

GSH/JF2/fzs 5/24/2022



**FILED**

05/24/22

11:11 AM

R1311005

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

Order Instituting Rulemaking  
Concerning Energy Efficiency  
Rolling Portfolios, Policies, Programs,  
Evaluation, and Related Issues.

Rulemaking 13-11-005

**ORDER TO SHOW CAUSE DIRECTING SOUTHERN CALIFORNIA  
EDISON COMPANY TO ADDRESS UPSTREAM LIGHTING PROGRAM  
ISSUES FOR PROGRAM YEARS 2017 THROUGH 2019**

**Summary**

This ruling directs Southern California Edison Company (SCE or Respondent) to show cause why it should not be required to do the following, for its mismanagement of the energy efficiency upstream lighting program for the years 2017 through 2019, as addressed in Decisions (D.) 14-10-046, D.15-10-028, D.18-05-041, and D.13-09-023:

- 1) Refund ratepayer funding for the portion of the program budget associated with light bulbs that were unaccounted for;
- 2) Refund Efficiency Savings and Performance Incentive shareholder awards associated with unaccounted-for light bulbs; and
- 3) Pay penalties for misrepresenting program progress and results to the Commission, in violation of Rule 1.1 of the Commission's Rules of Practice and Procedure and Public Utilities Code Sections 451, 701, and 2107-2108.

SCE shall serve a response to this order to show cause (OSC) ruling no later than June 20, 2022. Other parties may reply to SCE's response by no later than July 18, 2022 and may ask for hearings in those filings. Any party seeking a

hearing shall identify the following information: 1) the material issues of disputed fact that require a hearing; 2) the evidence germane to each listed issue; 3) witness(es) essential to such a hearing; and 4) for each issue, reasons why the Commission may not reach a decision based on a paper record. After review of these filings, the assigned Commissioner and/or administrative law judges (ALJs) will issue further rulings setting the scope and schedule for this OSC phase of the proceeding.

### **1. Background**

On January 9, 2020, an ALJ ruling was issued seeking comment from SCE, San Diego Gas & Electric Company (SDG&E), and interested parties, on the 2017 upstream lighting program impact evaluation report. This ALJ ruling first identified concerns raised in the impact evaluation report conducted by DNV GL Energy Insights USE, Inc. (DNV GL)<sup>1</sup> about unusually large volumes of light bulbs shipped to many small stores in SCE and SDG&E territories in the 2017 program year. The impact evaluation stated that the reported number of light bulbs shipped to stores was higher than the number of total California light bulb sales determined from other data sources. According to DNV GL, “these data reveal that the market could not have supported the volume of sales that the 2017 program data reported as shipped.” Therefore, the impact evaluation concluded that the number of light bulb shipments was overstated and the energy savings claims were too high.

As a result, the 2017 DNV GL impact evaluation report made downward adjustments to the light bulb sales credited to SCE and SDG&E, to adjust for the approximately 15 million lamps, a mixture of standard light emitting diodes

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<sup>1</sup> Available at the following link: <https://pda.energydataweb.com/#!/documents/2146/view>

(LEDs) and specialty LEDs (such as decorative candelabras, reflector light bulbs, and globe light bulbs), that could not be tracked by the DNV GL evaluators.

The January 2020 ALJ ruling asked that SCE and SDG&E, along with interested parties, respond to five questions and address several topics, including what remedies the Commission should order due to the program not delivering the energy savings benefits expected, while still expending budget. The ruling asked specifically whether refunds should be provided to ratepayers who funded the program, and about any other suggested outcomes.

SCE responded to the ALJ ruling on January 31, 2020, by providing an overview of its Primary Lighting Program and a response that “details SCE’s corrective actions after learning of the findings from the Impact Evaluation Report.”<sup>2</sup> SCE’s response also requested more time to gather additional facts. In its response, “SCE acknowledges the Commission’s findings regarding the overstocking issues,” but states that several key issues require additional inquiry and review in order to make a recommendation.<sup>3</sup>

SCE also states that in early 2019, after learning of the recommendations in the draft version of the DNV GL 2017 impact evaluation, SCE launched an internal audit review of its program operations and operating processes, focused on “evaluating and implementing corrective actions necessary to resolve issues on a going-forward basis for the remainder of [program year] PY 2019.”<sup>4</sup>

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<sup>2</sup> SCE Responses on Upstream Lighting Program Impact Evaluation for Program Year 2017, January 31, 2020 at 2.

<sup>3</sup> SCE Responses on Upstream Lighting Program Impact Evaluation for Program Year 2017, January 31, 2020 at 2.

