



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

**FILED**

09/30/24

04:59 PM

A2308013

Application of Southern California  
Edison Company (U338E) for Authority  
to Recover Costs Related to the 2017  
Thomas Fire and 2018 Debris Flow  
Events Recorded in the Wildfire  
Expense Memorandum Account and  
Catastrophic Event Memorandum  
Account.

Application 23-08-013  
(Filed August 22, 2023)

**WILD TREE FOUNDATION COMMENTS  
IN OPPOSITION TO PROPOSED SETTLEMENT**

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Dated: September 27, 2024

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In accordance with the provisions of Rule 12.2 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Wild Tree Foundation (“Wild Tree”) respectfully files the following comments in opposition to the Proposed Settlement Agreement proposed by Applicant Southern California Edison Company (SCE”) and the Public Advocated Office (“Cal Advocates”) on August 29, 2024 (“Proposed Settlement”).

## INTRODUCTION

As the Applicant seeking recovery in rates for a catastrophic fire, SCE must affirmatively satisfy the Commission that it acted reasonably and prudently<sup>1</sup> and that the requested rates are just and reasonable.<sup>2</sup> SCE has not met that burden and any settlement that would then permit ratepayer recovery for the costs of the Thomas Fire and Montecito Debris Flows would thus not be reasonable in light of the whole record, consistent with law, or in the public interest. The proposed settlement would have SCE recover in rates the vast majority of its requested costs as well as unspecified “trailing” costs, all tax benefits, and the majority of any proceeds from and legal fees for outstanding litigation. SCE has not met its burden of proof that its conduct was reasonable and prudent in regards to the Thomas Fire and Montecito Debris Flows and the Proposed Settlement should be denied.

## ARGUMENT

### I. STANDARD OF REVIEW

The Commission can only approve settlements that are “reasonable in light of the whole record, consistent with law, and in the public interest.”<sup>3</sup> The Commission may reject a proposed settlement whenever it determines that the settlement is not in the public interest.<sup>4</sup> This is regardless of whether or not a settlement is contested.<sup>5</sup>

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<sup>1</sup> D.17-11-033 at p. 10.

<sup>2</sup> Pub. Util. Code, § 451.

<sup>3</sup> Commission Rules of Practice and Procedure Rule 12.1, subd. (d).

<sup>4</sup> Rule 12.4.

<sup>5</sup> Rule 12.1, subd. (d).

Parties to a proceeding may contest a proposed settlement by filing comments contesting all or part of the proposal.<sup>6</sup> Wild Tree contest the Proposed Settlement though the filing of these comments in opposition. Where a settlement is contested, as here, the Commission engages in a closer review of the settlement compared to an all-party settlement. “Central to our analysis here, where the proposed settlement is contested, is the relevant objections or concerns of opposing parties and the question of whether the settlement agreement provides a negotiated resolution of all the disputed issues.”<sup>7</sup> In reviewing any settlement proposed in this proceeding, the Commission should look to relevant precedents relating to contested settlements affecting a broad public interest.<sup>8</sup> The Commission has long relied upon the factors used by the courts in approving class action settlements in reviewing settlements that affect a broad public interest such as all customers of a utility:<sup>9</sup>

The standard used by the courts in their review of proposed settlements is whether the class action settlement is fundamentally fair, adequate, and reasonable. [Citations omitted.] The burden of proving that the settlement is fair is on the proponents of the settlement. [Citations omitted.] In order to determine whether the settlement is fair, adequate, and reasonable, the court will balance various factors which may include . . . : the strength of applicant’s case; the risk, expense, complexity, and likely duration of further litigation; the amount offered in settlement; the extent to which discovery has been completed so that the opposing parties can gauge the strength and weakness of all parties; the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of class members to the proposed settlement. [Citations omitted.]

In addition, other factors to consider are whether the settlement negotiations were at arm’s length and without collusion; whether the major issues are addressed in the settlement; whether segments of the class are treated differently in the settlement; and the adequacy of representation. [Citations omitted.]<sup>10</sup>

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<sup>6</sup> Rule 12.2.

