannot review.

While none of the parties to the proceeding objected to Mr. Dinkel's testimony as hearsay, or pointed to the lack of the report in the record, the Commission may take note of this legal error as, pursuant to Rule 13.6 (a), "Although technical rules of evidence need not be applied in hearings before the Commission, substantial rights of the parties shall be preserved." In *The Utility Reform Network v. Public Utilities Commission*, 223 Cal. App. 4th 945 (Oakley) where a hearsay objection was made and sustained by the judge to exclude a study submitted in support of the moving party's proposal, the Court found that the Commission could not rely on hearsay evidence for the truth of the matter asserted, and found that the remainder of the record did not contain sufficient evidence to support the Commission's finding. While no hearsay objection was made to Mr. Dinkel's testimony regarding the report, the Commission must still treat that testimony for what it is—testimony about a report—and not the report itself. Thus the Commission may afford little weight to the testimony about the report as the absence of the report from the record precludes assessment of the basis for the report's conclusion about the origin point of most Catalina Island visitors.

Neither does the testimony relied upon as the pivotal rationale for the extraordinary rate to be imposed on SCE Electric customers outside of the SCE General Rate case even attempt to explain why SCE customers are so uniquely a burden among Southern California visitors that they should be assessed most of the rate burden in this case. Even assuming such rates were permitted to be assessed upon electric customers for water facilities, and apart from notice and due process issues, the record does not support such rates on SCE electric customers.

The Commission must consider the record based on what is submitted, and what is absent. Neither Mr. Dinkel's testimony, nor any other party, submitted any evidence in the record that purports to assert what percentage of the Southern California visitors to Catalina Island are SCE *electric customers*. No evidence was submitted regarding what portion of SCE electric customers visit Catalina. Mr. Dinkel's testimony did not even assert that SCE electric customers stood out among Southern California visitors as causing costs for the Catalina Island water service. Neither did Mr. Dinkel's testimony attempt to explain any basis for attributing the source of \$8.895 million in costs to SCE Electric customers, and not to other Southern Californian such as Los Angeles Department of Water & Power Customers living in the second-largest city in America, or San Diego residents living in the second largest city in California and one of the top ten largest cities in America.

There are 4.8 million SCE electric ratepayers, compared to approximately 1 million annual visitors to Catalina. Mr. Dinkel testified that close to 80 percent

of Catalina Island visitors are repeat visitors within any given year.⁵ The record does not even attempt to show how many of the visitors are SCE electric customers, or examine how many unique visitors come to the Island and where they hail from. No testimony or evidence proffers any unique nexus between SCE electric customers, except that some of them live in Southern California, and the \$8.895 million in rates the settling parties wish SCE to impose on them. There is not a scintilla of evidence in the record that purports to assert a unique nexus between SCE Electric ratepayers, costs impacts to the Catalina Island Water systems, and services and facilities for SCE Electric ratepayers that would support the proposal to charge SCE electric ratepayers \$8.895 million for Catalina Island Water facilities and services. As the Court held in *Oakley*, this Commission may not approve rates where there is not “a residuum of legally admissible evidence” in the record.⁶ Neither is there any testimony or record evidence that defines "Southern California." Many SCE customers live in Ventura, Kern, and Tulare counties. Lacking any testimony as to the definition of Southern California, and absent the report to which Mr. Dinkel’s hearsay testimony generally referred, we can only guess which counties were included in the definition of “Southern California.” The Commission may not base its decisions on guesses. The parties’ failure to submit the report in the record leaves the Commission unable to assess the nexus between the purported geographic origin of Catalina Island visitors, and SCE electric customers.

⁵ EH 710, lines 20-22.

⁶ *Oakley*, 223 Cal. App. 4th 945 at 961.

Neither the record nor the parties explain why only the *SCE electric customer* visitors from Southern California, however that region is defined, should be made to contribute to the water system through Commission-approved rates. The parties to the settlement do not proffer any evidence or argument that their proposed settlement benefits SCE electric customers regarding the electric system. Their only argument is that SCE electric customers benefit from paying \$8.895 million for Catalina's water system because *some* SCE customers *may* visit Catalina. This speculation about whether some SCE electric ratepayers may visit Catalina Island rests on a foundation of hearsay about a report not submitted to the record. Neither is it based on any facts about a unique nexus between SCE electric ratepayers, costs to the Catalina Island water system, and benefits to SCE electric ratepayers in terms of their electric service that may be the basis for Commission-assessed rates.