<sup>4</sup> *Ibid.*

SCE states that it took “prompt corrective action in 2019 to implement process improvements and strengthen controls for the remainder of the Program term.” This corrective action, according to SCE, included the following:

- SCE limited the amount of Program shipments to small retailers and added controls to prevent shipments from multiple manufacturers to the same retailer.
- SCE also increased inspections and redistributed excess light bulbs to other retailers. For example, overstock bulbs from PY 2017 were shipped to places in SCE’s service territory such as Catalina Island and Mammoth where incandescent bulbs are still being used.
- From May through October 2019, SCE inspected over 700 small, hard-to-reach stores, met with participating retail stores, and reviewed the program requirements.
- SCE enhanced tracking and verification of program activity and held manufacturers accountable to the terms of their manufacturer participation agreements.
- In many cases, SCE worked with manufacturers to move overstock inventory, at the manufacturers’ cost, to stores with lower inventory numbers.<sup>5</sup>

In addition to the above actions described, SCE asked for additional time for the following:

- Phase I: Data Gathering (Timing: February 2020 – March 2020)
- Phase II: Analyze SCE’s Findings and PY2018 Impact Evaluation Report (Timing: March 2020 – April 2020)
- Phase III: Identify Recommendations (Timing: April 2020)
- Phase IV: Submit Final Recommendations (Timing: End of April 2020).

On April 1, 2020, the Commission issued the Upstream and Residential Downstream Lighting Impact Evaluation Report: Lighting Sector - Program

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<sup>5</sup> SCE Responses on Upstream Lighting Program Impact Evaluation for Program Year 2017, January 31, 2020 at 2-3.

Year 2018, conducted by DNV GL. The 2018 Impact Report<sup>6</sup> found that unusually large volumes of bulbs continued to be shipped to discount and grocery stores in SCE's service territory. Specifically, the 2018 Impact Report found that almost 87 percent of SCE's shipments went to these same two types of stores.

On April 3, 2020, an ALJ ruling was issued setting new dates and seeking further comment from SCE, SDG&E, and interested parties on upstream lighting programs from 2017 as well as 2018.

On June 8, 2020, SCE responded to the ALJ ruling, stating that its field investigation efforts had to be cut short due to the COVID-19 Shelter in Place orders, and therefore its findings were more limited than anticipated. SCE provided a summary of its findings, which included, among other things, the fact that SCE found evidence that an "overstock condition" existed in PY 2017 and 2018 for grocery and discount retailers and that there were potential contract violations by manufacturers.<sup>7</sup> In the response, SCE also proposed that the Efficiency Savings and Performance Incentive (ESPI) mechanism was the appropriate mechanism to account for any deficiencies in program performance, by reducing utility shareholder earnings.

On July 17, 2020, the Public Advocates Office (Cal Advocates) and The Utility Reform Network (TURN) filed a joint motion to order a shareholder-funded independent external investigation of SCE's upstream lighting program and to extend the time to file comments on the ALJ ruling requesting further comments on the 2017 and 2018 upstream lighting programs.

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<sup>6</sup> Available at the following link: <https://pda.energydataweb.com/#!/documents/2365/view>

<sup>7</sup> SCE Responses to the Administrative Law Judge's Ruling Seeking Further Comment on Upstream Lighting Program Impact Evaluation for Program Years 2017 and 2018 at 2.

In this motion, Cal Advocates and TURN pointed out the “stark contrast”<sup>8</sup> between the SDG&E approach to the DNV GL impact evaluation report of 2017 and SCE’s response. In particular, they pointed to the fact that SDG&E was able to complete both an internal and an independent investigation under COVID-19 restrictions, whereas SCE claimed it could not.

Cal Advocates and TURN called the SCE investigation “woefully incomplete” and “merely a self-assessment.”<sup>9</sup> However, they argued that even SCE’s “ cursory investigation” showed that SCE failed to adequately monitor and administer the program to avoid overstock. Cal Advocates also conducted discovery on this matter and stated that in data responses SCE revealed “an inadequate invoice review process that resulted in SCE staff approving incomplete or inaccurate invoices.”<sup>10</sup> Further, TURN and Cal Advocates argued that “while there is ample evidence that SCE failed to prudently administer its 2017 and 2018 Upstream Lighting Program, the full scope of likely program mismanagement or violations of program rules, Commission authorities, and/or statutes is unknown due to SCE’s failure to complete its investigation.”<sup>11</sup>

On this basis, TURN and Cal Advocates sought in their motion to have the Commission require SCE shareholders to fund an independent investigation and have the Commission defer assessment of potential remedies.

