



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

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

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

**JOINT OPENING COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY  
(U 338-E) AND SAN DIEGO GAS AND ELECTRIC COMPANY (U 902 E) ON THE  
PROPOSED DECISION AND ALTERNATE PROPOSED DECISION AUTHORIZING  
ESTABLISHMENT OF WILDFIRE EXPENSE MEMORANDUM ACCOUNT**

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**Table of Contents**

<b><u>Section</u></b>	<b><u>Title</u></b>	<b><u>Page</u></b>
I.	INTRODUCTION AND RECOMMENDATION .....	1
II.	DISCUSSION.....	2
A.	The APD Correctly Determines That It Is Appropriate to Make the WEMA Effective as of the Date PG&E Filed Its Application .....	2
B.	The PD Commits Error by Ignoring the Record and Declining to Grant PG&E’s Requested Effective Date for a WEMA.....	4
C.	Failure to Adopt the APD Poses Serious and Unwarranted Risk to the Utilities in the Wake of the 2017 Wildfires and the Further Contraction of the Wildfire Insurance Market for California Utilities.....	6
III.	CONCLUSION.....	7

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**Authorities**

	<b><u>Page</u></b>
<b>Statutes</b>	
Cal. Pub. Util. Code § 1731(a).....	4
<b>CPUC Decisions</b>	
D.09-06-053 .....	3, 4
D.18-01-014 .....	4
<b>CPUC Resolutions</b>	
Resolution E-3761 .....	4
<b>CPUC Rules of Practice and Procedure</b>	
Rule 14.3 .....	1

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Pursuant to Rule 14.3 of the California Public Utilities Commission's (Commission or CPUC) Rules of Practice and Procedure, Southern California Edison Company (SCE) and San Diego Gas and Electric Company (SDG&E) (together, the Joint Utilities) submit their joint opening comments on the Proposed Decision of the assigned Administrative Law Judge (ALJ) and the Alternate Proposed Decision (APD) of the assigned Commissioner, both dated May 16, 2018.

**I. INTRODUCTION AND RECOMMENDATION**<sup>1</sup>

The key findings are not disputed in this proceeding. Both the APD and PD recognize that establishing an ongoing Wildfire Expense Memorandum Account (WEMA) is appropriate given the current state of law on inverse condemnation and its effect on utilities, and the state's acknowledgement of a significant increase in the risk of fire events. They also recognize that Pacific Gas and Electric Company (PG&E) already is incurring wildfire liability-related costs for

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<sup>1</sup> As discussed herein, the Joint Utilities do not propose changes to either the APD or PD, and therefore did not include an index of recommended changes under Rule 14.3. The Joint Utilities confirmed with the Commission's docket office that it is appropriate to summarize our recommendation (to adopt the APD in its entirety) in the introduction.

at least one wildfire event, the Butte Fire, and faces the prospect of incurring substantial costs for later wildfire events, and that such costs have not been included in general rate case forecasts. And, importantly, they agree that establishing an ongoing memorandum account will have no detrimental impact on customers, and will actually save costs by avoiding the need to process multiple, individual WEMAs for subsequent fire events.

The Joint Utilities strongly encourage the Commission to adopt the APD rather than the PD, however, because the APD follows these findings to the only logical and equitable determination on a central issue in this proceeding: Making the WEMA effective as of the date PG&E filed its application (July 26, 2017), as opposed to the much later date of a final Commission decision approving the account. The APD correctly concludes this relief is warranted given that PG&E already is incurring costs following the Butte Fire and the 2017 wildfires and should not be unfairly penalized by having to absorb these costs. The PD, by contrast, would deny PG&E's request based on a general "reluctance" to retroactively establish an effective date for a memorandum account. The PD implicitly concedes that the Commission has the legal authority to adopt an earlier effective date, but fails to explain or justify its "reluctance" to take this step. Given the PD's conclusion that an ongoing WEMA is necessary to record the costs being incurred by PG&E, a decision declining to make the WEMA effective as of the filing date would be unreasonable and inequitable.

