

Decision 17-09-024 September 28, 2017

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

Order Instituting investigation on the Commission's Own Motion into the Operations and Practices of Southern California Edison Company; Notice of Opportunity for Hearing; and Order to Show Cause Why the Commission Should not Impose Fines and Sanctions for Major Power Outages in the City of Long Beach on July 15, 2015 to July 20, 2015, and on July 30 to August 3, 2015.

Investigation 16-07-007

**DECISION ADOPTING SETTLEMENT AGREEMENT BETWEEN  
SOUTHERN CALIFORNIA EDISON COMPANY AND  
THE SAFETY AND ENFORCEMENT DIVISION**

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**DECISION ADOPTING SETTLEMENT AGREEMENT BETWEEN  
SOUTHERN CALIFORNIA EDISON COMPANY AND  
THE SAFETY AND ENFORCEMENT DIVISION**

**Summary**

This decision approves the all-party Settlement Agreement between the Commission's Safety and Enforcement Division (SED) and Southern California Edison Company (SCE). The Settling Parties negotiated the settlement after SED concluded its investigation and finalized a report about the incident. The settlement resolves all issues of this Commission-ordered investigation of power outages originating with SCE's secondary network system in the City of Long Beach during July and August 2015. The settlement requires SCE to pay a penalty of \$4 million to the General Fund and to perform \$11 million worth of specific System Enhancement Projects at shareholder expense. The Settling Parties have met their burden to establish that the settlement is reasonable in light of the record, consistent with law and Commission precedent, and in the public interest. This proceeding is closed.

**1. The Settling Parties**

The Safety and Enforcement Division (SED) is a division of the California Public Utilities Commission (CPUC) charged with enforcing compliance with the Public Utilities Code and other relevant utility laws and CPUC's rules, regulations, orders, and decisions. SED is also responsible for investigations of utility incidents, including fires, and assisting the Commission in promoting public safety. Southern California Edison Company (SCE) is a public utility subject to the CPUC's jurisdiction under the Public Utilities Code. Center for Accessible Technology was granted party status at the Prehearing Conference (PHC), but subsequently withdrew from participation in February 2017.

## **2. Background**

In 2015, multiple power outages on SCE's secondary network system, the electric distribution system that serves downtown Long Beach, occurred, including a five-day outage from July 15 to July 20, 2015, and a four-day outage from July 30, 2015 to August 3, 2015. The Long Beach outages primarily affected 3,825 customers served by SCE's Long Beach secondary network, but at times extended to 30,000 customers, including customers who receive their power from radial circuits that also feed the secondary network. Along with these outages, the failure of electric facilities caused fires in several underground structures, resulting in explosions that blew manhole covers into the air. No injuries or fatalities resulted from these outages.

SED investigated the outages and alleged significant problems with SCE's maintenance, inspection, and management of the network system in Long Beach, and with SCE's emergency response and communications during the outages. Based on SED's investigation, on July 14, 2016, the CPUC issued Order Instituting Investigation (OII) 16-07-007, which attached SED's Investigation Report dated June 2016.

## **3. Allegations and Initial Recommendations**

SED alleged that (1) SCE violated General Order 128, including but not limited to Rules 17.1, 17.2, and 33.6-A, by failing to adequately design, install, maintain, and inspect its electrical distribution system, and by failing to maintain reasonably accessible working space in SCE's underground vaults; (2) SCE violated Section 768.62 of the Public Utilities Code<sup>1</sup> because SCE did not hold meetings with specific city and county representatives to improve SCE's

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<sup>1</sup> All statutory citations are to the Public Utilities Code unless otherwise noted.

emergency and disaster preparedness plan; (3) SCE failed to comply with Decision (D.) 14-08-009 that required SCE to implement recommendations from the SED 2011 Windstorm Report, in particular that SCE provide accurate restoration time estimates to its customers; (4) SCE violated § 451, which requires every public utility to reliably furnish and maintain its facilities to promote the safety of its employees, patrons, and the public; and (5) the aforementioned violations caused or contributed to the multiple and significant power outages that resulted in property damage, fires, explosions and other events that endangered the safety of the public in Long Beach during the months of July and August 2015.

Based on these allegations, SED recommended that SCE make changes in how it handles network system training maintenance, mapping, modeling, operations, and monitoring. SED also recommended that SCE improve its emergency response during outages including policies for deploying generators in emergency situations, communications with medically sensitive customers, improving the accuracy of restoration estimates, and inviting Long Beach city officials to participate in General Order 166 exercises and other emergency planning activities and exercises. SED recommended corporate culture changes, including programs and practices to capture and address employee concerns regarding maintenance and testing; developing and improving emergency response protocols companywide; reviewing and developing comprehensive risk management practices; continuously reviewing training activities; and utilizing formal automated work management systems to report and track work.