This Alternate Proposed Decision does not contest the finding that the upgrades to the Catalina water system are reasonable. It finds there is no evidentiary basis that assessing \$8.895 million in rates on SCE electric ratepayers is reasonable in light of the record. The threshold issue is an evidentiary showing of a sufficient nexus supported by the record of system requirements and benefits for those who are being asked to pay, SCE electric ratepayers. This settlement proposes that the Commission consider Catalina Island Water system benefits and costs and the basis for imposing rates on SCE electric ratepayers through their *electric bills*. In addition to the notice, due process, and lack of evidence issues to support this attempted imposition of a significant rate burden on SCE Electric customers, \$8.995 million, the proposal lacks sufficient connection between the *ratepayers* to be assessed, and the facilities and services provided, as discussed below.

**1.2. The Settlement is Not Consistent with the Law
or With Commission Precedent****A. The Settlement is Inconsistent with the Law by Imposing a Charge
without Furnishing a Service or Commodity**

The proposal to collect from SCE's electric utility customers \$8.895 million associated with water utility plant investment violates Sections 451 and 710.10 of the Public Utilities Code. Section 451 states, in part:

All charges demanded or received by any public utility... for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful...
(emphasis added)

Section 710.10 states, in pertinent part:

The policy of the State of California is that rates and charges established by the commission for water service provided by water corporations shall do all of the following:

(f) Be based on the cost of providing the water service...

Implicit in both of these statutes is that any charge or rate must be for a service, furnished product, or commodity. Here, the settlement proposes charging electric customers for an unrelated water system, not for a service, product or commodity to be furnished *to those customers*.

The asserted justification for this imposition of rates is that some SCE electric customers may visit the island, therefore benefitting from the water service. As discussed above, there is nothing in the record supporting a unique nexus between those being asked to pay for Catalina's water system-SCE electric customers, and those benefitting from the service -visitors to the island. Parties propose to have SCE electric ratepayers pay in rates more than twice as much as Catalina Island customers who have connections to the water system. This is

itself an extraordinary proposition, made untenable and unlawful by the lack of evidence to support a nexus to show an \$8.895 million rate impact uniquely attributable to SCE electric ratepayers, and in light of the lack of timely notice to the parties the PD proposes to charge the overwhelming bulk of the rates. Neither is the proposed settlement consistent with substantive legal requirements for the imposition of rates.

Here, the applicant is asking the Commission to establish rates and charges for SCE electric customers related to water service provided to a distinct rate base. Electric customers on the mainland already pay for their own water service through a variety of sources, some regulated by the Commission, some not. A small percentage of SCE electric customers have residences or businesses that receive electrical or gas connections on Catalina Island and those customers are notified of proposed rates regarding their electric service through SCE's General Rate Case, like all other SCE customers. The settlement and Proposed Decision attempt to characterize the \$8.895 million rate they wish to impose on SCE electric customers as a *transfer* to support the costs of water facilities and service on Catalina. There is no precedent or authority in law for a "transfer" from one set of ratepayers to another in an unrelated rate base for a different service. The settlement and PD propose to impose \$8.895 million in *rates* on SCE electric customers, and any such proposal must comport with the law and rules regarding ratemaking. This proposal fails to do so as SCE electric customers will not receive any service as SCE electric customers. SCE electric customers may avail themselves of the facilities and services of a different rate base when they visit San Diego or Yosemite, yet this Commission does not impose as *rates* costs for utility service or facilities that may be affected by their visit. As one SCE electric customer who objected to the proposed settlement commented, "it's like

asking the Island of Catalina residents to pay every month for the City of Anaheim's water because some of them might visit Disneyland."

