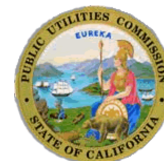

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA

Order Instituting Rulemaking Concerning Energy Efficiency Rolling Portfolios, Policies, Programs, Evaluation, and Related Issues.	Rulemaking 13-11-005

SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) RESPONSE TO THE ORDER TO SHOW CAUSE DIRECTING SOUTHERN CALIFORNIA EDISON COMPANY TO ADDRESS UPSTREAM LIGHTING PROGRAM ISSUES FOR PROGRAM YEARS 2017 THROUGH 2019

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Dated: **June 20, 2022**

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I.

INTRODUCTION

Southern California Edison company (SCE) respectfully provides this response to the California Public Utilities Commission's (Commission) May 24, 2022, Order to Show Cause (OSC) Directing SCE to Address Upstream Lighting Program Issues for Program Years (PY) 2017 through 2019.

SCE appreciates the Commission's stated intent, as laid out in the OSC, to carefully consider the record evidence and address the important issues raised in this proceeding. As the OSC makes clear, there are three points to address:

1. Should SCE return to ratepayers the funds that it spent on the unaccounted-for lightbulbs in 2017-2019 as part of the Upstream Lighting Program (Program);

2. Should SCE return a portion of the shareholder awards that are associated with unaccounted-for lightbulbs;

3. Has SCE misrepresented the progress and results of its Program in a manner that justifies the imposition of Rule 1.1 penalties.

SCE submits that it has already agreed, both as part of the Commission's Evaluation Impact Study process and on the record in this proceeding, that returning a portion of program funds and shareholder awards associated with unaccounted-for lightbulbs is appropriate. SCE has remained willing to take responsibility and hold itself accountable for the missteps in the way it managed the Program. Over the years, SCE has been forthright in acknowledging its errors and has been compliant with the Program structure, as designed by the Commission, to address those errors and make improvements. A brief history of this proceeding provides ample illustration of these facts.

The Program was designed so that the IOUs' performance, in promoting efficient lightbulbs in the hard-to-reach markets, would be reviewed and any shortcomings addressed through the annual Commission review and Impact Reports. SCE fully cooperated with this review and, notwithstanding its concerns regarding the Impact Reports, fully implemented the ESPI reductions recommended in the Impact Reports. Accordingly, the Commission had issued its assessment of the unaccounted-for lightbulbs and addressed that shortfall by reducing SCE's ESPI earnings by approximately $13.3 million for PYs 2017 and 2018. Given the reductions to the ESPI earnings and the robust and public process surrounding the Impact Reports, SCE believes the process worked as intended by performing a thorough review of the Program and remediating any shortcomings through appropriate financial remedies.

Nevertheless, once the Commission took steps to determine if additional remedies were appropriate, SCE voluntarily commissioned an independent third-party investigation of the facts to address the concerns raised by the Commission. In response to the findings made through the independent investigation, SCE proposed that it will refund an additional $6.8 million dollars in ESPI earnings and pay back some $20 million dollars in program costs. As these facts demonstrate, SCE has been consistently forthright, transparent, and compliant with the Commission rules, programs, and regulations.

Given these facts and the applicable law, SCE does not believe Rule 1.1 penalties are appropriate or warranted. There has been no concealment or lack of candor in SCE's filings or statements before the Commission. Indeed, given the extensive Impact Report process, SCE's cooperation with that process, and the full engagement by the Commission and the parties in the review of SCE's management of the Program, allegations that SCE has been less than fully transparent and cooperative are not credible or supported by facts in the record. Moreover, SCE's willingness to initiate an independent third-party review and share that review with the Commission confirms SCE's commitment to compliance and forthright engagement with the Commission and the parties. While there were certainly weaknesses in the way SCE administered the Program, such missteps, while not by any means acceptable, cannot and should not be the basis for a Rule 1.1 penalty, particularly given the other financial remedies available to the Commission as part of the existing process.

Finally, taking into account the already-extensive litigation on this issue, which began with the January 9, 2020, issuance of the Administrative Law Judge's Ruling Seeking Comment on Upstream Lighting Program Impact Evaluation for Program Year 2017 (2020 Ruling), SCE believes that the Commission will be able to make a decision in this OSC based on the papers that have been submitted previously and that will be submitted during the course of this OSC without the need for hearings.

II.

