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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338-E) for Authority to Establish Its Authorized Cost of Capital for Utility Operations for 2022 and Reset the Annual Cost of Capital Adjustment Mechanism	Application 21-08-013
And Related Matters.	Application 21-08-014 Application 21-08-015 [Consolidated]

WILD TREE FOUNDATION REPLY BRIEF

April Rose Maurath Sommer
Executive and Legal Director

Wild Tree Foundation
1547 Palos Verdes Mall #196
Walnut Creek, CA 94597
April@WildTree.org
(925) 310-6070

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In accordance with Rule 13.11 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, Wild Tree Foundation ("Wild Tree") submits the following reply brief in the above-captioned consolidated applications of the Southern California Edison Company ("SCE"), San Diego Gas & Electric Company ("SDG&E") and Pacific Gas and Electric Company ("PG&E") (collectively the "Utilities"), all seeking suspension of the cost of capital mechanism ("CCM") adjustment for 2022 in off-cycle applications claimed to be necessary as a result of the COVID-19 Pandemic ("Applications").

INTRODUCTION

None of the Utilities have met the three-pronged test[1] required for an off-cycle application exception to the CCM schedule and all the Utilities' Applications should be denied and the 2022 CCM be reinstated with the authorized adjustment. The Utilities seek to divert attention from their failures, collectively and individually, to meet their burden of proof by attacking the CCM itself as "broken." The Utilities would have the Commission believe that it is tasked in this proceeding with re-evaluating the CCM because it isn't working any longer. This is not a proceeding to re-evaluate the CCM and the Utilities claims that the CCM is broken is based entirely upon made-up criteria contrary to D.08-05-035, D.13-03-015, and D.19-12-056 ("CCM Decisions"). The fact that the Utilities don't like the results of the lawful and reasonable operation of the CCM does not mean anything is broken. The CCM has been working just fine as a mechanism designed to decrease workload by providing for less litigated costs of capital applications by using automatic adjustment based on actual data from a measurement period instead of forecasts of an unknown and unknowable future.

The only problems the Commission and ratepayers are facing are those created by the Utilities' frivolous Applications that they do not have the evidence to support. This blatant attempt by the Utilities to short-circuit the lawful and reasonable operation of the CCM has caused the Commission and ratepayers to spend significant time that should have been allocated elsewhere in litigating this complex issue of first impression. We should not be here at all. During the 2022 measurement period, interest rates dropped below the triggering level. The

[1] D.08-05-035 at pp. 16, 19 ("While streamlining the cost of capital process, the utilities have a right to file a cost of capital application outside of the CCM process upon an extraordinary or catastrophic event that materially impacts their respective cost of capital and/or capital structure and affects them differently than the overall financial markets.")

triggered, automatic decrease in ROEs was the appropriate and approved result of the CCM. The Utilities should have filed the required October 15 Advice Letters and rates adjusted January 31, 2022. Instead, the Utilities violated the Commission order to file the Advice Letters and forced the Commission and ratepayers to litigate three entirely superfluous applications. The Utilities now hypocritically rely upon workload reduction as a reason to grant them all their wishes in this phase and not hold a second phase.

The Utilities have provided no credible evidence that they suffered any type of financial catastrophe as a result of the Pandemic that would warrant any off-cycle applications. The Utilities direct presentations are of poor quality, rife with mistakes and typos, and based upon flawed analytical techniques that distort financial reality. The Utilities arguments are all based upon made-up criteria different than the requirements established in the CCM Decisions. The Utilities claim that their arguments are undisputed when in fact the Applications and all of the Utilities' arguments have been vigorously disputed and opposed by all intervenors in this case. In addition, PG&E relies completely upon rebuttal testimony as support for a number of its arguments on issues that it could and should have addressed in direct testimony. SCE and SDG&E then rely upon PG&E's rebuttal testimony for their arguments. The Utilities' direct showings do not provide the clear and convincing evidence required for Commission approval.

At this phase in this proceeding, the only question to be answered is whether the Utilities have demonstrated that off-cycle applications are permitted. Ultimately, the Utilities seek to reverse the CCM automatic adjustment for 2022 for the purpose of enriching shareholders to the detriment of ratepayers more than $400 million. This can only be done through a successful petition to rescind, alter, or amend the decisions that established the CCM and applied it to 2022. The Utilities have not followed the required procedure of filing a petition to modify any

Commission decisions and parties have not been provided notice and opportunity to be heard in this or any other proceeding on the issue of whether the CCM adjustment should be permanently revoked for 2022 and if so, what the appropriate ROEs for the Utilities should be.