#### **4. Procedural History**

SCE's July 27, 2016 Response to the Preliminary Scoping Memorandum included SCE's internal report addressing the cause of the Long Beach secondary

network outages as well as an independent report by Davies Consulting. Both SCE's and Davies Consulting's reports were provided to SED and contained extensive recommendations. SED's own report generally agreed with the recommendations made by both SCE and Davies Consulting.

On September 6, 2016, a PHC was held to determine the parties, discuss the scope, schedule, and other procedural matters. At the PHC, SCE waived confidentiality for the redacted portion of the SED investigation. After propounding and responding to several data requests in the Long Beach OII, SED and SCE began settlement discussions of this proceeding on December 16, 2016. SED and SCE jointly moved for adoption of the settlement agreement on May 24, 2017.

## **5. Summary of the Settlement Agreement**

The Settlement Agreement resolves all issues in this proceeding with respect to SCE. The Joint Motion summarizes the components of the settlement from which we quote frequently in the sections that follow. Because the settlement includes a penalty payable to the General Fund of the State of California (General Fund), we evaluate the penalty provisions against those established in D.98-12-075, as recently applied in D.14-08-009 and related decisions.

### **5.1. SCE Safety Admission**

The Settlement Agreement contains the following admissions by SCE:

1. SCE admits it violated General Order 128, Rule 17.1 in connection with the 2015 Long Beach outages with respect to the operation, maintenance, and monitoring of the secondary network: (i) Two network protectors (NPs) were in the manual closed position and without functioning relays (NP 20649 and NP 28113); and (ii) NPs 20638, 25505, 25509, and 30397 were without functioning relays.

2. Based on the results of destructive testing that was performed on the failed splices to determine the cause of the failure, SCE admits that the Float and Steam 12 kilovolt splices were not constructed as required by General Order 128, Rule 17.1.
3. SCE admits that the conditions described in the chart below were found in the structures inspected following the July 15, 2015 Long Beach outage. None of the conditions were identified by inspections conducted prior to the outages.

Structure	Conditions
5132893	Damaged Splice
5061887	Hot, deteriorated, and leaking cable
5132647	Leaking Splice
5133097	Leaking Splice
5133251	Leaking Lead Cable
5132736	Splice Damage
5133094	Damaged Lead Cable
5133268	Heat Damage on Splice
5133353	Leaking Splice
5134048	Splice blown open

4. SCE admits that it violated General Order 128, Rule 17.2 in that on March 15, 2013, an Apparatus inspection crew was unable to inspect NP 20649 due to accessibility issues, and closed the inspection without scheduling and conducting a subsequent inspection.
5. SCE admits that it did not comply with § 768.6 because SCE did not hold the first public meeting required under § 768.6 until 2016.
6. SCE admits that it violated General Order 128, Rule 33.6-A in that vault number V5133089 contained cables that were not installed or supported properly inside the vault, thus preventing the initial inspection of the vault working space following the first of the Long Beach outages.

7. SCE admits that it violated § 451 in that the violations stated in Admissions 1, 4 and 6 also represent a failure to maintain certain of its facilities so as to promote the health, safety, comfort and convenience of its customers, employees and the public.

### **5.2. System Enhancement Program**

SCE agrees to use the \$11 million shareholder provided settlement fund established by the Settlement Agreement on the System Enhancement Projects listed below, in the order listed, over the next four years:

1. Installation of permanent lid restraint systems in underground structures containing facilities that are a part of the network system;
2. Replacement of all Paper Insulated Lead Covered ( PILC) and aluminum secondary conductors and all PILC primary conductors on the network system with copper conductors;
3. Installation of underground fault indicators and automation of switch capability on the network; and
4. Installation of current monitoring devices on network protectors.

SCE will provide quarterly reports to SED of its progress, implementation, and performance of the System Enhancement Projects until the end of the quarter in which SCE has spent all of the funds. Prior to the start of each such project, SCE and SED will confer about the format of the quarterly reports. SCE will notify SED if the projects cannot be completed within four years, or will be completed before the shareholder funding is exhausted. SCE and SED will make a good faith effort to agree about an extension of the four-year schedule or funding additional projects.