<sup>7</sup> D.16-12-065 at p. 7.

<sup>8</sup> D.09-12-045 at p. 33.

<sup>9</sup> D.88-12-083; D.09-12-045; D.16-12-065.

<sup>10</sup> D.09-12-045 at pp. 33-35, quoting D.88-12-083.

SCE has applied for ratepayer cost recovery for costs it recorded in a wildfire expense memorandum account (“WEMA”) and catastrophic event memorandum account (“CEMA”). Because any settlement must be in compliance with the law and because SCE seeks ratepayer recovery for WEMA and CEMA accounts, any settlement must meet the legal requirements for ratepayer recovery of such accounts.

The standard of review for all charges, including those requested here, is just and reasonable, as established in Public Utilities Code section 451. This application seeks ratepayer recovery of costs and expenses arising or incurred as a result of a catastrophic wildfire that was ignited during 2017 and thus S

Section 451.2 also applies whereby “the commission shall determine whether those costs and expenses are just and reasonable in accordance with Section 451” but may also “shall consider the electrical corporation's financial status and determine the maximum amount the corporation can pay without harming ratepayers or materially impacting its ability to provide adequate and safe service” when allocating costs.

Commission precedent has established that the reasonable and prudent manager standard applies in Commission review of applications for ratepayer recovery through a WEMA account:

The Commission’s standard for reasonableness reviews, reaffirmed in a series of decisions, is as follows:

The term reasonable and prudent means that at a particular time any of the practices, methods and acts engaged in by a utility follows the exercise of reasonable judgment in light of the facts known or which should have been known at the time the decision was made. The act or decision is expected by the utility to accomplish the desired result at the lowest reasonable cost consistent with good utility practices. Good utility practices are based upon cost effectiveness, safety and expedition.<sup>11</sup>

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<sup>11</sup> D.17-11-033 quoting 24 CPUC 2d 476, 486.

In this case, SCE carries the “burden of proof to show by a preponderance of the evidence, that it complied with the Commission’s prudent manager standard.”<sup>12</sup>

Recovery of any costs through a CEMA account requires additional compliance with the Code, Commission policies, and CEMA tariffs:

Catastrophic event costs are recoverable only after the Commission makes a finding of their reasonableness and approves them following an expedited proceeding in response to the utility’s filed application (§ 454.9(b)). All of the approved CEMA applications have two common features: (1) a disaster declaration by a competent state or federal authority; and (2) citations to both Resolution E-3238 and § 454.9 for authority to recover reasonable costs on an expedited basis.<sup>13</sup>

Under the Public Utilities Code section 454.9, Resolution E-3238, and Commission precedent, CEMA review is complicated and is not analogous to review for other types of costs.

As the Commission has explained, CEMA costs are subject to a multi-part review:

In this case, in addition to confirming that the funds for which [a utility] seeks recovery were spent on the stated repairs, a proper review requires us to determine whether, at a minimum: (1) the [event] qualify as a disaster for CEMA purposes, and, if so, the scope of the disaster; (2) the damage for which cost recovery is sought was related to that disaster; (3) the costs could have been avoided or reduced. . . and (4) the costs for which recovery is sought are reasonable and incremental to normal . . . facility repair activity, including whether the costs were or should have been included among the risks contemplated to be borne by the utility in current rates. It is only after making these determinations that we can properly evaluate the reasonableness. . .<sup>14</sup>

SCE seeks to shift the Commission’s review away from the reasonable prudent manager standard to looser standard that is not applicable to fires ignited in 2017. SCE’s application states:

While section 451.1(b) is not directly applicable to the Events, the Commission nevertheless may and should consider that section, as well as the broader purpose and context of AB 1054 and the policies it reflects, when exercising its “broad discretion” in

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<sup>12</sup> D.17-11-033 at p. 11.

<sup>13</sup> D.07-07-041 at p. 17; *See also* D. 19-06-007.