REASONABLE PROGRAM AND ESPI REFUNDS ARE APPROPRIATE, BUT RULE 1.1 PENALTIES ARE NOT WARRANTED

The OSC directs SCE 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 (ESPI) 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

Given the record and the lack of any new material facts, SCE's position on the appropriate approach and amount for each potential refund and penalty remains the same as described in its March 15, 2021 Amended Reply Comments on the Administrative Law Judge's Ruling Seeking Comment on Upstream Lighting Program Impact Evaluation for Program Years 2017 and 2018. As such, SCE's response to this OSC incorporates its previously filed positions regarding refunds and penalties. In sum, SCE proposes:

- a refund of $8.8 million of Program incentive costs associated with the bulbs shipped to discount and grocery retailers for PY 2017-2019;
- a refund of $4.3 million in Program administration costs associated with the entire Program for PY 2017-2019;
- a refund of $6.8 million in ESPI earnings for PY 2017-2019; and
- absorb approximately $900,000 associated with the independent investigation.

A. **A Program refund of $13.1 million, which includes a portion of grocery and discount program incentives ($8.8 million) and all program administration costs ($4.3 million) for PYs 2017-2019, is proportionate and reflects SCE's accountability for Program management gaps**

California's EE programs have three broad goals – reduce greenhouse gas emissions, help the economy, and avoid the need for additional transmission lines and power plants.[1] For more than 30 years, SCE has administered hundreds of different EE programs and has established a consistent record as a good and responsible steward of those programs. For example, in 2018 and 2019, SCE's *Ex Ante* Review (EAR) Scores were the highest among the IOUs,[2] demonstrating a high level of focus on technical rigor and quality. While these facts in no way diminish the Program shortcomings at issue in this proceeding, they do provide context for understanding the nature of those discrete shortcomings, particularly in view of the disproportionate penalties proposed by the Intervenors.

The Program specifically at issue here was aimed at encouraging the market adoption of energy efficient lightbulbs by, among other things, influencing consumers to use such lightbulbs and by lowering their prices through widespread distribution to retail outlets.[3] Even with SCE's shortcomings in managing some aspects of the Program, according to the Commission the Program was instrumental in transforming the lightbulb market, particularly with respect to discount and grocery stores.[4]

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[1] Regulating Energy Efficiency, A Primer on the CPUC's Energy Efficiency Programs, California Public Utilities Commission, February 2016, p.2.

[2] *See* 2019 Efficiency Savings And Performance Incentive Performance Scores *available at* http://www.deeresources.com/files/espi/downloads/SCE_2019_ESPI_2020_03_30_Final.pdf; and 2018 Efficiency Savings And Performance Incentive Performance Scores *available at* http://www.deeresources.com/files/espi/downloads/SCE_2018_ESPI_EAR_20190327_Final.pdf.

[3] The Commission was particularly interested in assuring that the energy efficient bulbs were distributed to hard-to-reach markets, such as discount stores and grocery outlets (*See* Response to Recommendations for Impact Evaluation of the 2015 Upstream and Residential Downstream Lighting Programs, pp.1-2).

[4] California Residential Replacement Lamp Market Status Report: Upstream Lighting Program and Market Activities in California through 2015, DNV GL-Energy, November 18, 2016, p. iii states that,

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It is also important to note that the Program, pursuant to the process put in place by the Commission, was not evaluated in real-time, and, accordingly, the results of such evaluations were not available until long after the close of each Program year. For example, when SCE was planning for and making lightbulb shipments for the Program Year 2018, it could not reference or incorporate Commission review of Program Year 2017. Indeed, the Impact Reports reviewing the success of the Program were issued well over a year after each Program year concluded. SCE, for example, did not learn about the Impact Report conclusions for the 2017 Program year until 2019.

The Impact Reports assessed, among other matters, the energy savings resulting from the Program. The assessment was made using a number of assumptions regarding market and technical performance (i.e., the amount of time a lightbulb is estimated to be in use).[5] Notably, these assumptions included estimated, not actual, sales when projecting how many lightbulbs the discount and grocery retail market could support.[6] Additionally, the Impact Report assessments included interviews with a sample of Program participants. For example, in January and February 2019, DNV GL, the CPUC's consultant, conducted telephone surveys with 34 out of 1,251 discount and grocery retailers participating in the 2017 program and in October 2019 conducted additional computer-assisted telephone surveys with 253 of 926 discount and grocery retailers participating in the 2018 program.

Based on this assessment as well as the review of SCE data, including tracking data, the 2017 and 2018 Impact Reports concluded that 40 percent and 27 percent, respectively, of the

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"Smaller retail channels such as discount, drug, and grocery may not sell ENERGY STAR CFLs or "LED lamps without [Program] support." *See* also 2018 Energy Efficiency Portfolio Report, California Public Utilities Commission, May 2018, which concluded that "the upstream lighting program seems to have the greatest influence on retail sales in the non-big box channels." at p. 56.