The requirement in Code 454 for notice to ratepayers of proposed rates or charges prior to hearings emphasizes the connection between the rate base and the facilities, commodities, or services affected by the proposed rates. Code section 454 requires "the corporation shall furnish *to its customers affected by the proposed rate change* notice of its application to the commission for approval of the new rate." (*emphasis added*). In addition to the fact that there is no evidence that SCE served that notice to its customers affected by the propose rate change before the hearing, as required by Code § 454, notice of the Catalina Island Water rate change was sent to customers of the Catalina Island Water utility, the customer affected by the proposed rates in the Catalina Island General Rate Case (GRC). The unsubstantiated assertion that some SCE electric customers may occasionally visit Catalina does not justify charging rates to all SCE electric ratepayers for facilities and services for a different rate base, Catalina Island Water customers. Additionally, the Public Utilities Code clearly distinguishes between different classes of utility service. Division 1, Part 2, Chapter 2 addresses water companies, while Division 1, Part 2, Chapter 4.5 addresses electric and gas corporations. There is no evidence or even argument that the Public Utilities Code contemplates allowing utilities to reach outside of the class of customers with service connections for that particular class of utility service. SCE treats the water utility and electric utility separately, as evidenced by the fact that SCE files separate general rate cases for each service, and notices different customers. SCE electric ratepayers were not notified through the SCE electric GRC of proposed costs related to the Catalina Island Water company. Notice of the proposed cost increases to the Catalina Island water rate base was given only to customers with

connections to the water company. The belated attempt to provide notice to SCE electric customers of a settlement that would impose costs on SCE electric customers through *electric rates and bills* for Catalina Island water costs and services, only emphasizes that even SCE has always treated these two sets of ratepayers as separate rate bases, subject to separate GRCs, and separate notices.

There are additional logistical questions that could arise from the attempt to assess rates on SCE electric customers for Catalina Island water costs. SCE did not address the Catalina Island water system and the rates it proposes to impose on SCE electric customers in the GRC Edison filed for SCE electric service subsequent to its filing of the Catalina Island water system GRC. If the Catalina water system were sold, would the electric ratepayers benefit from the sale? Should an evaluation of any transfer or sale of the Catalina Island water system consider the impact on SCE electric ratepayers under Code § 851-854 if they are made to pay for \$8.895 million of the Catalina Island water system through SCE electric rates? These issues highlight some of the concerns raised by this unprecedented and unjustified proposal that runs contrary to statutory ratemaking laws and due process requirements.

B. The Settlement is Inconsistent with the Law Because it Violates Due Process

The Public Utilities Code, the Commission's Rules of Practice and Procedure⁷ and due process standards require that customers affected by a proposed rate increase be given notice and opportunity to participate. Pub. Util. Code § 454 (emphasis added) states:

⁷ Rule 3.2 (d).

- (a) Except as provided in Section 455, a public utility shall not change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the commission and a finding by the commission that the new rate is justified. Whenever any electrical, gas, heat, telephone, water, or sewer system corporation files an application to change any rate, other than a change reflecting and passing through to customers only new costs to the corporation which do not result in changes in revenue allocation, for the services or commodities furnished by it, the corporation shall furnish *to its customers affected by the proposed rate change* notice of its application to the commission for approval of the new rate.

Rules 3.2(d) and 13.1 adopt Pub. Util. Code § 454 (a). Here, the Rule 3.2 (d) compliance filing, filed on December 3, 2010, only noticed *Catalina Island water customers* of a requested increase in water rates. The notice SCE sent only contemplated increased rates for Catalina Island water customers. SCE also sent to local government entities in Los Angeles County (Catalina Island is part of Los Angeles County) and Avalon, the largest city on Catalina Island, as well as to the California Attorney General and Department of General Services. SCE's notices were only published in Catalina local newspapers. The SCE electric ratepayers who would potentially be responsible for the majority of the costs in this application were not give notice that their electric rates may increase at the beginning of the process. The electric customers were given notice at some point later in the proceeding, as evidenced by the informal comments received by the Public Advisor beginning in September, 2013, but no Rule 3.2 compliance filing accompanied this notice. The lack of a Rule 3.2 compliance filing to SCE electric customers is not merely an administrative omission, it evidences a failure to comply with statutory notice requirements and the Commission's rules about

informing customers about proposed rate increases when an application to increase rates is filed so those customers can participate in the Commission's decision-making process. This failure violates due process and the substantial rights of SCE electric ratepayers.

Code § 454(a) specifies the substance and the timing for the required notice or a rate change:

The notice shall state the amount of the proposed rate change expressed in both dollar and percentage terms for the entire rate change as well as for each customer classification, a brief statement of the reasons the change is required or sought, and the mailing, and if available, the email address of the commission to which any customer inquiries may be directed *regarding how to participate in, or receive further notices regarding the date, time, or place of, any hearing on the application,* and the mailing address of the corporation to which any customer inquiries relative to the proposed rate change may be directed.(emphasis added)

Pub. Util. Code § 454(a) requires notice of the date, time and place of any hearing to facilitate the participation of customers that may be subject to a rate increase in those hearings. This notice must be given before such hearings to provide meaningful opportunities to participate and due process rights to the customer. The belated attempt to serve notice on SCE customers nearly two years after the Commission's evidentiary and public participation hearings flips the timeline in a fashion that deprives SCE customers of due process rights to participate in the decision-making process of this Commission, a governmental body with the power to impose rates found to be just and reasonable, supported

by record evidence. It appears that SCE's notice to SCE electric customers was not given until the evidentiary process was complete and the parties had proposed a settlement.