<sup>14</sup> D.01-02-075 at pp. 19-20; *see also* D.19-06-007.

applying section 451.51 SCE does not contend that section 451.1(c), which addresses the burden of proof, applies to this proceeding, although the concept that the existence of a reasonable risk mitigation plan justifies a presumption of prudence is good guidance.”<sup>15</sup>

Public Utilities Code section 451.1 is inapplicable here and should play no role in this proceeding. The Thomas Fire and Montecito Debris Flows had already occurred when the Legislature promulgated section 451.1. Section 451.1 is specifically limited to wildfires ignited on or after July 12, 2019 and there was never any intention that any part of AB 1054 be backward looking to 2017.

In D.21-08-024, the Commission denied SCE recovery of CEMA costs for the Thomas Fire finding that “SCE has not met its burden of proof to demonstrate the costs associated with these two fires are reasonable and therefore recoverable.”<sup>16</sup> The Commission explained in that Decision why Section 451.1 is irrelevant to review of Thomas Fire costs and why Commission precedent is applicable:

[W]hile AB 1054 implemented § 451.1, which modified the standard of review applicable for cost recovery applications for catastrophic wildfires caused by an electrical corporation that ignited on or after July 12, 2019,<sup>101</sup> the standard of review applicable to the 2017 Firestorms is governed by § 451 and § 451.2. Our past precedent is therefore fully applicable to this decision, as § 451.2(a) specifically requires that the Commission, for catastrophic wildfires with an ignition date in the 2017 calendar year, to “determine whether those costs and expenses are just and reasonable in accordance with Section 451.”<sup>17</sup>

The Commission explained the precedent, applicable to this case, in conducting reasonableness reviews in past instances when considering whether to grant recovery for wildfire related costs.

In A.15-09-010, the Commission determined that San Diego Gas & Electric Company (SDG&E) did not reasonably manage and operate its facilities prior to 2007 wildfires, and therefore denied the utility’s request to recover costs. In that proceeding to recover Wildfire Expense Memorandum Account (WEMA) costs, the Commission considered the

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<sup>15</sup> SCE Application at p. 13.

<sup>16</sup> D.21-08-024 at p. 18.

<sup>17</sup> D.21-08-024 at pp. 24-26.



utility's management and operation of its facilities prior to the ignition of the subject fires, with review under the Commission's prudent manager standard, in order to determine whether the utility acted reasonably under § 451. Evidence considered included CalFire ignition findings, response times, potential actions that could have limited damage, foreseeability, compliance with General Order 95 standards, and inspection information, among a number of other factors. In that proceeding, the Commission determined that SDG&E did not show by a preponderance of the evidence that it prudently managed and operated its facilities prior to certain 2007 wildfires, and therefore denied the utility's request to recover WEMA costs. [citations omitted]

## **II. THE PROPOSED SETTLEMENT IS NOT CONSISTENT WITH THE LAW AND IS NOT REASONABLE IN LIGHT OF THE WHOLE RECORD**

### **A. The Record Demonstrates that SCE Failed to Act Reasonably and Prudently**

SCE bears of the burden of proof by a preponderance of the evidence and must therefore present more evidence that supports the requested result than would support an alternative outcome.<sup>18</sup> Pursuant to the Code and Commission precedent, SCE cannot recover costs associated with a catastrophic fire unless it demonstrates that it acted reasonably and prudently in incurring these costs and that any rates are just and reasonable. The CalFire investigation, Commission's Safety Enforcement Division ("SED") investigation, and evidence on the record demonstrate that SCE did not act reasonably and prudently, resulting in the ignition of the Thomas Fire.

The Proposed Settlement relies upon a finding that the requested costs are "just, reasonable, and recoverable through rates."<sup>19</sup> The Proposed Settlement states this claim is based upon the testimony of SCE's experts and testimony of Cal Advocates experts but is actually

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<sup>18</sup> D.17-11-033 at p. 10.

<sup>19</sup> Proposed Settlement at p. A-32, A-33.

contradicted by Cal Advocates testimony, the CalFire Investigation, and the SED Investigation and enforcement action which found that SCE acted imprudently and unreasonably.