On July 22, 2020, SCE responded to the Cal Advocates and TURN motion and stated that Edison International (EIX, SCE’s parent company) and its Independent Audit Services Department had already engaged an external

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<sup>8</sup> TURN and Cal Advocates motion, July 17, 2020, at 5.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*, at 5-6.

<sup>11</sup> *Ibid.*, at 6.

third-party consulting firm to perform a full, independent investigation of the upstream lighting program for years 2017-2019. In the response, SCE offered to take input from stakeholders for the scope of the investigation and acknowledged that the upstream lighting program “has experienced some program management shortcomings.”<sup>12</sup>

SCE’s response further described the role of the EIX Audit Services Department as providing the EIX “governing body and senior management with comprehensive reasonable audit assurance based on the highest level of independence and objectivity within the organization by conducting audits, investigations, consulting engagements, and other related activities.”<sup>13</sup>

Also in its response to the TURN and Cal Advocates motion, SCE argued that the Commission should decide the funding source for the EIX independent investigation at the conclusion of the proceeding, arguing that it is premature to assign these costs to SCE shareholders. Instead, SCE requested to separately track all SCE costs related to the third-party investigation by making entries in a subaccount of the Energy Efficiency Balancing Account, and sought the Commission’s authority to modify the balancing account to create the subaccount.

On July 24, 2020, an ALJ email ruling suspended the schedule for party comments and set a deadline of October 30, 2020 for SCE to file the results of the independent EIX investigation into the upstream lighting program.

On August 14, 2020, SCE filed an amended response to the ALJ ruling seeking further comment. This response was an amendment to SCE’s response

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<sup>12</sup> SCE response to Cal Advocates and TURN motion, July 22, 2020, at 2.

<sup>13</sup> *Ibid.*, at 3.

originally filed on June 8, 2020. The amendments affected the number of field inspections conducted (30 instead of 29), the number of on-site inspections reviewed (59 instead of 137), and the percentage of SCE's participating grocery and discount retailers where on-site inspections were conducted in 2018 (6 percent instead of 15 percent).

On October 19, 2020, SCE requested an extension of time to file the results of its independent investigation to November 30, 2020. This extension was granted by ALJ ruling on October 19, 2020.

On November 30, 2020, SCE filed the results of the third-party investigation conducted by Deloitte & Touche (D&T), consultants hired by EIX. According to SCE, the scope of the investigation included specific inquiries regarding whether there was overstocking of lightbulbs, whether manufacturers falsified shipments, whether SCE personnel were aware of any falsification activity, and whether manufacturer invoices to SCE were split in order to circumvent SCE's payment approvals or authorizations.<sup>14</sup>

According to SCE, D&T identified various discrepancies in manufacturer-provided supporting documentation, including but not limited to: duplicate photographs used for proof of delivery on different dates; duplicate photographs used for different retailers, duplicate delivery driver and retailer signatures from proof of delivery documentation, and quantity of lightbulbs delivered by a manufacturer to one retailer did not match the amount reportedly received per the retailer's data.<sup>15</sup> D&T also identified 14 instances where daily delivery routes included an excessive number of stops.

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<sup>14</sup> SCE Response of November 30, 2020, at 4-5.

<sup>15</sup> Ibid. at 9.



In addition, D&T identified 128 instances of overstock<sup>16</sup> of lightbulbs with 124 unique retailers, and the overstock instances were increasing between 2017 and 2019.<sup>17</sup> D&T also found that various levels of SCE personnel were aware of overstock situations between 2017 and 2019.

SCE also characterized several D&T findings as “limited upward visibility of inspection reports,” where SCE’s Quality Assurance team removed program inspection results from the quarterly portfolio management reporting and also failed to conduct program inspections for program year 2018 until early 2019, due to the “transition between management-level employees.”<sup>18</sup>

According to SCE, D&T’s review also identified instances where retailers did not adhere to, or understand, program rules, including giving away lightbulbs for free or to charity.<sup>19</sup> Eleven retailers interviewed by D&T stated that they had “little to no understanding” of the program or its rules.

As a result of these findings, SCE states that the D&T investigations did not identify any evidence of fraud or collusion between or among SCE employees and/or manufacturers, but admits “instances of gaps in program management and lack of oversight with respect to overstocking at the discount retailers that should have been mitigated through more stringent and diligent program management practices.”<sup>20</sup>

SCE’s November 30, 2020 Response goes on to describe improvements it made to the program management and controls, but states that “what happened

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<sup>16</sup> “Overstock” is defined as greater than three months of lightbulb stock at a retailer location.

<sup>17</sup> SCE Response of November 30, 2020, at 10.

<sup>18</sup> *Ibid.*, at 11.

<sup>19</sup> SCE Response of November 30, 2020, at 11-12.