### **5.3. Additional Corrective Actions Performed**

SCE did not provide and did not meet estimated restoration times as required by the Commission approved settlement in D.14-08-009. SCE has since



implemented several corrective actions based on SED's recommendation to enhance the process for developing and releasing service restoration estimates.

SED recommended SCE implement six recommendations related to corporate issues such as internal communications, risk assessment, training, transmission of institutional knowledge and work management. SCE has implemented these recommendations.

Additionally, SCE performed the following corrective actions prior to filing of the Long Beach OII:

1. SCE inspected 329 underground structures, including 303 underground structures that were part of the Long Beach secondary network system. The inspections included inspections of the underground structures, equipment contained within the structure, and other elements.
2. SCE replaced 19 structures, 1 underground switch, 9 blowers, 1 vault lid, 2 transformers, multiple mole limiters, and 4 leaking splices; installed 278 tethers and 5 network protector relays; reconfigured 1 network protector relay; and replaced 4053 feet of cable.
3. As part of the above-mentioned inspections, SCE created notifications to repair or replace equipment requiring corrective action, including underground blowers used for ventilation.
4. SCE commenced inspecting underground structures that do not contain equipment such as underground switches or transformers.
5. SCE commenced performing additional tests on substation circuit breakers for primary feeder circuits connected to the Long Beach secondary network system.
6. SCE tethered 287 underground structures in the Long Beach secondary network system.
7. SCE issued two new standard operating bulletins after the events of July 30-August 3, 2015. One operating bulletin

- directed not to leave a network protector in manual closed, and the other operating bulletin indicated what a network protector without a network protector relay looked like.
8. SCE appointed the Long Beach Distribution Business Line District Manager as a single point of contact for work on the Long Beach secondary network system.
  9. SCE implemented the dozens of recommendations contained in the Davies report and in SCE's internal report.

#### **5.4. Penalty**

SCE shareholders will pay a fine of \$4 million to the General Fund pursuant to §§ 2107-2019.

### **6. Evaluation of the Settlement**

Rule 12.1(d) of the CPUC Rules of Practice and Procedure (Rules) applies whether settlements are contested, or like this case, uncontested. Therefore, as Rule 12.1(d) requires, we must assess each settlement against the record and applicable law and determine whether a settlement is in the public interest. Because the settlement also requires SCE to make shareholder-funded penalty payments to the General Fund in addition to the specified, shareholder-funded System Enhancement Projects, we examine the recommended penalty against the 12 identified criteria set out in D.98-12-075.

#### **6.1. Compliance with Rule 12.1(d)**

Beginning with Rule 12.1(d) the CPUC considers the record first. The Scoping Memo includes, as Attachment A, the official version of the SED Investigation Report into the Long Beach incident. The report specifies SED's factual basis for concluding that SCE violated § 451 as well as General Order 128,

Rules 17.1, 17.2 and 33.6A, § 768.6, and failed to comply with D.14-08-009.<sup>2</sup> As memorialized in Section III.D of the Settlement Agreement and summarized in the Joint Motion, SCE admits all of these allegations.

In addition to the \$4 million penalty, this settlement provides for \$11 million in shareholder-funded System Enhancement Projects designed to prevent future outages.

Remediation measures are forward-looking and, if well-designed and properly implemented, can correct problems in order to minimize or prevent the risk that harm will recur. Given the record of SED's investigations and given SCE's admissions, the remediation measures specified under the Settlement Agreement appear to be reasonably designed to address the equipment, performance and inspection failures that caused the Long Beach Secondary Network Outage.

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<sup>2</sup> As pertinent to the Long Beach OII, § 451 requires public utilities to provide safe and reliable service. The cited provisions of General Order 128 and § 768.6 govern the following:

- Rule 17.1 (Design, Construction and Maintenance), requires electrical supply and communication systems shall be designed, constructed, and maintained for their intended use, regard being given to the conditions under which they are to be operated, to enable the furnishing of safe, proper, and adequate service.
- Rule 17.2 (Inspection) Systems shall be inspected by the operator frequently and thoroughly for the purpose of insuring that they are in good condition and in conformance with all applicable requirements of these rules.
- Rule 33.6A (Accessibility) Cables and conductors in manholes, handholds, permanent cable trenches, or other similar enclosures shall be reasonably accessible to workmen and working space shall be available at all times.
- § 768.6 (Disaster and Emergency Preparedness Plans) Every two years an Electrical Corporation must invite appropriate city and county representatives to provide consultation regarding Disaster and Emergency Preparedness Plans within the Electrical Corporation's service area.