The settling parties would have this Commission bless this two-year delay in notice to SCE electric ratepayers that impaired the substantial rights of SCE electric ratepayers, protected in Rule 13.6. This long-delayed notice effectively denied SCE electric ratepayers the opportunity to become a party, or to influence parties who represent ratepayers, until they were notified of the proposed settlement two years after the hearing. Such a process is anathema to this Commission's procedures, the laws it follows, and to procedural and substantive due process rights. The lack of notice, lack of evidence, and lack of substantive legal support for the theory that one set of ratepayers could be charged for costs associated with a different set of ratepayers, indicate that the Commission need not explore the constitutional implications of such a decision to understand that the proposed settlement is contrary to the statutory and constitutional charge of this Commission, and to the Commission's rules, decisions, procedures, and the California Public Utilities Code.

As discussed above, the only asserted justification for the imposition of rates on SCE electric customers for Catalina Island water facilities and services is direct oral testimony regarding some information that had been collected and reported by the Catalina Chamber of Commerce regarding visitors to the island. The full accounting of that information, or any report or records upon which that testimony was based, was never submitted to the record or made available to parties. Only active parties during evidentiary hearings had the opportunity to litigate this issue that became the evidentiary backbone and sole justification of the settlement proposal. Electric customers were deprived of the opportunity to

object to this testimony as hearsay, request more foundation, cross-examine the witness regarding this data, or request that the full report to which he alluded be submitted into the record for further analysis. Neither TURN nor ORA cross-examined this witness on this issue on behalf of the electric ratepayers. The absence of cross-examination by TURN and ORA does not waive the substantial rights of SCE electric ratepayers who were not given notice of the proposed rate increases before the Commission's evidentiary hearing. The attempt to impose rates on SCE electric ratepayers after the hearings were held and after the water system improvements were installed also smacks of retroactive ratemaking.

It is a well-established tenet of the Commission that ratemaking is done on a prospective basis. The Commission's practice is not to authorize increased utility rates to account for previously incurred expenses, unless, before the utility incurs those expenses, the Commission has authorized the utility to book those expenses into a memorandum or balancing account for possible future recovery in [*32] rates. This practice is consistent with the rule against retroactive ratemaking.

Decision (D.) 92-03-094 (1992) 43 Cal. P.U.C. 2d 596, 600 (Emphasis in original).

The purpose of Code § 454 is to provide notice and opportunity to comment not only on rates but on proposals to construct facilities or incur costs before steel is sunk in the ground and funds are spent. Notice after construction to an entirely new set of ratepayers is a new twist on retroactive ratemaking.

While Code § 701 gives the Commission the authority to "do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction," that does not mean the Commission can ignore statutory due process obligations, its own rules and procedures, or act without sufficient evidence to support its

decision. In this case, the customers bearing the greatest burden of this rate increase, the SCE electric customers, were deprived of their substantial due process rights by not having notice and opportunity to participate in the full proceeding, including evidentiary hearings. This is a process and outcome that neither Pub. Util. Code § 701 nor any other statute or the California constitution permits.

C. The Settlement is Inconsistent with the Law Because Cross-Subsidization Between Different Classes of Utility Service is Contrary to Commission Practice

In the limited instances where the Commission has allowed some cross-subsidization, it has been limited to those *within* a class of utility service. No public utilities code specifically addresses “cross-subsidization” *between* ratepayers of different types of utilities.

When the Commission has approved some type of cross-subsidization *within* a class of utility service, it has discussed with some particularity the question of fairness to the ratepayers who are giving the subsidy. The Commission has issued numerous decisions in which it has indicated, without much discussion, that it disfavors cross subsidization.⁸ Here, there is no discussion or reference to the record as to whether this settlement is fair to SCE electric ratepayers. Absent this threshold finding, this settlement is not consistent with Commission’s decisions or practice.