This proceeding should end here with a denial of all Applications with prejudice. If, despite the substantial record evidence to the contrary and the Utilities' violation of the CCM Decisions, the Commission determines that the Utilities have demonstrated that they suffered a financial catastrophe as a result of the COVID-19 Pandemic and can file off-cycle applications, a second phase must be opened to determine whether the 2022 CCM adjustment should be permanently revoked and, if so, what the appropriate ROEs should be for 2022.

BACKGROUND

I. BURDEN OF PROOF

This proceeding has been categorized as ratemaking and involves an increase of more than $400 million in rates for the Utilities' customers. Public Utilities Code Section 454 requires utilities to demonstrate to the Commission that any proposed new rates are justified. The burden is on the utility to establish the reasonableness of proposed new rates. "To meet the burden of presenting clear and convincing evidence of the need for an increase the applicant must produce evidence having the greatest probative value."[2]

It is a fundamental principle of public utility regulation that "the burden rests heavily upon a utility to prove it is entitled to rate relief and not upon the Commission, its staff or any

[2] D.00-02-046 at p. 38 quoting from D.90462 at pp. 98-99.

interested party . . . to prove the contrary."[3] The burden of proof is on the utility applicant to establish the reasonableness of ratemaking and the Commission "expect[s] an affirmative showing by each utility with percipient witnesses in support of all elements of its application."[4] A utility cannot wait until rebuttal testimony to present salient information supporting its rate request; the utility's "direct showing must provide the clear and convincing evidence."[5] The Commission "reserve[s] the right to deny consideration of any "rebuttal" evidence that could have and should have been included with the utility's direct showing, even where, as here, a simple mistake of omission has been made by the utility."[6]

ARGUMENT

I. THERE ARE NO EXTRAORDINARY CIRCUMSTANCES THAT WARRANT A DEPARTURE FROM THE CCM FOR 2022 (SCOPING ISSUE 1)

The evidence demonstrates that the Utilities have not fulfilled any of the three requirements for an off-cycle cost of capital application: 1.) the Utilities did not suffer financial catastrophes; 2.) the Utilities' costs of capital have not been materially impacted; and 3.) the Utilities have not been affected differently than the overall financial markets.[7] The Utilities' Opening Briefs add nothing to the Utilities' presentations in this case. The Utilities have failed to make an "affirmative showing by each utility with percipient witnesses in support of all

[3] D.83-05-036.
[4] *Ibid.*
[5] D.05-08-041 at pp. 7-8 *citing* D.04-03-034.
[6] D.04-07-022 at p. 158.
[7] D.08-05-035 at pp. 16, 19.

elements of its application."[8] The Utilities did not provide credible or reliable testimony from percipient witnesses. The Utility presentations were neither clear nor convincing. The Utility arguments are based entirely upon witness opinions that rely upon flawed analytical techniques that distort financial reality and upon criteria made up in this proceeding by the Utilities, that is different than and contrary to the requirements in D.08-05-035 and the other CCM Decisions. Furthermore, the Utilities rely upon information that they claim is salient and which supports their rate requests that was presented for the first time in rebuttal testimony. Arguments based upon such rebuttal testimony should be disregarded as unfair.[9] The Utilities have failed their burden of proof that they have a right to file cost of capital applications outside of the CCM process. The Applications should, therefore, be denied.

A. Precedent Demonstrates that CCM Suspension Would be Unreasonable in this Case

The Utilities claim that "suspension of the CCM's FAM in extraordinary circumstances is consistent with prior commission decisions"[10] is based upon a single previous decision, D.09-10-016. The Utilities' reliance in this case upon a Commission decision approving a joint petition to modify D.08-05-035[11] is ironic. This is not a proceeding to evaluate a petition for modification, the required procedural mechanism to request to rescind, alter, or amend a past decision, despite the fact that the Utilities seek to rescind, alter, or amend the CCM Decisions, including D.08-05-035.