CalFire found that SCE violated the law in committing involuntary manslaughter<sup>20</sup>, unlawfully causing a fire<sup>21</sup>, negligently failing to take reasonable precautions necessary to insure against the starting and spread of fire<sup>22</sup>, causing fire to be set on land that is not its own<sup>23</sup>, failing to design, construct, and maintain electrical systems in a condition which will enable safe, proper, and adequate service<sup>24</sup>.

The Commission's Safety Enforcement Division found that that SCE committed five violations of the Public Utilities Code and Commission rules: violation of GO 95, Rule 38, Minimum Clearances of Wires from Other Wires; violation of GO 95, Rule 31.1, Design, Construction and Maintenance; violation of Public Utilities Code section 399.2, subdivision (a) failing to operate its electric distribution grid in a safe, reliable, efficient, and cost-effective manner; violation of GO 95, Rule 19, Cooperation with Commission Staff; and violation of Public Utilities Code section 316 failing to cooperate fully with the Commission in an investigation into a major reportable incident concerning overhead electric supply facilities.<sup>25</sup>

The SED Investigation describes violations regarding the Anlauf ignition:

Edison failed to operate its facilities in a safe and reliable manner. When the overhead conductors made contact, they caused an ignition that started the fire. Edison should have maintained the clearance of its overhead conductors in a manner consistent with the clearance specified in GO 95, Rule 38. Edison should have recognized during its last detailed inspection that the clearance between its overhead conductors was not sufficient

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<sup>20</sup> Penal Code, § 192.

<sup>21</sup> Penal Code, § 452.

<sup>22</sup> Health & Safety Code, § 13001.

<sup>23</sup> Pub. Resources Code, § 4421.

<sup>24</sup> California Public Utilities Commission General Order 95, 31.3

<sup>25</sup> SED, *Investigation Report Of The December 4, 2017 Wildfire In Santa Paula, California Involving Southern California Edison Facilities That Came To Be Known As The Thomas Fire* ("SED Investigation") at p. 33.

to prevent contact during windy conditions. By failing to recognize the danger imposed by improper clearance, Edison failed to operate its facilities safely as required by PU Code § 399.2, thus, causing an ignition that started the fire.<sup>26</sup>

In denying SCE's previous attempt to recover CEMA costs for the Thomas Fire, the Commission found SCE failed to meet its burden of proof:

At the outset, we note there is an outstanding question of SCE's responsibility for and possible contribution to the Thomas and Rye Fires, based on California Department of Forestry and Fire Protection (CalFire) reports which found that SCE equipment ignited those fires.<sup>59</sup> Accordingly, we find that SCE has not met its burden of proof to demonstrate the costs associated with these two fires are reasonable and therefore recoverable. It may file a subsequent cost recovery application if it can demonstrate that it operated its system prudently under the prevailing standard at the time.<sup>27</sup>

The Commission has explained that in applicable precedent, it considered the utility's management and operation of its facilities prior to the ignition of the subject fires, with review under the Commission's prudent manager standard, in order to determine whether the utility acted reasonably under § 451. Specifically, the "evidence considered included CalFire ignition findings, response times, potential actions that could have limited damage, foreseeability, compliance with General Order 95 standards, and inspection information, among a number of other factors."<sup>28</sup> In this case, the CalFire ignition finding, potential actions that could have limited damage, foreseeability, compliance with General Order 95 standards, and inspection information all demonstrate that SCE did not act reasonably and prudently.

In addition to supporting the CalFire and SED findings, CalAdvocates testimony demonstrates that SCE was not prudent in not having a proactive de-energization program at the

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<sup>26</sup> SED Investigation at p. 29.

<sup>27</sup> D.21-08-024 at pp. 17-18.

<sup>28</sup> D.21-08-024 at pp. 24-25.

time of the Thomas Fire and that SCE's situational awareness practices at the time of the Thomas Fire were imprudent.