5 *See* Upstream and Residential Downstream Lighting Impact Evaluation Report; Lighting Sector – Program Year 2017, pp. 5 & 6.

6 2017 Upstream and Residential Downstream Lighting Impact Evaluation Report at p. 31; 2018 Upstream and Residential Downstream Lighting Impact Evaluation Report, p. 32 (hereinafter 2017 and 2018 Report).

lightbulbs shipped in those years contributed to the energy savings envisioned by the Program.[7] On the basis of the Impact Reports, SCE's ESPI awards, were reduced by 60 percent and 73 percent for program years 2017 and 2018 respectively. All of the energy savings reductions were attributed to the lightbulbs shipped to discount and grocery retailers. The Impact Reports gave SCE 100 percent credit for Program implementation with respect to big box stores.

SCE and San Diego Gas & Electric Company (SDG&E) submitted comments that questioned the methodology and results of the Impact Reports, and in particular, the market size analysis. Specifically, SDG&E was concerned that the 2017 Impact Report attributed only three percent of sales to discount channels based on a consumer survey, while another study issued in June 2018, and referenced by SDG&E in their comments on the 2017 Impact Report, showed that nine percent of bulbs were purchased at discount stores and 12 percent at grocery stores. SDG&E noted that if the results of the June 2018 study were applied to 2017, then approximately 14.4 million of lightbulb sales, rather than the 3 to 4 million shown in the Impact Report, could be supported.[8] Because the Impact Reports are issued in hindsight, savings adjustments are not uncommon.[9]

A number of things are worth noting about the Impact Report process and SCE's response to that process. First, although SCE had concerns with the methodology of the Impact Reports,[10] SCE did not dispute any of the proposed ESPI reductions. Second, in early-2019, when the 2017 Draft Impact Report came out, SCE recognized the issues identified in the report were important and asked Edison International's Audit Services Department (ASD) to evaluate

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[7] *See* 2017 Impact Report at p. 35 Table 4-7 and 2018 Impact Report at p. 38 Table 4-10.

[8] *See* 2017 Impact Report, Appendix J: Public Comments, Item SDG&E-1 at p. 155 (citing to results of the June 2018 "California Statewide Residential Lighting Customer Decision Study," p. 37). SCE also raised issues related to the estimated market size in its comments on both the 2017 and 2018 report. *See id.* Comment SCE-2 at p. 154 (inviting additional data and more robust sample counts where possible to increase the precision of market size estimates) and SCE Comments on the 2018 Draft Impact Report, dated March 18, 2020 at pp. 2-3.

[9] There have been numerous programs for which the IOUs have received ESPI reductions based on discounted savings claims.

[10] *See* 2017 Impact Reports, Appendix J: Public Comments, Item SCE-1 at p. 152 and SCE Comments on the 2018 Draft Impact Report, dated March 18, 2020 at p. 1.

the Program's processes and controls.[11] SCE made improvements in 2019 to address the overstock issues.[12] It is this accountability and willingness to abide by the Commission's guidance that has characterized SCE's conduct throughout this proceeding.

Third, SCE's filings have consistently acknowledged the Company's concerns with lapses in the Program and its responsibility to address them. In its first filing in response to the Ruling, on January 31, 2020, SCE stated "[f]irst and foremost, SCE would like to acknowledge the shortcomings with certain aspects of the [Program performance for PY 2017]." Moreover, even though the Ruling was limited to PY 2017, SCE volunteered in its January Response that PY 2018 would be relevant to SCE's recommendations and outlined a plan to include the PY 2018 Impact Report into its internal investigation. Similarly, in its November 30, 2020 Response, SCE stated:

> the investigation findings describe 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. In that regard, SCE must assume responsibility for not taking sufficient action on the overstock issues identified in its own inspection reports in 2017 and 2018. Although in 2019 SCE implemented rules to limit multiple manufacturer shipments to retailers and other measures (described below) in an effort to mitigate the overstock issues, those actions came throughout the year and did not eliminate all 2019 overstocking.[13]

SCE's November 2020 Response goes on to state that although SCE made program improvements in 2019:

> SCE in no way seeks to excuse its prior gaps in program oversight in the Upstream Lighting program for grocery and discount retailers. While the Upstream Lighting Program is now closed, SCE has already taken significant steps across its Demand Side Management (DSM) portfolio to improve the quality of other programs, and increase internal processes, oversight and controls.