[8] D.83-05-036.
[9] D.04-07-022 at p. 158.
[10] *See* SCE Opening Brief at p. 5.
[11] *See* PG&E Opening Brief at p. 11.

Everything about the Applications is different than the petition for modification that was granted in D.09-10-016. The entire discussion in D.09-10-016 is as follows:

> This is an uncontested matter. Approval of the petitions would benefit the ratepayers and shareholders of SCE and PG&E. Ratepayers would benefit by avoidance of revenue requirement increases that would have occurred in 2010 due to a triggering of the utilities' CCMs. Shareholders would benefit by postponing the requirement for full cost of capital applications to April 2012 from 2010. All parties, including Commission staff would benefit by a reduction of workload requirements and regulatory costs. The unopposed petitions for modification of D.08-05-035 are reasonable and should be adopted.[12]

In contrast to that proceeding, the current proceeding is a contested matter with *all* non-Utility parties opposing the Applications and *no* non-Utility parties supporting the Applications. Approval of the Applications would harm ratepayers and would unjustly enrich shareholders. Ratepayers would be harmed by the reversal of revenue requirement decreases that are approved to automatically occur in 2022 due to a triggering of the Utilities' CCM. No one benefits from the additional, extraneous applications the Utilities filed. All parties, including Commission staff, have been harmed by the unnecessary and unproductive increase of workload requirements and regulatory costs caused by the Utilities.

In addition, the Commission noted in D.09-10-016 that petitioners had stated in their petitions that "in the event their joint petitions are not granted by the end of 2009, SCE and PG&E will file October 15, 2009 advice letters for their 2010 cost of capital increases. SCE and PG&E will withdraw their cost of capital advice letters if the joint petitions are granted before December 31, 2009."[13] So, when the CCM adjustment benefits utilities, the Utilities would follow the law and file the October 15 Advice Letters even when a petition for modification is pending, but when the adjustment benefits ratepayers, the Utilities willingly and knowingly

[12] D.09-10-016 at p 3.
[13] D.09-10-016 at pp. 3-4.

violated the law to prevent the CCM adjustment by failing to file the Advice Letters even though they have not (and still have not) petitioned for modification of the CCM Decisions.

B. Intervenors Dispute And Challenge All Of The Utilities' Claims

In the Utilities' opening briefs, the Utilities assert that many of their positions are undisputed. For example, PG&E states, "It is also undisputed that beta for utilities in general remains higher today than before the pandemic, even when measured using periods that exclude the initial months of the pandemic."[14] Wild Tree absolutely disputes this claim as laid out in detail in its Opening Brief. SDG&E states, "intervenors largely acknowledge that the pandemic constituted an extraordinary event that differentially affected utilities."[15] Wild Tree has made no such acknowledgment and no non-Utility party in this proceeding recognizes any such thing. If any of the parties agreed that "the Pandemic constituted an extraordinary event that differentially affected utilities" parties would be not be opposing the Utilities' Applications on this very ground. In intervenor testimony and opening briefs, all of the Utilities' claims have been disputed and challenged and the Commission should ignore any assertions to the contrary. There is no merit whatsoever to any of the Applications and the Utilities have not met their burden of proof for any requirement.

[14] PG&E Opening Brief at p. 10.
[15] SDG&E Opening Brief at p. 21.

C. Unfair Rebuttal Should be Disregarded

The Utilities' arguments rely heavily on rebuttal testimony for all of their main arguments, including those based on "undisputed stock price and P/E ratio performance data" and beta coefficient analysis. Utilities cannot wait until rebuttal testimony to present salient information supporting their rate requests[16] but that is precisely what the Utilities have done here. In this case, the Utilities had a unique opportunity to file direct testimony following the submission of protests and the issuance of the scoping memo. Even with another bite at the apple, informed by protests and the scoping memo, the Utilities still heavily rely upon rebuttal testimony. PG&E for its part couldn't even get the job done in three tries, relying upon an inappropriate errata to change its second direct testimony from relying upon 2 year betas to 5 year betas -- or the other way around, since it's hard to figure out exactly what PG&E claims happened.