SCE's application does not demonstrate that it can meet its "burden of proof to show by a preponderance of the evidence, that it complied with the Commission's prudent manager standard."<sup>29</sup> SCE's argument that it was prudent is that 1.) its equipment *likely* was not the cause of the Thomas Fire and 2.) even though its equipment was responsible for the Koenigstein Fire, the conductor and power pole failures were "unusual and unexpected."

Neither argument is sufficient to meet the requirements of the Code and, furthermore, SCE itself obstructed investigation into the cause of the fires. SED found SCE to have violated GO 95, Rule 19, Cooperation with Commission Staff and Public Utilities Code section 316, explaining;

By not providing the comprehensive set of data and evidence that SED requested, Edison impeded and prolonged SED's investigation. Edison's actions prevented SED from reviewing all available information from the point at which the fire had least disturbed the electric facilities . . . Without such comprehensive information, SED cannot conduct a thorough investigation, determine the root cause of the incident, expeditiously remedy any issues and prevent future similar incidents from occurring.<sup>30</sup>

SCE's position is that even though "SCE and its experts *are not able to reach a definitive conclusion* regarding the cause of [the Thomas Fire] ignition" CalFire, the Ventura County Fire Department, the United States Forest Service, and the Commission's Safety Enforcement Division ("SED") are all wrong and SCE equipment was not "likely" the cause of ignition and thus it should be deemed to have acted prudently and reasonable.<sup>31</sup>

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<sup>29</sup> D.17-11-033 at p. 11.

<sup>30</sup> SED Investigation at p. 32.

<sup>31</sup> SCE-02 Direct Testimony at p. 2.

Despite the fact that CalFire and the Ventura County Fire Department found that “the equipment associated with the cause of the Thomas fire is owned and operated by Southern California Edison (SCE)”<sup>32</sup> and that line to line contact of SCE conductors caused the fire and, that SED found that SCE failed to maintain minimum required clearance between conductors resulting in ignition and the fire<sup>33</sup>, SCE claims its facilities were not “likely” involved in the ignition of the Thomas Fire.

Although SCE agrees with the results of that various governmental investigations that a downed SCE power line arcing into a receptive fuel bed ignited the Koenigstein Fire, and “SCE has not been able to reach a definitive conclusion as to why the conductor separated in the manner that it did”, SCE also seeks to evade responsibility for this ignition on the grounds that “SCE’s electrical expert concludes that the event was unexpected and extremely unusual.”<sup>34</sup>

SCE would have the Commission ignore the question of whether it acted prudently in constructing, operating, inspecting, managing, and maintaining its facilities by arguing that the Anlauf ignition “was *likely* not caused by SCE facilities” and that Koenigstein Fire was unexpected and unusual. By SCE’s own terms, it cannot meet its burden of proof that its acted reasonably and prudently. The Commission should not, therefore, approve a settlement based upon the grounds that SCE acted reasonably and prudently.

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<sup>32</sup> CalFire / Ventura County Fire Department, *Thomas Fire Investigation Report* at p. 47.

<sup>33</sup> SED Investigation at p. 29.

<sup>34</sup> SCE-02 Direct Testimony at p. 4.

### III. THE PROPOSED SETTLEMENT WOULD NOT BE IN THE PUBLIC INTEREST

It is not in the public interest to permit a utility to recover costs incurred as a result of deadly catastrophe that was the result of the utility's unreasonable and imprudent acts and omissions. Review of other factors used to determine whether a settlement is fair, adequate, and reasonable<sup>35</sup> demonstrate the Proposed Settlement would not be in the public interest. Some of these factors include the strength of applicant's case; the risk, expense, complexity, and likely duration of further litigation; the amount offered in settlement; and whether the major issues are addressed in the settlement.<sup>36</sup> The Proposed Settlement does not withstand scrutiny required for contested settlements and is demonstrated as not fundamentally fair, adequate, and reasonable and, therefore, not in the public interest.