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11 On March 1, 2021, the Commission issued the 2019 Draft Impact Report indicating similar findings to its prior Impact Reports.

12 *See* SCE June 8, 2020 Comments, p. 13.

13 SCE's Responses to the ALJ's Ruling filed November 30, 2020, p. 14.

> Specifically, SCE is holding all program leaders accountable for addressing any process or control gaps within their program and is increasing inspection practices across its DSM portfolio. Management is also fully engaged with SCE's Inspection Team and the inspection processes and has visibility of the routine updates on program related inspections and reviews. SCE is also conducting training for all team members working on the DSM portfolio to increase knowledge about contract management, program and process controls, and operational requirements in consultation with ASD. Simply put, what happened with the Upstream Lighting Program is not acceptable to SCE, and SCE will correct matters with all due speed.[14]

Fourth, SCE not only conducted an internal Program investigation in response to the Ruling, it also proactively retained an independent third-party to investigate the matter. By the time Cal Advocates and TURN filed a joint Motion to Order Shareholder-Funded Independent External Investigation of the Program for PYs 2017-2018 (Motion), Edison International's ASD had already engaged Deloitte to perform a third-party investigation of PYs 2017-2019, voluntarily adding PY 2019 to the scope of the investigation although it had not officially been added to the scope of the proceeding.[15] SCE sought Intervenors' input on the scope of the Deloitte investigation and included a number of their suggestions into the scope of work (SOW) performed by Deloitte.[16] Indeed, at TURN's request, SCE agreed to provide a public version of the Deloitte Report and employee emails for reference and/or inclusion in TURN's January 20, 2021 Comments.

SCE is also taking, as it has previously committed to do, concrete steps to ensure that the situation at issue in this proceeding will not repeat itself. Although the Program closed at the end of 2019, SCE has taken steps to further build upon the actions it took in 2019 to address the shortcomings noted in the 2017 Impact Report and is continuing to review internal processes, strengthen controls, and overhaul the inspection process. To that end, SCE has re-emphasized

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[14] *Id.*

[15] SCE response to Motion of Cal Advocates and TURN, p. 2.

[16] Although SCE did not include all suggestions received, SCE believes that the SOW developed was broad enough to address the issues raised by the Commission in its January 2020 Ruling.

the critical role employees play in implementing and improving controls, and the need to provide employees with improved training. SCE is developing additional controls for programs it implements, as well as third-party EE programs that will be ramping up over the next several years. These additional measures include, but are not limited to:[17]

- Require the collection and verification of the end-use customer that purchases and installs the energy efficiency measures,[18]
- Monitor contractual requirements and ensure enforcement by contract and program managers,
- Verification of measure eligibility to ensure implementers cannot submit ineligible measures,
- Inspection of sites (in-person and virtual) both at pre- and post-installation stages, as applicable,
- Conducting early-screening review for customized calculated and NMEC-based site-specific projects, as needed,
- Exercising measure package development oversight and review in accordance with CPUC energy efficiency rules and policies,
- Developing and requiring the use of job aids and checklists for SCE operations personnel to approve and report progress, or reject measures and projects,
- Requiring management-level personnel to review and approve savings for each measure and project,
- Implementing standardized verification process to confirm accuracy of invoices, and

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[17] Each of these measures is a multi-step process being implemented by management. SCE is providing only a general overview of each measure.

[18] SCE does not envision allowing incentives in energy efficiency programs that are based on the shipment approach without evidence of sale to an end-use customer. However, if SCE or a third-party implementer does use a shipment approach, SCE will make sure that robust controls are implemented for those situations.

- Requiring management-level personnel to review and approve all invoice payments.
- Reviewing and evaluating current programs to identify any issues or gaps in controls;
- Enhancing training on DSM program controls and contract management (e.g., invoicing, inspections, etc.);
- Increasing awareness and improving processes for all stakeholders to raise concerns to their direct supervisor, Principal Manager, inspection teams or the SCE Ethics hotline related to program gaps, concerns or questions;
- Assuring that third-party implemented contracts contain requirements for sufficient inspection, oversight, and audit rights for SCE;
- Developing of internal contract management processes to ensure that the third-party designed and implemented programs are subject to sufficient SCE oversight; and
- Completing an on-going project to create a comprehensive set of "best practice" inspection criteria and plans, consistent with industry standards, for all energy efficiency programs, including third-party implemented programs. This project is scheduled to be completed and implemented in Q3 2021 and will be modified and improved on an on-going basis.