## **6.2. Compliance with D.98-12-075**

In D.98-12-075, the CPUC adopted the following criteria for evaluating the reasonableness of settlements involving fines: (1) physical harm; (2) economic harm; (3) harm to the regulatory process; (4) the number and scope of violations; (5) the utility's actions to prevent a violation; (6) the utility's actions to detect a violation; (7) the utility's actions to disclose and rectify a violation; (8) the need for deterrence; (9) the constitutional limit on excessive fines; (10) the degree of wrongdoing; (11) the public interest; and (12) consistency with precedent. (D.98-12-075 (1998), 84 CPUC 2d 155, 188-93.) As discussed below, application of the foregoing criteria demonstrates that, on balance, the Settlement Agreement, including the \$4 million fine, is reasonable and should be approved. The System Enhancements were taken into account in evaluating the reasonableness of the \$4 million penalty.

### **6.2.1. Physical and Economic Harm**

SCE and SED address these criteria together given the close relationship between them. D.98-12-075 defines these criteria as follows:

- Physical Harm - The most severe violations are those that cause physical harm to people or property, with violations that threatened such harm closely following. (D.98-12-075, 84 CPUC 2d at 188- 90.)
- Economic Harm - The severity of a violation increases with (i) the level of costs imposed on the victims of the violation, and (ii) the unlawful benefits gained by the public utility. Generally, the greater of these two amounts will be used in setting the fine. The fact that economic harm may be hard to quantify does not diminish the severity of the offense or the need for sanctions. (D.98-12-075, 84 CPUC 2d at 188-90.)

As described above, the Long Beach Incident resulted in a total power outage of nine days in July and August 2015 as well as several minor fires. The failure of the electric facilities caused fires in underground structures, resulting

in explosions that blew three manhole covers into the air, but there were no injuries, fatalities, or major property damage resulting from the outages.

Section II of the Settlement Agreement describes the scope of the outage that resulted from the damage to SCE's secondary system: the outages primarily affected 3,825 customers in SCE's Long Beach secondary network but the highest number of simultaneous customer outages was approximately 30,000.

Customers lost power for varying times over the nine days of outages. The Joint Motion states that SCE voluntarily issued a \$100 bill credit for all customers who were without power for more than 24 total hours. (Joint Motion at 10.)

Additionally, SCE administered a claims process to handle food spoilage and other outage related claims from customers, responded to such claims, and resolved all 2,495 claims for a total of \$2.03 million. (Joint Motion at 10.) Finally, the Settling Parties state that they "are not aware of any unlawful benefits gained by SCE from its conduct in this incident." (Joint Motion at 13.)

In light of the minor physical and economic harm identified and the steps SCE took to mitigate the economic harm that did occur, we agree with the Settling Parties that these factors are not significant for purposes of evaluating the penalty level in the Settlement Agreement.

### **6.2.2. Harm to the Regulatory Process**

D.98-12-075 defines Harm to the Regulatory Process as:

- A high level of severity will be accorded to violations of statutory or Commission directives, including violations of reporting or compliance requirements. (D.98-12-075, 84 CPUC 2d at 190.)

Regarding the Long Beach Incident SCE has admitted to violations of § 451, General Order 128, Rules 17.1, 17.2 and 33.6A, § 768.6, and failed to comply with D.14-08-009. The Settling Parties accurately point out that "there were no

allegations of Rule 1.1 violations or other ethical violations, no allegations of deliberate misconduct nor violations of reporting or compliance requirements associated with this incident.”<sup>3</sup> (Joint Motion at 14.) We agree with the Settling Parties that this is not a significant factor for purposes of evaluating the Settlement Agreement.

### **6.2.3. The Number and Scope of Violations**

D.98-12-075 described this criterion as:

- A single violation is less severe than multiple offenses. A widespread violation that affects a large number of consumers is more severe than one that is limited in scope. For a continuing violation, § 2108 counts each day as a separate offense. (D.98-12-075, 84 CPUC 2d at 191.)

The Long Beach Incident affected as many as 30,000 customers for varying periods of time, over a nine day period. Only a small number of these affected customers were without power for more than 24 hours. The Settling Parties have agreed on the violations listed in Section III.D of the Settlement Agreement. (Settlement Agreement at 4-5.) Some of the violations included improper installation, maintenance, accessibility and inspection of equipment for the secondary network system in Long Beach and failure to provide accurate restoration times. Several of these violations (the inoperative network protectors and the improperly closed Apparatus inspection) were continuing violations, although the exact duration in the case of the network protectors would be difficult to determine. As for the remaining admissions in Section III.D of the

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<sup>3</sup> The violation of § 768.6 (failure to hold meeting for representatives of all cities and counties) was unrelated to the Long Beach outages. Although not in compliance with the statute, after the law went into effect, SCE had many emergency preparedness meetings with representatives of cities and counties.