The Commission has specifically disregarded rebuttal testimony in circumstances like that at hand, explaining:

> It was only when ORA highlighted the unreasonableness of SCE's position that SCE studied the issue. SCE's presentation of its statistical analysis is improper and unfair rebuttal and is therefore disregarded.[17]

The same is true in this case. In response to intervenor testimony, the Utilities produced analysis that they had not otherwise provided in their direct showing. Entire sections in the Utilities' opening briefs rely exclusively or primarily upon rebuttal testimony. All of the charts in PG&E's opening brief are from its rebuttal testimony. The Utilities relied upon witnesses not

[16] D.05-08-041 at pp. 7-8 *citing* D.04-03-034.
[17] D. 04-07-022 at p. 239.

prepared to accurately and adequately provide reliable testimony and tried to patch up their mistakes and omissions in rebuttal testimony and through improper use of an errata and extensive "typo" corrections. The Utilities could have provided all information in their rebuttal testimony in their direct presentations but did not. The non-Utility parties were not afforded any opportunity to have their experts respond to the new analyses, new charts, or use of different methodologies in the Utilities' rebuttal testimonies. The Commission should disregard the Utilities' unfair rebuttal testimony and arguments that rely upon it, including but not limited to the following.

- PG&E's claims regarding the transitory nature of the impact of the pandemic relies entirely upon rebuttal testimony citing to PG&E's Rebuttal Figure 1-6 and Dr. Vilbert's rebuttal testimony.[18]

- SCE's entire section regarding ROEs in other states relies only upon rebuttal testimony.

- PG&E includes Rebuttal Figure 1-2 and Rebuttal Figure 1-3 in its opening brief and substantially relies upon these rebuttal figures and rebuttal testimony[19] as support for its argument that: "undisputed stock market data directly establishes that the cost of equity for PG&E and other utilities materially diverged from the overall financial markets during the pandemic."[20] PG&E argues that the patterns of the Dow Jones industrial and utility averages is evidence of a " divergence between the overall financial markets and

[18] PG&E Opening Brief at pp. 22-24, *see* fns 55, 59, 61.
[19] PG&E Opening Brief at pp. 13-17.
[20] PG&E Opening Brief at p. 13.

utilities."[21] First, PG&E's claims about stock market data are certainly disputed by Wild Tree and other parties. Secondly, there is no discussion of any Dow Jones averages in PG&E's direct testimony.

SDG&E also included a chart in its opening brief from its rebuttal testimony about the Dow Jones industrial and utility averages.[22] SDG&E also made no mention of any Dow Jones averages in its direct testimony. There is no reason why the Utilities could not have included information about the Dow Jones averages in their direct presentations. For whatever reason, the Utilities chose not to analyze Dow Jones averages but when faced with testimony they didn't like, the Utilities used rebuttal testimony to present salient information about the Dow Jones averages that the Utilities claim supports its rate request. This rebuttal evidence should be disregarded.

- SDG&E and SCE have taken the problem of reliance on rebuttal testimony a step further, relying upon the rebuttal testimony of other utility witnesses. Both cite to Dr. Vilbert's rebuttal testimony and rebuttal figures[23] and SDG&E even reproduces a figure from PG&E's rebuttal testimony.[24]

- All the Utilities rely upon rebuttal figures and testimony in support of their arguments about beta coefficients. PG&E relies upon Rebuttal Figure 1-4 for its argument that "beta estimates for utilities increased substantially with the onset of the pandemic and remained

[21] PG&E Opening Brief at p. 14.
[22] SDG&E Opening Brief at p. 22, *DJ Utility Average vs. DJ Industrial Average Feb. 1, 2020-Jan.14, 2022.*
[23] *See, for example,* SDG&E Opening Brief at p. 34; SCE Opening Brief at p. 12.
[24] SDG&E Opening Brief at p. 25.

elevated through the Formula Adjustment Mechanism measurement period ending September 30, 2021 and even to today."[25] PG&E incorrectly claims that "Intervenors do not dispute the accuracy of PG&E's calculation of 2-year and 5-year beta estimates."[26] Wild Tree does dispute all of Dr. Vilbert's calculations, figures, and conclusions as unreliable, products of data mining, and lacking intellectual rigor.