Notwithstanding these improvements, SCE intends to take full accountability for prior program missteps and, for all the reasons described herein, believes that a program refund of $8.8 million associated with the incentives for bulbs shipped to grocery and discount stores and a full refund of program administration costs of $4.3 million are appropriate in this proceeding.

This amount corresponds to the instances of overstock identified in SCE's internal inspection reports, as these internal documents, unlike the Impact Reports,[19] existed in real-time, and SCE could and should have acted in response to its own records to reduce costs incurred.[20]

The Program inspection reports reflect conditions found by SCE in the field while the Program was in place. During the Program years 2017-2019, the record evidence shows that SCE conducted 1,078 inspections for the grocery and discount retailers. In an average of 10 percent of those reports, there was evidence that some amount of overstocking took place.[21] [22] In addition, as determined by the third-party investigation no evidence was found of falsified invoices,[23] invoice splitting,[24] or widespread missing or deficient documentation.[25] SCE believes that using this average is a reasonable representation of unaddressed overstock for the basis of determining any refunds of bulb costs. When the 10 percent factor is applied to bulb incentive payments, it yields a refund of $8.8 million of these costs. It bears noting that the existence of overstock does not, in and of itself, mean that the bulbs will never be used or never produce energy savings. Lightbulbs do not expire or perish, and it is logical to assume they will eventually be used and useful by customers. However, that does not in and of itself rectify

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[19] SCE does not believe that it is appropriate to base incentive refunds on the Impact Reports as SCE could not have taken action to reduce the number of shipped lightbulbs in response to those reports because they were issued over a year after shipments were made. Notably, once SCE did have access to the Impact Report data, it did take steps to incorporate that feedback into its Program structure, despite the concerns SCE may have had with the estimated nature of the Impact Reports.

[20] Certainly, SCE could not have acted on the Impact Reports which were issued long after incentives were paid and are, in any event, based on estimates and samples and have been questioned by SCE.

[21] The 10 percent is calculated by adding the percentage of reports that cited overstock each PY, and dividing by three (1.9 percent, 21.4 percent, and 6.2 percent). (*See*, Deloitte Report at p.13.) SCE uses this number as a proxy to calculate its refund proposal.

[22] *See* Deloitte Report, p. 13.

[23] As noted in SCE's November 30, 2020 Comments, Deloitte identified one retailer that stated it received two less shipments than indicated; however, Deloitte could not confirm whether this was an error or actually a missed shipment

[24] The Deloitte Report defined "invoice splitting" as manufacturer invoices being split in an effort to circumvent SCE's invoice approval process, but it did not find instances of this in the review.

[25] Deloitte's Report found approximately 1.6 percent of invoice packets contained missing or potentially duplicate information. Deloitte also identified evidence of potentially excessive daily deliveries in approximately 1.3 percent of daily routes (i.e., 14 out of 1,032). SCE posits that these discrepancies are minimal in view of the Program size and scope.

SCE's failure to closely monitor its own inspection reports and make the appropriate changes. As such, SCE proposes to take financial accountability and provide refunds for the overstock found by its inspections.

Finally, as to administrative costs, in as much as the Program administration practices led to overstocking, SCE agrees that its customers should not bear the administrative costs associated with the Program and is proposing to refund all the Program administration costs ($4.3 million) for years 2017 through 2019, including those associated with big-box stores – even though the big-box stores received a 100% performance credit in all of the Impact Reports. Refunding all program administration costs is appropriate because SCE's administration of the Program was done singularly for the entire program, and thus there is no clear basis to separate any portion of administrative costs.

B. <u>SCE agrees to refund or forgo all ESPI awards associated with the grocery and discount Upstream Lighting Program</u>

The OSC directs SCE to show cause why it should not be required to refund ESPI shareholder awards associated with unaccounted-for light bulbs. As previously stated, SCE fully recognizes its own Program shortcomings and these shortcomings impacted the discount and grocery store portion of the Program. As such, despite prior Commission authorization, SCE proposes to refund an additional $6.1 million in ESPI awards for Program years 2017-2018 – to reflect the remaining ESPI that SCE received under the portion of the Program associated with all bulbs shipped to discount and grocery retailers.[26] This is in addition to the approximately