<sup>20</sup> *Ibid.*, at 13.

with the Upstream Lighting Program is not acceptable to SCE, and SCE will correct matters with all due speed.”

Further, SCE puts blame on the manufacturers participating in the program for not properly educating retailers about the program rules, both at the inception of their participation and at least once every six months.

Based on these representations, SCE proposes a financial remedy of \$6.9 million total, composed of refunding \$6.1 million in ESPI awards to customers and having SCE shareholders bear the costs of the D&T investigation. As part of this proposal, SCE “acknowledges that its management of the grocery and discount retailer component of the program does not merit SCE earning the associated ESPI earnings.”<sup>21</sup>

On January 20, 2021, Cal Advocates filed comments responding to the SCE response to the ALJ’s rulings. Based on its review and analysis of filings from SCE and information obtained through discovery, Cal Advocates found the following:

- SCE’s review and Deloitte’s investigation demonstrate that SCE failed to appropriately administer the Upstream Lighting Program during program year 2017 and 2018.
- The Deloitte investigation found that there were inadequate controls, and that what controls were in place to detect non-compliance were removed at the direction of SCE management.
- SCE was aware of overstock occurring during Program Years 2017-2019, yet it failed to take corrective action.
- SCE failed to prudently administer the program in its failure to stop manufacturers and retailers from violating program rules.

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<sup>21</sup> Ibid., at 16.

- Data discrepancies in SCE’s Upstream Lighting Program data demonstrate SCE’s failure in oversight, resulting in the failure of its Upstream Lighting Program.
- Deloitte’s report was inadequate in identifying the full extent of SCE’s failure to prudently administer the Upstream Lighting Program.<sup>22</sup>

Based on these findings, Cal Advocates recommends three remedies:

- 1) A refund of \$32.7 million in ESPI awards.
- 2) Refunding all program expenditures associated with the hard-to-reach portion of the program and all program administration costs for program years 2017-2019, for a total of \$91.9 million in refunds.
- 3) \$140 million in fines for violations of Rule 1.1 of the Commission’s Rules of Practice and Procedure.

Cal Advocates also on January 20, 2021 filed a motion for leave to file under seal a confidential portion of their comments. The confidential portion, including an appendix, contains references to data request responses from SCE to Cal Advocates where SCE claimed confidentiality of the material. Thus, Cal Advocates sought to be able to refer to this information in its comments by filing a confidential version.

TURN also filed comments on January 20, 2021. TURN recommends four remedies:

- 1) Conclusion by the Commission that SCE imprudently managed the Upstream Lighting Program in 2017, 2018, and at least part of 2019, citing to oversight changes that

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<sup>22</sup> Cal Advocates comments, January 20, 2021, at 4.

SCE admits to, where inspections ceased and invoices were reviewed cursorily, among other examples of mismanagement;

- 2) Order remedies for SCE's conduct, including a refund of program expenditures, a refund of ESPI awards, and a fine for misleading the Commission by reporting energy savings from the program in amounts that SCE knew, or should have known, were unreliable because of overstocking of program bulbs and hard-to-reach retail channels;
- 3) Order SCE to provide, at shareholder expense, whistleblower training and adopt other measures to encourage its employees to be effective stewards of ratepayer funds and timely and effectively report utility conduct that violates the Commission's rules, regulations, requirements, and orders, including but not limited to activities that employees suspect are unsafe, unlawful, or dishonest; and
- 4) Expand and promote the Commission's own Whistleblower program, and explore the possibility of using any fine paid by SCE in this case to establish a Whistleblower reward pilot program.<sup>23</sup>

On March 5, 2021, SCE replied to the comments of Cal Advocates and TURN. SCE claims that the recommendations of Cal Advocates and TURN are

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<sup>23</sup> TURN comments, January 20, 2021, at 3.

unreasonable, stating that there is a “lack of evidence in the record of intentional misconduct, fraud, falsified information, or widespread collusion.”<sup>24</sup>

In the reply comments SCE offers, in addition to the \$13.3 million in ESPI earnings that the Commission already reduced as a result of a PY 2017 and 2018 Impact Reports:

- Refund of an additional \$6.8 million in ESPI earnings for program years 2017-2019
- Refund of \$8.8 million in program incentive costs associated with bulbs shipped to discount and grocery retailers for program years 2017-2019
- Refund of \$4.3 million in program administration costs for program years 2017-2019
- Shareholder funding for the entire cost (approximately \$900,000) associated with the D&T investigation.

SCE also proposes to take action, including additional audits and training, in response to the various non-financial recommendations of Cal Advocates and TURN.