Wild Tree did not address PG&E's 2-year beta calculations in its direct testimony because Dr. Vilbert did not label anything as 2-year beta calculations in either of his first two versions of direct testimony. *After* intervenor testimony was submitted, PG&E served an errata changing Dr. Vilbert's testimony regarding 2 and 5 year betas. It was only in rebuttal testimony that Dr. Vilbert produced the chart of 2 and 5 year betas. The only reason that Rebuttal Figure 1-4 was included in any testimony was because PG&E's witness apparently made a major error in the first two versions of his testimony in claiming to rely upon 5 year betas when his calculations and results were actually for 2-year betas and he included a new figure in rebuttal testimony as an to attempt to downplay the significance of his changing time horizons in his main analysis. Such unfair rebuttal should be disregarded.

SDG&E's witness Coyne also included a chart in his rebuttal testimony of an additional time horizon (12 months) which he did not include in his direct testimony. Citing to its rebuttal testimony, SDG&E states, "SDG&E's expert considered a 12-month estimate of the beta coefficient for utilities, which demonstrated that 12-month betas

[25] PG&E Opening Brief at pp. 17-18.
[26] PG&E Opening Brief at p. 18.

declined after an initial significant increase at the onset of the pandemic but remain above pre-pandemic levels."[27]

SCE also cites to its rebuttal figure and rebuttal testimony beta analysis for its claims that "both two- and five-year historical betas as reported by Bloomberg reflect an increase in electric utility betas during the relevant period."[28] SCE's direct testimony does not discuss 2 or 5 year betas, it only discusses 3 year betas. SCE's entire section "Betas Were Elevated During the Relevant Period Using Any Time Horizon and With or Without the Blume Adjustment" relies exclusively upon rebuttal testimony.[29]

The Utilities all prominently featured betas in their direct testimony as key evidence that Utilities were materially impacted differently than the market in general. Having so relied upon beta analysis as a critical element of one's testimony, a percipient witness would have provided a comprehensive beta analysis that includes a variety of historical and forward-looking, market-based betas. But none of the Utilities' witnesses provided more than one historical beta analysis although claiming to be qualified to be able to undertake more robust beta analyses.[30] In response to Mr. Rothschild's comprehensive and state-of-the-art beta analysis, the Utilities attempted to play catch up by including new beta calculations in their rebuttal testimony. The Utilities clearly consider betas to provide what they deem to be salient information in support of their request. They should have provided this information in their direct showing in their

[27] SDG&E Opening Brief at p. 17.
[28] SCE Opening Brief at p. 17.
[29] SCE Opening Brief at pp. 17-18.
[30] *See, for example,* RT at p. 251:8-28. (Vol. 2) (SCE – Villadsen).

direct testimony, and not have held this information until rebuttal. This unfair rebuttal should be disregarded.

II. UNDER ANY CIRCUMSTANCES, THE COMMISSION SHOULD NOT SUSPEND THE AUTOMATIC ADJUSTMENT FOR 2022. (SCOPING MEMO QUESTION 2)

The Utilities claim that "it is a more efficient use of the Commission and parties' resources to apply the Utilities' already approved cost of capital rather than conduct a simultaneous, phase two proceeding."[31] The time for concern over efficient use of the Commission and parties' resources has long passed. In filing their frivolous applications, the Utilities have already been a drain on the Commission and parties resources in litigating these extra cost of capital applications. Moreover, efficiency does not trump due process. The Utilities ignore the fact that it would be in violation of required notice and opportunity to be heard for the CCM to be suspended in this phase of this proceeding without further taking of testimony, evidentiary hearing, and legal briefings. The most efficient and the only reasonable outcome in this proceeding is to deny the Applications with prejudice in phase one.

[31] *See* SDG&E Opening Brief at p. 38.

CONCLUSION

For the reasons described in Wild Tree Foundation's testimony, opening brief, and herein, the Commission should deny SCE, SDG&E, and PG&E Applications A.21-08-013, A.21-08-014, and A.21-08-015 with prejudice and order the CCM automatic adjustment to be implemented for the rest of 2022 and ratepayers to be reimbursed for the overcharges they have paid in 2022 as a result of the temporary suspension of the CCM.

Respectfully submitted,

/s/ April Rose Maurath Sommer

April Rose Maurath Sommer
Executive and Legal Director

Wild Tree Foundation
1547 Palos Verdes Mall #196
Walnut Creek, CA 94597
April@WildTree.org
(925) 310-6070

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