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[26] In its November 30, 2020 filing, SCE identified ESPI earnings associated with Discount and Grocery retailers within the Upstream Lighting Program of approximately $6.1M for 2017-2018. SCE estimated the earnings associated with these retailers by using a simple ratio of the total bulbs shipped by manufacturers to these retailers compared to the total bulbs shipped for the entire Program. Using the same method, approximately $700,000 in ESPI earnings (adopted in Resolution E-5108) would be attributed to the Discount and Grocery portion of the program for 2019, for a total of $6.8 million. SCE also identified an alternative estimating method to more precisely identify the ESPI earnings associated with the evaluated bulbs versus shipped bulbs in the Discount and Grocery channels. This results in an estimate of approximately $4.7 million in ESPI earnings associated with Discount and

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$13.3 million in ESPI earnings that the Commission has already reduced as a result of both the PY 2017 and 2018 Impact Reports. SCE also recommends that it forgo the ESPI earnings associated with Program year 2019 which were recently approved in Resolution E-5108 (approximately $700,000).[27] These actions, taken together, would result in SCE's shareholders receiving **zero** ESPI awards for the discount and grocery retailers for program years 2017 through 2019, despite the savings that were actually realized for that portion of the market.

C. SCE did not violate Rule 1.1, so no penalties are warranted.

In its January 20, 2021 Comments, Cal Advocates recommended an unprecedented $140 million in Rule 1.1 fines, alleging SCE violated Rule 1.1 when it submitted ESPI advice letters for PYs 2017-2019, EE Annual Reports for PYs 2017-2019, and quarterly CEDARS energy savings claim for PYs 2017-2019.[28] SCE strongly disagrees with Intervenors' claims and methodology for calculating those alleged penalties.

Rule 1.1 states:

> Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

"The purpose of Rule 1.1 is to preserve the integrity of the Commission's process and to provide an enforcement tool to address situations when parties that practice before the

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Grocery retailers for program years 2017-2019. Recognizing that ESPI earnings are calculated by the Commission at the portfolio and not program level and that either estimating method described above could be used as a basis for ESPI refunds in this proceeding, SCE continues to include the $6.1million amount for PY 2017-2018 in its proposed customer refunds.

[27] Pursuant to Resolution E-5108, ESPI earnings have been deferred to 2022 and therefore SCE would forego the collection of ESPI earnings associated with the Program for PY 2019.

[28] Cal Advocates Comments, p. 25.

Commission do not provide truthful, accurate, or complete information."[29] The claim of a Rule 1.1 violation cannot be rooted in mere aspersions and must be established "by a preponderance of the evidence."[30] At its core, the Intervenors' argument was that a Rule 1.1 penalty should be imposed because SCE submitted incorrect information to the Commission in its Program filings – CEDARS, Advice Letters, and Annual Filings – and failed to correct these filings:

> SCE violated Rule 1.1 by submitting false information to the Commission which it knew would be used to, among other things, calculate SCE's ESPI awards and assess SCE's progress toward energy efficiency goals. Specifically, instances where SCE filed figures that included energy savings from the Upstream Lighting program were a violation of Rule 1.1. The fact is that SCE was aware of but took no action to correct savings figures that included the overstocked bulbs. To date, despite SCE's admissions of program mismanagement, SCE has not taken steps to correct these submissions. Having had and failed to avail itself of the opportunity to correct this data, the Commission must treat SCE's violations as willing and ongoing.[31]

The Intervenors' arguments are fundamentally misaligned with how energy efficiency program submittals and evaluations occur. SCE filings reflected the information required by the CPUC reporting including the program incentive costs that are paid, administrative costs incurred, and estimated energy savings. The Intervenors' arguments do not appear to challenge the data actually submitted in the filings; rather, the Intervenors' real contention is that SCE should have changed its operational practices to reflect the numbers, for the lightbulbs shipped and incentives paid, to be more aligned with the yet-to-be-published Impact Reports.[32] That, however, is not an argument as to the accuracy of the actual submissions, it is a criticism of program management. The function of the Program submissions, however, is not to make a qualitative judgment on the efficacy of Program controls or to change data to align with what

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[29] D.15-04-008, p. 3.

[30] D.19-12-041, pp. 13-14.

[31] Cal Advocates Comments, pp. 24-25.

[32] It is possible to read the Intervenors' arguments that the numbers in the filings should have been reduced to align with SCE's internal inspection reports, but the main point remains the same – i.e., the apparent contention that the actual numbers of shipped bulbs should have been lower. Again, that is an argument for better operational controls and not a challenge to reporting practices.

may have been generated through better controls, it is simply to report the data. That is what happened here.