⁸ See, e.g., D.05-09-004, 2005 Cal. PUC LEXIS 356 (denying Cal-Am’s request to consolidate its Monterey and Felton water districts, in part because Monterey ratepayers would have to subsidize Felton ratepayers) and D.87666, 82 CPUC 362 (finding no justification for allowing telco to implement extended area service in single exchange when to do so would require large subsidy from ratepayers in other exchanges).

While the Commission is not bound by its own precedent, it is obligated to follow applicable statutes and Pub. Util. Code § 451 requires any rates to be just and reasonable for the ratepayers on which the rates are imposed. The absence of analysis of the fairness of the imposition of rates on SCE electric customers, coupled with the due process issues, indicates the proposed rates to be added to SCE electric customer bills for Catalina Island water facilities and services are not just and reasonable or consistent with the law

Additionally, the proposed cross-subsidization here is unprecedented and contrary to law. The settling parties propose to shift cost and rates from one set of ratepayers to an unrelated set of ratepayers for a different utility, an unprecedented proposal unfounded in law. While settlements do not have precedential value, this wide variation from long-standing Commission practice would be a worrisome move towards future inter-utility cross-subsidization. Although these two sets of ratepayers have a common parent, SCE, they have very different rate bases and ratepayers. In *In re So. Cal. Water Co.*, D.00-06-075, 2000 Cal. PUC LEXIS 1114, the Commission wrote:

“The question is whether the subsidization in question constitutes undue discrimination in violation of Pub. Util. Code §§ 451 and 453 which, respectively, prohibit unjust and unreasonable rates and undue discrimination among customers.” 2000 Cal. PUC LEXIS 1114, at *37-38.

As discussed above, the record does not show that the rates to electric customers are just and reasonable under Section 451. As DRA (now ORA) stated in prepared testimony,⁹

⁹ Exhibit DRA-1 at 4.

“Not only is SCE’s alternative proposal unfair to the electric customers who gain no benefit from such a proposed subsidy, the proposal delinks costs from rates. In many cases, DRA has argued against subsidies where other water customers (not in the district) should pay the cost of providing service. DRA has even opposed water subsidies within a multi-district water company...While the Commission has granted limited forms of subsidies to mitigate rate shock...SCE’s proposal goes well beyond that allowance, even if it is only for a year. The level of subsidies SCE proposes masks the true cost of service and the Commission should reject its proposal.”

There have been and will be situations where some degree of cross-subsidization within a rate base or associated with an acquisition into a rate base is found to be reasonable. This Application does not propose to transfer a rate base or the facilities, assets or services associated with that rate base to create a larger rate base over which costs could be spread. The record in this Application does not support a finding that the attempt to impose rates on SCE electric ratepayers to subsidize costs for the Catalina Island Water System it is just or reasonable based on the facts submitted into evidence, the holes in the evidentiary record, the due process, and substantive legal issues associated with this extraordinary proposal. As discussed, the \$8.895 million rate to be imposed on SCE electric ratepayers for the Catalina water system is unjust and unreasonable, based on the record.

1.3. The Settlement is Not in the Public Interest

The Commission appreciates that, given the small number of Catalina residents and commercial operations, the parties sought a creative solution to ensure that residents and visitors have access to an affordable, safe and reliable water supply. In general, Commission policy allows support for settlements that are in the public interest if they are fair and reasonable in light of the whole

record. This policy supports many worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results. In this instance, however, we cannot find the settlement to be fair and reasonable because a major constituency affected by the settlement was not given the opportunity to participate in the proceeding prior to the filing of the settlement, and was not separately represented in the discussions resulting in the settlement.

The settling parties represent a broad spectrum of interests, but there is no evidence on the record that any party, including TURN or ORA, specifically advocated for the SCE electric ratepayers in this proceeding. This finding is particularly necessary in this situation, where the interests of two unrelated ratepayer groups, water customers and electric customers, were at cross purposes. Under the terms of this proposed settlement, any benefit to one group of customers would necessarily burden the other group of customers. It was extraordinary that SCE and Catalina Island customers would even think of asking only SCE electric customers to contribute to their water system costs, and contribute more than Catalina customers. This proposal may have been rooted in the common parent for both sets of customers. The proposal ignores their different rate bases, different Applications and GRCs, different notices, and the distinct purposes of each separate utility rate bases and services.