#### A. The Applicant's Case is Weak

The weakness of Applicant CE's case make settlement inappropriate. As explained above, SCE does not even claim to have met its burden of proof, claiming only that "its independent expert testimony shows that the Anlauf ignition *likely* was not caused by SCE facilities" and that "SCE's expert opined that the conductor separation event was *unique and highly unusual*."<sup>37</sup>

SCE's case relies almost entirely upon disavowing the determinations made by CalFire and by the Commission's Safety Enforcement Division that SCE equipment caused the fire and that SCE acted imprudently and unreasonably. SCE's case also relies upon claims regarding

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<sup>35</sup> D.09-12-045 quoting D.88-12-083.

<sup>36</sup> *Ibid.*

<sup>37</sup> Proposed Settlement at pp. 19-20 (emphasis added).

financial matters that are immaterial to the determination of prudence. For example, the Proposed Settlement states, “Recovery will permit SCE to reduce the significant debt it has incurred to pay claims related to the Thomas Fire and Montecito Debris Flows, which will improve its credit metrics and financial health and thus permit more cost-effective access to capital for the benefit of customers.”<sup>38</sup> These after-the-fact matters are entirely irrelevant to determining prudence of SCE’s acts and omissions that lead to the Thomas Fire.

The Proposed Settlement relies upon SCE’s assertions that it was prudent in the design, construction, inspection, and maintenance of SCE’s facilities, deployment of protective devices, and SCE’s operations and wildfire mitigation measures<sup>39</sup> and that it was reasonable for SCE to settle claims against it even though “its independent expert testimony shows that the Anlauf ignition likely was not caused by SCE facilities and therefore was not attributable to any imprudence on the part of SCE.”<sup>40</sup> SCE has not proven any of the elements of its case and has failed its burden to present more evidence that supports its requested result than would support an alternative outcome.

## **B. Settlement Will not Substantially Decrease the Risk, Expense, Complexity, And Likely Duration Of Further Litigation**

The standard for considering litigation risks associated with approving a contested settlement is whether settlement would be better for ratepayers versus litigating to conclusion the Application. Applicant makes much of supposed avoidance of litigation stating, “absent the Settlement Agreement, future action in this proceeding would involve the Settling Parties and the

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<sup>38</sup> Proposed Settlement at p. 23

<sup>39</sup> Proposed Settlement at p. 8.

<sup>40</sup> Proposed Settlement at p. 19.

Commission in a lengthy, time-consuming, and complex litigation process that would be costly and burdensome.”<sup>41</sup> This proceeding has not been protracted and the record will be closed and submitted for a decision without a great amount of additional effort by the parties. The risk, expense, complexity, and likely duration of further litigation and stage of the proceeding do not weigh in favor of settlement.

### **C. Major Issues Are Not Addressed In The Settlement**

Major issues are not addressed in the settlement including prudence of settling claims and the actual amount of the settlement. The settlement does not make any distinction between recovery for Thomas Fire, the Montecito Debris Flows, legal costs, or debt costs but instead proposes to permit a percentage of all requested costs lumped together into WEMA and CEMA recorded costs.

SCE has not demonstrated that it acted prudently in settling claims. SCE claims that even though “the Anlauf ignition likely was not caused by SCE facilities and therefore was not attributable to any imprudence on the part of SCE” it was “reasonable for SCE to nevertheless settle claims against it given the Anlauf fire agency report’s conclusions, the merger of the two ignitions, and the courts’ application of the inverse condemnation doctrine.”<sup>42</sup> There have been no inverse condemnation decisions made regarding the Thomas Fire or the Montecito Debris Flows and inverse condemnation is inapplicable if a utility’s equipment was truly not responsible for causing the catastrophe, as SCE claims. If SCE’s position is that its facilities did not cause the Thomas Fire, then it should have not settled with victims of the Thomas Fire and settling was

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<sup>41</sup> Proposed Settlement at p. 24

<sup>42</sup> Proposed Settlement at p. 19.



thus imprudent. Inverse condemnation was not applied; SCE willingly settled without the courts making any determination on inverse condemnation. SCE has also taken the position that its facilities did not cause the Montecito Debris Flows yet, it settled over a billion dollars of Debris Flows claims. If SCE can really prove – as it claims in here – that its facilities were not the cause of the Thomas Fire or the Montecito Debris Flows, inverse condemnation would be not applicable because no public utility facility would have been involved in the disasters and settling would have been imprudent.