## **II. DISCUSSION**

### **A. The APD Correctly Determines That It Is Appropriate to Make the WEMA Effective as of the Date PG&E Filed Its Application**

The Joint Utilities strongly encourage the Commission to adopt the APD, which determines that it is appropriate to make the WEMA effective as of the date PG&E filed its application: July 26, 2017. The APD provides strong, reasoned support for its determination grounded in both the record and Commission precedent. Importantly, the APD correctly

concludes that failing to grant this relief would unfairly penalize the utility for pursuing an ongoing WEMA that provides a more efficient means of recording wildfire liability-related costs. This outcome should be avoided considering the nature of the relief, *i.e.*, a memorandum account solely intended to maintain shareholder and customer indifference pending the Commission’s eventual review in a cost recovery proceeding.

The APD further recognizes that it is illogical to make the WEMA’s effective date dependent on the date that the Commission issues a final decision approving the account. The APD’s observation that “numerous factors outside [a] proceeding may impact” the date of final approval<sup>2</sup> is true as a practical matter, and illustrated by the record. Although PG&E filed its application in late July 2017, a prehearing conference was not held until December 8, 2017 and a scoping memo was not issued until January 11, 2018—a prolonged timeline compared to comparable ratesetting proceedings. But once the scoping memo was finally issued, the parties were able to brief all issues over an approximately six-week period, and without the need for evidentiary hearings. This relatively short briefing schedule suggests that the nature of PG&E’s request was not entirely (if at all) responsible for this proceeding’s extended duration.

The APD’s determination is also supported by Commission precedent and applicable law. This includes Decision (D.) 09-06-053, which the APD cites for the proposition that a memorandum account may be made effective prior to the Commission decision authorizing it “where the account is established not as a part of general ratemaking, but rather to account for unanticipated costs” like the costs at issue here.<sup>3</sup> And, although not cited in the APD, other Commission decisions, as well as the California Public Utilities Code, provide support for the APD’s determination. For example, in Resolution E-3761, the Commission approved SCE’s request to establish a Risk Management Memorandum Account (RMMA) effective over a month

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<sup>2</sup> APD, p. 12.

<sup>3</sup> APD, p.12 citing D.09-06-053, p. 9.

before the Resolution’s issuance.<sup>4</sup> And California Public Utilities Code Section 1731(a) expressly provides that the Commission “may set the effective date of an order or decision prior to the date of issuance.”<sup>5</sup> The Commission thus clearly has authority to grant this relief, and it should do so here as this reflects sound regulatory policy needed during our critical time in our state.

**B. The PD Commits Error by Ignoring the Record and Declining to Grant PG&E’s Requested Effective Date for a WEMA**

The PD commits error by rejecting PG&E’s request to make its WEMA effective as of the date it filed its application. This conclusion is not just unsupported by the record—it is contradicted by the PD’s own findings. The PD agrees that PG&E’s proposal to create an ongoing WEMA, while contested, nonetheless has merit and is warranted given courts’ application of inverse condemnation to utilities and the significant increase in fire risk throughout the state. The PD also agrees that establishing an ongoing WEMA is beneficial not only for the utility, but also for Commission staff and customers, as it avoids the need to process multiple, individual WEMAs for future wildfire events and will save costs.

Given these conclusions, there is simply no reason for the PD to deny PG&E an opportunity to record incremental wildfire liability-related costs in the WEMA incurred during this proceeding. No party claims that granting this relief will harm customers, as a memorandum

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<sup>4</sup> In Resolution E-3761, the Commission reasoned that deeming the requested RMMA effective as of October 5, 2001 (the date upon which the settlement to which it referred was approved in federal court) instead of November 29, 2001 (the date of the Commission’s decision) was appropriate, in part because creation of the RMMA would not “increase any rate or charge, cause the withdrawal of service, or conflict with any other schedule or rule.” *Id.*, p. 3 (Nov. 29, 2001). Similarly, in D.18-01-014, the Commission approved a settlement agreement between applicant Suburban Water Systems and ORA establishing an Asbestos Litigation Memorandum Account with an effective date as of the applicant’s filing (January 6, 2017), finding this relief to be “reasonable and consistent with the law.” *Id.*, Ordering Paragraph No. 8.