For this reason, despite the fact that all active parties to this proceeding support the proposed settlement agreement, we cannot find that all parties affected by this settlement were represented in the settlement's creation. As a result, this settlement benefits Catalina Island water customers and visitors to the Island, but does so by shifting \$8.895 million dollars in rates to a group of largely unrelated customers, the vast majority of whom have no nexus or other

identifiable benefit related to their increased electric rates. This outcome is inequitable and contrary to the public interest.

SCE's electric customers were apparently provided notice of the settlement in late 2013, but were not given the opportunity to formally participate earlier in the proceeding. It should be noted that the Commission can only rely on the informal comments of SCE electric ratepayers because these customers were not given notice and opportunity to participate in any earlier, formal phase of the proceeding. Sixteen informal comments were received via e-mail by the Public Advisors Office, all of them strongly opposing the settlement. As electric customers were not given the opportunity to participate earlier, the Commission cannot ascertain whether those customers would have formally participated and if so, how many and to what extent. It is telling however that every comment received opposed the rate increase to electric customers. As one customer said "I know it would be easy just to collect the monies from mainland SCE ratepayers, but it is inequitable to charge ALL of them for the relatively small percentage who visit Catalina." Many commenters state that they have never been to Catalina, or have only been infrequently. Many suggest that the cost instead be passed on directly to visitors.

2. Next Steps

Because we find that the \$8.895 million rate charge on SCE electric customers is not reasonable based on the record, consistent with the law, or in the public interest, SCE may not recover these costs from its electric customers. Instead, SCE is directed to file a Tier 3 Advice Letter to establish a Memorandum Account to track the cost of the contemplated upgrades, not to exceed the \$8.895 million cost estimate for those upgrades. The parties are directed to negotiate to find alternatives to recover the \$8.895 million other than attempting

to assess that \$8.895 million through rates to be charged to SCE ratepayers or any other set of ratepayers except Catalina Island ratepayers. The settling parties should consider both alternatives that could be fully administered within the Commission's jurisdiction and those that the parties would have to administer outside of our jurisdiction. Examples of alternatives could include a surcharge on ferry tickets, plane, helicopter, or other visitors, or an agreement to impose a landing fee on visitors to the Island, based on the contention that visitors benefit from the water system on Catalina. If within six months of this Decision becoming final the parties cannot agree to a funding mechanism, then Catalina Island water ratepayers will pay \$3 million, collectable over 3 years, and SCE shareholders will pay the remaining balance, \$5.895 million plus interest, as a write off. If, within 6 months, the parties do agree to a funding mechanism, this proposal should be filed in a second Phase of this proceeding, limited to this issue. As long as the parties believe they can have SCE electric ratepayers pay this \$8.895 million bill, they have little incentive to consider alternatives including those outside of Commission jurisdiction to administer.

As TURN said "Edison shareholders have a closer nexus to Catalina Island water service than Edison's electric ratepayers. If anyone is going to be volunteered to absorb some of the impact of the increased costs of providing water service on Catalina Island, it should be the utility's shareholders...after all, it was the shareholders who hired the management that allowed Catalina Island water service to become unaffordable."¹⁰.

¹⁰ Exhibit TURN-01 at 11.

3. Procedural Background

On November 15, 2010, SCE filed its Application to Increase Rates for Water Service (Application). On December 17, 2010, ORA protested the application. On December 28, 2010, Protestants protested the Application.

A prehearing conference was noticed and held on January 14, 2011 and an Assigned Commissioner's Scoping Memo and Ruling was issued on March 16, 2011. The scoping memo determined the issues, set a procedural schedule and determined the category as ratesetting and the need for hearing. On April 22, 2011, TURN filed a motion to become a party. On April 27, 2011, a public participation hearing was held on Santa Catalina Island.

ORA served intervenor testimony on May 16, 2011. Protestants and TURN served intervenor testimony on May 23, 2011. SCE served rebuttal testimony on June 13, 2011. The parties filed concurrent opening briefs on November 1, 2011 and concurrent reply briefs on November 18, 2011.

On December 12, 2011, the parties filed a joint motion for approval of rate design issues addressing all rate design issues except Domestic Employee Rates and annual revisions in SCE's water sales.

On May 23, 2012 then-assigned Administrative Law Judge (ALJ) Robert Barnett issued a Proposed Decision (PD). On May 14, 2012, the parties filed concurrent opening comments on the PD and on May 21, 2012, parties filed concurrent reply comments on the PD.