Nor did SCE violate Rule 1.1 because it did not correct its Program submittals. In fact, it is unclear how such corrections would or could be made. There is no consensus regarding overstock or what effect that overstock had on the savings attributable to the Program. SCE did not agree that the size of the market was accurately reflected in the Impact Reports (and would not have had access to these Impact Reports when its Program filings were made).[33]

The Impact Reports – as explained above – included assumptions and estimates and had limitations with respect to their data sources.[34] SCE questioned[35] the data used in the Reports. In its comments on the PY 2017 Report, for example, SCE suggested that DNV-GL provide additional data sources for the estimated market size of lighting in California in order to validate the information used in the report, if not for PY 2017, then for the PY 2018 Report.[36] SCE further suggested that DNV GL use more robust sample counts where possible to increase the precision of the estimates.[37] DNV GL responded:

> For the 2017 impact evaluation, DNV GL used the best available data sources to try to triangulate market size. We recognize the difficulty in understanding market size, and we welcome additional sources to help understand the market. The CREED sales data was just one piece to try to understand the market. Because we understood the limitations of the data sources, we developed the store manager survey with the express purpose of developing a sales-to-shipment ratio for participating stores. When developing the scope of the 2018 evaluation, we will certainly consider additional data sources and methodologies to continue to increase the rigor of the sales-to-shipment ratio.[38]

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[33] *See* 2017 Impact Reports, Appendix J: Public Comments, Item SCE-2 at p. 154 and SCE Comments on the 2018 Draft Impact Report, dated March 18, 2020 at p. 2.
[34] *See* 2017 Impact Report, DNV GL Response to Public Comments, Appendix J at p. 154.
[35] *Id*. and SCE Comments on Draft 2018 Impact Report at pp. 2-3.
[36] DNV GL Impact Evaluation Report PY 2017, at p. 154, Comment SCE-2.
[37] *Id.*
[38] PY 2017 Report, p. 154.

Importantly, the Impact Reports were public documents that underwent a stakeholder process through EM&V Stakeholder Meetings. The Commission and Staff were aware of SCE filings, as compared with the Impact Reports and acted on the Impact Reports to reduce portions of ESPI earnings. In addition, at a February 27, 2020, Commission meeting, the Commission's Energy Division acknowledged that SCE's ESPI award for PY 2017 accounted for the reduction in savings identified in the 2017 Impact Evaluation report.[39] As such, there was transparency around the Impact Reports and data submitted by SCE in its filings.

Moreover, correcting prior submittals based on the Impact Reports is not the normal part of the energy efficiency process. Adjustments in energy savings and ESPI awards in the Commission's ESPI resolutions, for a variety of reasons, are not unusual and to the best of SCE's knowledge, utilities have not been required to update past filings to reflect such adjustments retroactively. Adjustments are reflected in ESPI reductions and there was no reason for SCE to assume that the process would be different this time. Certainly, the Intervenors have not explained what purpose revisions to SCE's filings would serve given that the Commission had visibility into SCE's filings and the issues identified in the Report as shortcomings of SCE's Program, and the Commission made the resulting ESPI reductions. Essentially, the Intervenors' arguments were an attempt to retroactively revise the expectations and norms that have applied to the EE process without having explained why they have not argued that other energy efficiency filings, be they for other programs or other years, should be similarly corrected, much less be subject to a Rule 1.1 penalty. Such a selective approach, particularly when it is applied in hindsight, does not serve the integrity or consistency of the regulatory process.

Intervenors also ignored the fact that SCE included a reference to the PY 2017 Evaluation report in its PY 2018 Annual Report to note that despite shipment data being accurately reported

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[39] SCE's June Response, pp. 14-15 (June 8, 2020); *See* CPUC Meeting, Public Agenda 3456, February 27, 2020, Item 10 discussion, *available at* http://www.adminmonitor.com/ca/cpuc/voting_meeting/20200227/.

in the Annual Report, adjustments to savings calculations might ultimately be made based on DNV GL's benchmarks:

> In 2018 [*sic*], the Impact Evaluation for the 2017 Upstream Lighting Program was issued, SCE expects similar results for 2018, thus SCE's Primary Lighting Program anticipates a reduction to its TRC on an ex-post basis.[40]

SCE also acknowledged the adjustment in its September 1, 2020, ESPI AL 4281-E:

> The Final Performance Statement Report reflects the adjustments from the impact evaluation studies, including the primary lighting study. SCE's request for the Part 2 - PY 2018 award reflects the results of those adjustments of approximately $11.9 million, of which $11.2 million is related to the primary lighting program.[41]

In short, there is no basis to conclude that SCE has violated Rule 1.1 or that a penalty is warranted in connection with any of SCE's Program submissions, particularly when the Intervenors' proposal is considered in light of Commission precedent.[42]

Further, the CEDARS reports are not final documents, but "in-process" quarterly submissions that are revised to reflect the most recent information, and each quarterly report makes the preceding one obsolete. After the Annual Report is filed for a specific year, that

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[40] Energy Efficiency Annual Report, PY 2018, p. A-5.