<sup>5</sup> See e.g., Cal. Pub. Util. Code Section 1731(a) (“The commission shall set an effective date when issuing an order or decision. The commission may set the effective date of an order or decision before the date of issuance of the order or decision.”)

account is used only to record costs. But the record shows that PG&E faces the potential for substantial harm if its request is denied: PG&E’s Reply Brief explains that, as of the fourth quarter of 2017, it was incurring significant uninsured claims costs and wildfire insurance costs.<sup>6</sup> This is reflected in the PD’s own proposed Findings of Fact Nos. 1-4, which state that PG&E has incurred costs related to the Butte Fire and has also incurred (or is likely to incur) costs related to later wildfire events, and these costs may be “substantial” and “not recoverable in a general rate case or otherwise.”<sup>7</sup>

The PD fails to address the significant financial implications of its proposed ruling. Instead, the PD simply states that it is “reluctant to approve the retroactive recording of costs to a memorandum account.”<sup>8</sup> The PD’s hesitation is unwarranted given that Commission precedent and law afford the Commission discretion to set an earlier effective date. It is also inequitable considering the agreed-upon facts in this proceeding, and, if adopted, is equal to imposing a preemptive disallowance or financial penalty on the utility by forcing it to absorb potentially substantial wildfire liability costs—solely due to the lengthy nature of the regulatory review process.

The PD tries to justify this harsh outcome by suggesting that PG&E “may” have avoided a contested proceeding by limiting its WEMA to the Butte Fire;<sup>9</sup> however, the PD concludes that PG&E’s request to establish an ongoing WEMA is justified, and it is therefore particularly inequitable to punish PG&E for making that proposal. Had PG&E proposed a WEMA limited to the Butte Fire, the record shows that PG&E likely would have needed to file another WEMA shortly afterward to record costs related to the 2017 wildfires and PG&E’s need to replenish its wildfire insurance. This, of course, would have promulgated the very inefficiencies that the PD credits PG&E with avoiding via its contested proposal, which, again, the PD agrees is

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<sup>6</sup> PG&E Reply Brief, p. 13.

<sup>7</sup> PD, p. 13, Findings of Fact (FOF) Nos. 1-4.

<sup>8</sup> PD, pp. 11-12.

<sup>9</sup> PD, p. 11, fn. 5 (“A WEMA limited to the Butte Fire costs may have been less contested, and may have been able to be addressed on a more limited basis.”)

meritorious and should be approved over The Utility Reform Network’s and Office of Ratepayer Advocates’ objections. The Commission should reject the PD’s unfair “second guessing” of PG&E’s proposal, which effectively puts the utility in a “no win” situation regarding its filing options.

**C. Failure to Adopt the APD Poses Serious and Unwarranted Risk to the Utilities in the Wake of the 2017 Wildfires and the Further Contraction of the Wildfire Insurance Market for California Utilities**

Beyond affecting PG&E, the Commission’s final decision in this proceeding has potential implications for the Joint Utilities, and for SCE in particular. SCE has its own WEMA application pending before the Commission, and, like PG&E, is requesting to make the account effective as of SCE’s filing date: April 3, 2018.<sup>10</sup> For reasons similar to PG&E’s, it is imperative that SCE obtain this relief, as it is securing additional wildfire insurance for the 2018-2019 period and faces substantial costs in excess of amounts currently authorized in rates or forecast in SCE’s 2018 General Rate Case proceeding, A.16-09-001. Beyond insurance, SCE also faces a real possibility of incurring substantial wildfire liability costs stemming from the December 2017 wildfires. This is detailed in SCE’s application and supporting filings in A.18-04-011, and provides added justification for the Commission’s adoption of the APD rather than the PD. Commissioners have recognized the serious implications posed by the 2017 wildfires—sound regulatory policy dictates that the Commission avoid establishing a precedent that unfairly penalizes a utility by forcing it to absorb potentially substantial wildfire-related costs without good cause.

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<sup>10</sup> See *Application of Southern California Edison Company (U 338-E) to Establish the Wildfire Expense Memorandum Account*, Application (A.) 18-04-001.

**III. CONCLUSION**

For the reasons stated above, the Commission should adopt the APD over the PD, and make PG&E's WEMA effective as of the date PG&E filed its application: July 26, 2017.

Respectfully submitted,

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