On March 15, 2021, SCE filed an amended set of reply comments to its March 5, 2021 reply filing, modifying certain references and details in the filing, but containing the same basic recommendations and proposals.

## **2. Discussion**

Section 451 of the Public Utilities Code requires that:

“All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity

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<sup>24</sup> SCE Reply Comments, March 5, 2021, at 2.

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.”

Rule 1.1 of the Commission’s Rules of Practice and Procedure requires that any person who transacts business with the Commission may never “mislead the Commission or its staff by an artifice or false statement of fact or law.” A person who violates Rule 1.1 may be sanctioned in accordance with Public Utilities Code Section 2107, which provides for a penalty of not less than five hundred dollars and not more than one hundred thousand dollars for a utility’s failure or neglect to comply with “any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the [C]ommission.” Importantly, Rule 1.1 does not require an intent to deceive the Commission in order to find that the Commission has been misled.

In addition, the ESPI mechanism originally adopted in D.13-09-023 is designed “to promote achievement of energy efficiency (EE) goals through programs” and “also designed to motivate utilities to prioritize EE goals, while protecting ratepayers through necessary cost containment mechanisms.”<sup>25</sup> The ESPI mechanism has several components, including energy efficiency resource savings, which is the largest category and most relevant for purposes of this OSC phase of the proceeding.

Moreover, in addition to the options to withhold cost recovery for unjust and unreasonable expenses, withhold rewards to shareholders for benefits unearned, and impose monetary fines and penalties, the Commission can do all

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<sup>25</sup> D.13-09-023 at 2.

things necessary and convenient in the exercise of its power and jurisdiction (Public Utilities Code Section 701), if found to be supported by the record.

Based on the summary of the substantive contents of the filings to date in Section 1 above, this ruling is initiating an Order to Show Cause phase of this proceeding to address SCE's management of the upstream lighting program during program years 2017 through 2019.

In the course of this portion of the proceeding, SCE shall be required to address why the Commission should not require SCE to:

- 1) Refund ratepayer funding for the portion of the program budget associated with all light bulbs that were unaccounted for;
- 2) Refund Efficiency Savings and Performance Incentive shareholder awards associated with unaccounted-for light bulbs; and
- 3) Pay penalties for misrepresenting program progress and results to the Commission, in violation of Rule 1.1 of the Commission's Rules of Practice and Procedure.

### **3. Responses to Order to Show Cause**

SCE is directed to response to the OSC ruling by no later than June 20, 2022. Other parties are invited to reply to SCE's response by no later than July 18, 2022.

If SCE or any other party seeks a hearing on any issues related to this ruling, their filings must identify the following information: 1) the material issues of disputed fact that require a hearing; 2) the evidence germane to each listed issue; 3) witness(es) essential to such a hearing; and 4) for each issue, reasons why the Commission may not reach a decision based on a paper record.

After review of these filings, the assigned Commissioner and/or ALJs will issue further rulings setting the scope and schedule for this OSC phase of the proceeding.

#### **4. *Ex Parte* Prohibition**

As provided in Rules 1.3(a) and 8.2(b) of the Commission's Rules of Practice and Procedure, the order to show cause portion of this proceeding is categorized as adjudicatory and *ex parte* communications are prohibited. The determination as to category is appealable pursuant to Rule 7.6 of the Commission's Rules of Practice and Procedure.

**IT IS RULED** that:

1. The January 20, 2021 Motion of the Public Advocates Office for Leave to File Under Seal Confidential Portion of Comments on the Administrative Law Judge's Ruling Seeking Comment on Upstream Lighting Program Impact Evaluation for Program Years 2017 and 2018 is granted.
2. Southern California Edison Company shall file a response to this ruling by no later than June 20, 2022.
3. Any party may file a reply to the Southern California Edison Company response to this ruling by no later than July 18, 2022.
4. If any party wishes to request hearings in this order to show cause portion of the proceeding, the party shall identify the following information in its filing:
  - (a) The material issues of disputed fact that require a hearing;
  - (b) The evidence germane to each listed issue;
  - (c) Witness(es) essential to such a hearing; and
  - (d) For each issue, reasons by the Commission may not reach a decision based on a paper record.



5. This order to show cause portion of the proceeding is categorized as adjudicatory and *ex parte* contacts are prohibited. The determination as to category is appealable pursuant to Rule 7.6 of the Commission's Rules of Practice and Procedure.

6. This Ruling is effective today.

Dated May 24, 2022, at San Francisco, California.

/s/ GENEVIEVE SHIROMA

Genevieve Shiroma  
Assigned Commissioner

/s/ JULIE A. FITCH

Julie A. Fitch  
Administrative Law Judge