#### **D. The Amount Offered In Settlement Is Not Determined In The Proposed Settlement**

The Proposed Settlement would benefit SCE shareholder to a greater degree and increase rates more than the stated amount of \$1.68 billion. The Proposed Settlement would grant SCE 60% of WEMA costs; 85% of CEMA costs; 60% of unspecified amount of “trailing costs” incurred after May 31, 2024 (minus \$125 million disallowance imposed as a penalty); 40% of any amount recovered by SCE in Montecito Debris Flows litigation; 75% of legal fees and costs incurred after May 31, 2024; and any tax benefits such as deductions for disallowed amounts.

The Proposed Settlement states that the “Final Settlement” will be \$1,682,090,000. This includes WEMA and CEMA costs up until May 31, 2024 but not any of the other costs. The Proposed Settlement provides a speculative, outdated estimate only for “trailing costs,” it does not provide any other estimates of additional costs SCE would recover. “As of the time it served rebuttal testimony, SCE estimated that the WEMA Trailing Amounts net of the ACO disallowance would be \$9 million (60% of which would be recoverable from customers), but that estimate is

subject to change.”<sup>43</sup> The \$125 million “ACO disallowance” has already determined by the Commission to be disallowed as part of enforcement proceeding for SCE’s violation of the law. The Proposed Settlement does not provide any justification for why this disallowance would not be applied to the settlement but instead would be left to be deducted from some future, unspecified costs. The Proposed Settlement states, ““In the unlikely event that the CPUC-jurisdictional amount of WEMA claims costs incurred after May 31, 2024 does not exceed the \$125 million in WEMA claims costs waived under the ACO, SCE will ensure that the full \$125 million is given effect, through a refund to customers if necessary.”<sup>44</sup>

In the Montecito Debris Flows litigation, SCE has sued various public agencies for indemnity. The Proposed Settlement would grant SCE 60% of its Debris Flows WEMA costs and 40% of any amount recovered by SCE in the lawsuit. Under the Proposed Settlement, if SCE was successful in the lawsuit and the court ordered that the cross-defendants fully indemnify SCE, it would recover at least 100% of its costs associated with the debris flows (60% now, 40% after indemnification). If it was successful in the lawsuit and cross-defendants were ordered to pay SCE’s legal fees, SCE would likely recover a windfall in legal fees - 60% of legal fees recorded under WEMA, 75% of legal fees and costs incurred after May 31, 2024 plus all legal fees awarded by the court.

The Proposed Settlement does not provide any information on SCE’s expected tax benefits other than to state that SCE would receive all tax benefits. “Having considered the potential tax treatment applicable to the Settlement Agreement Amounts, the Parties expressly agree that the Settlement Agreement Amounts are fair, just, and reasonable without any adjustment needed to

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<sup>43</sup> Proposed Settlement at p. A-35.

<sup>44</sup> Proposed Settlement at p. A-34n68.

account for any tax benefits or liabilities that may be realized by SCE or its shareholders.”<sup>45</sup> This would include deductions for disallowed amounts which functionally decreases the disallowed amounts.

Ratepayers will have further costs associated with the financing and transaction costs of the long term securitized bond that SCE would seek for \$1.682 billion for WEMA costs. Ultimately, SCE’s shareholders will receive more, and rates will be increased more than the 60% of WEMA costs and 85% of CEMA costs described in the Proposed Settlement. Exactly how much more is unclear and it would not be just and reasonable to approve rates in a settlement when the rates have not been defined.

## CONCLUSION

For the reasons stated herein, Wild Tree Foundation urges the Commission to deny approval of the contested Proposed Settlement. The Proposed Settlement is not consistent with the law, not reasonable in light of the whole record, and its approval would not be in the public interest.

Respectfully submitted,

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<sup>45</sup> Proposed Settlement at pp. A-39-40.