On June 13, 2012, ALJ Barnett released a revised PD. On June 15, 2012, Commissioner Sandoval convened an all-party meeting on Santa Catalina Island to consider the issues. At its June 21, 2012 meeting, the Commission discussed and considered the revised PD, but did not vote on it. Instead, the Commission

urged the parties to engage in settlement discussions on the remaining disputed issues.

On August 1, 2012, SCE and Protestants filed a joint motion to set aside submission for 60 days to engage in settlement discussions. On August 16, 2012, ALJ Barnett granted the motion. On August 10, 2012, President Peevey, the assigned Commissioner, issued an order amending the scoping memo to extend the deadline for resolution of the case to December 28, 2012. On December 13, 2012, President Peevey issued an extension order extending the deadline for resolution to June 28, 2013. On June 28, 2013, a third revised scoping memo was issued.

On February 12, 2014, ALJ Linda Rochester was assigned to the proceeding.

4. Comments on Alternate Proposed Decision

The alternate proposed decision of Commissioner Sandoval in this matter 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 Commissioner's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Linda A. Rochester is the assigned ALJ in this proceeding.

Findings of Fact

1. On August 13, 2013, SCE, ORA, TURN and Protestants filed a motion to adopt an all-party settlement agreement on revenue requirement issues, rate of return, rate design, memorandum accounts and compliance with the Uniform System of Accounts.

2. Parties negotiated the all-party settlement and request that the Commission waive the Rule 12.1(a) requirement that settlements be filed within 30 days of the last day of evidentiary hearing.

3. The record for the proposed settlement is composed of the application, the testimony of the parties and all other filings.

Conclusions of Law

1. Applicant alone bears the burden of proof to show that its requests are reasonable.

2. Rule 12.1(d) provides that the Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

3. The proposed settlement is not reasonable in light of the record because it fails to cite to a nexus between the Catalina water system and the SCE electric ratepayer rate increase of \$8.895 million.

4. The proposed settlement is inconsistent with law because it fails to examine whether the rate increase is fair to SCE electric ratepayers, violates due process, and is inconsistent with Commission policy and precedent. The proposed settlement constitutes retroactive ratemaking on SCE electric ratepayers who were not given notice of the Application in a timely manner to allow them to participate in this proceeding or become a party.

5. The proposed settlement is not in the public interest because it fails to show that any settling party advocated specifically on behalf of SCE electric ratepayers or ensure that rates are tied to service.

6. The settlement should be rejected.

7. All outstanding motions are denied.

O R D E R**IT IS ORDERED** that:

1. The joint motion of Southern California Edison Company, the Office of Ratepayer Advocates, The Utility Reform Network and Protestants that include the City of Avalon, the Chamber of Commerce, Catalina Island's principal land owners and condominium associations, and campgrounds, to adopt the August 16, 2013 Settlement is denied.

2. Within 30 days of the effective date of this decision, Southern California Edison Company (SCE) is authorized to file a Tier 2 advice letter to amortize the balances in the Purchased Power Expenses Memorandum Account and the Catalina California Alternatives Rates for Energy Memorandum Account through water rates over a one-year period. SCE's advice letter will request cost recovery of the expenses recorded in the above named memorandum accounts from their inception through the date of a final decision in this application.

3. Within 30 days of the effective date of this decision, Southern California Edison Company (SCE) shall file a Tier 3 Advice Letter to open a Memorandum Account for the \$8.895 million that cannot be recovered by electric ratepayers. SCE is authorized to incur interest at the 90-day commercial paper rate.

4. Within 180 days of the effective date of this decision, the settling parties shall submit to the Commission a new filing, limited to this issue, with an alternate means of funding the \$8.895 million costs to the water system, other than imposing rates or charges on Southern California Edison Company electric ratepayers or rates on any rate base other than Catalina Island water customers. The parties may contemplate funding mechanisms they or a party they designate would administer such as a landing fee on visitors to support the Catalina Island water costs. This filing will be the entirety of Phase two of this proceeding,

ALTERNATE DECISION

which will be limited to the issue of an alternate funding mechanism for recovery of the \$8.895 million, plus interest, from the memorandum account.

5. If the parties do not agree on an alternate funding mechanism within 180 days of the effective date of this decision, Southern California Edison Company shall file a Tier 2 Advice Letter reflecting a \$3 million increase to Catalina Water System rate base and a shareholder disallowance of the remaining Memorandum Account balance.

6. Application 10-11-009 remains open for Phase 2.

This order is effective today.

Dated _____, at San Francisco, California