[41] Advice 4281-E, 2020 Request of Southern California Edison Company for Efficiency Savings and Performance Incentive Award, p. 7.

[42] *See*, e.g., D.17-06-009, pp. 13, 15 (disagreement regarding sufficiency of quarterly reports meeting reporting requirements resolved without finding Rule 1.1 violation for filing reports, but Commission directed utility to be more proactive about reporting requirements); *see, e.g.,* D.07-09-041 at 45 (although PG&E violated tariff rule and refunds ordered, there was no evidence PG&E knew it was violating tariff, nor evidence PG&E concealed its conduct from the Commission, and staff were aware of PG&E's practices and did not object; therefore a fine would not have a reasonable deterrent effect); *see*, e.g.,D.19-04-041 (Commission assessed penalties for SoCalGas violations of tariffs that delayed customer bills without Rule 1.1 allegations); *see, e.g.,* ALJ Ruling Denying Motion to Dismiss, Granting Motion for Leave to File Under Seal and Revising Procedural Schedule, A.19-04-001 (October 8, 2019), p. 4, *available at* https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M317/K314/317314701.PDF (dismissing argument of Rule 1.1 violation regarding data request responses, where the information was not false and misleading and made on good faith belief.)

program year is "locked down."[43] The quarterly reports are, in any event, subsumed by the year-end Annual Report. Even if there were corrections to be made, it would not make sense to reopen and correct quarterly reports. Annual Reports reprise the information in CEDARS for the entire year, whereas Advice Letters also include, in addition to all of the factual information from the prior year's CEDARS and Annual Report, the CPUC's savings performance statement which serves as the basis for the ESPI calculations reflected in SCE's ESPI advice letter filings. Thus, the ESPI advice letters already reflect accurate savings information as directed by the savings performance statement and would not need to be corrected. CEDARS, ALs and Annual Reports are only intended to be operative in the applicable year and have no "future" impacts.

In short, SCE provided its available information, acknowledged the 2017 Report in its 2018 Annual Report[44] and also acknowledged the impact evaluation adjustments in its September 1, 2020, ESPI AL 4281-E.[45] For these reasons, SCE does not believe it violated the requirements of Rule 1.1.

That being said, in the event the Commission disagrees with SCE's assessment and determines a Rule 1.1 violation occurred, SCE believes that any penalties should not be calculated as ongoing violations, as previously proposed by the Intervenors.

III.

THE COMMISSION CAN REACH A DECISION BASED ON THE EXTENSIVE PAPER RECORD

Since the January 9, 2020, issuance of the Administrative Law Judge's Ruling Seeking Comment on Upstream Lighting Program Impact Evaluation for Program Year 2017, SCE has submitted substantial documentation regarding the upstream lighting program issues, which

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43 "Locked down" means all values and claims data submitted for the prior year are frozen and only information for the ongoing year can be input into CEDARS without the Energy Division or its consultants undoing the work done for the past year and "unfreezing" that year.

44 EE Annual Report, PY 2018, p. A-5.

45 Advice 4281-E, 2020 Request of Southern California Edison Company for Efficiency Savings and Performance Incentive Award, p. 7.

includes, but is not limited to, responding to several rounds of discovery,[46] conducting internal and external third-party investigations, and filing several briefs on the issues. SCE believes the extensive paper record, amassed from over a year of litigation on these issues, in addition to any filings that will be submitted as part of this OSC, will contain all the information the Commission would require to make a decision based solely on the papers and that no hearing would be necessary.

IV.

CONCLUSION

SCE believes it should be required to refund $8.8 million as a percentage of Program costs, as well as all Program administration costs for PYs 2017-2019 in the amount of $4.3 million. In addition, SCE should be required to refund $6.8 million in ESPI earning for PYs 2017-2019, which reflects *all* ESPI incentives received for the Program. SCE does not believe it violated Rule 1.1, and, as such, does not believe Rule 1.1 penalties are warranted. For the reasons discussed here, SCE believes its proposed refunds are a reasonable and proportionate remedy that reflect SCE's accountability and transparency regarding Program management gaps.

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[46] Since January 2020, SCE has responded to a total of 11 requests for data from Cal Advocates, addressed a total of 72 questions relating to Program, and provided 6,300 documents containing supporting information on the Program.

Respectfully submitted,

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