Settlement Agreement, SED and SCE have agreed that it is not necessary to resolve whether they involved continuing violations and if so, how long the violations may have continued.

This criterion weighs in favor of a significant penalty. Multiple violations caused the nine-day power outage that affected up to 30,000 people. Several of the violations were continuous, for an unknown duration.

**6.2.4. The Utility's Actions to Prevent, Detect, Disclose, and Rectify a Violation, The Need for Deterrence, and the Degree of Wrongdoing**

SCE and SED address the next five criteria together given the close relationship between them. D.98-12-075 defines these criteria as follows:

- The Utility's Actions to Prevent a Violation: Utilities are expected to take reasonable steps to ensure compliance with applicable laws and regulations. The Utility's past record of compliance may be considered in assessing any penalty. (D.98-12-075, 84 CPUC 2d at 191.)
- The Utility's Actions to Detect a Violation: Utilities are expected to diligently monitor their activities. Deliberate, as opposed to inadvertent wrongdoing, will be considered an aggravating factor. The level and extent of management's involvement in or tolerance of, the offense will be considered in determining the amount of any penalty. (D.98-12-075, 84 CPUC 2d at 191-92.)
- The Utility's Actions to Disclose and Rectify a Violation: Utilities are expected to promptly bring a violation to the Commission's attention. What constitutes "prompt" will depend on circumstances. Steps taken by a utility to promptly and cooperatively report and correct violations may be considered in assessing any penalty. (D.98-12-075, 84 CPUC 2d at 192.)
- Need for Deterrence: Fines should be set at a level that deters future violations. Effective deterrence requires that the size of a fine reflect the financial resources of the utility. (D.98-12-075, 84 CPUC 2d at 192.)

- The Degree of Wrongdoing: The Commission will review facts that tend to mitigate the degree of wrongdoing as well as facts that exacerbate the wrongdoing. (D.98-12-075, 84 CPUC 2d at 192.)

Addressing the third criterion first (actions to disclose and rectify), the Settling Parties agree that SCE made a timely initial report in the immediate aftermath of the Long Beach incident. Thereafter, SCE took appropriate corrective action to inspect and repair infrastructure in the Long Beach secondary network system, and cooperated in the subsequent investigation. SCE repaired infrastructure damaged in the incident and replaced network protectors, 4 leaking splices, 4053 feet of cable and other equipment. (Joint Motion at 12.) SCE also responded to SED data requests, conducted an internal investigation, and implemented recommendations made by an independent consultant as well as SED. (Joint Motion at 15.)

Regarding the first and second criteria (preventing and detecting violations), SCE admits that although SCE did undertake a network upgrade program in 2011, it did not follow through on all of the identified issues. (Joint Motion at 15.) SCE admits that the historical reliability of the secondary network resulted in less attention to employee training, benchmarking with other utility network systems, mapping, and restart procedures as well as incomplete follow-through after inspections. However, the Settling Parties agree that SCE implemented corrective actions. (Joint Motion at 11-12.) The Long Beach network system has functioned without incident since these outages occurred.

The Settling Parties concur that the settlement meets the fourth criterion (deterrence) given the substantial size of the shareholder payments, which total \$15 million. The Settling Parties also assert that the shareholder-funded penalty and remediation components of this settlement are appropriate to the financial



size of SCE. The Settling Parties also agree there are no allegations of deliberate misconduct associated with this incident. (Joint Motion at 15.)

The CPUC agrees that the proposed penalty is reasonable. The Settling Parties persuasively argue that \$15 million in shareholder payments is reasonable and should deter future violations of this nature by SCE. The Long Beach Incident was caused by SCE's failure to prevent and detect multiple, continuous violations through negligent maintenance and inspection of its historically reliable system. The nine days of power outages resulted in minor property damage and little to no physical harm and SCE has since taken reasonable steps to prevent a future incident. SCE made timely disclosure of the incident to the CPUC, and took corrective actions according to independent recommendations. The record does not establish any deliberate misconduct or Rule 1.1 violations by SCE. \$4 million is a significant direct penalty in light of these mitigations. Additionally, the shareholder funded System Enhancement projects, at a cost of \$11 million, provides for ongoing monitoring by SED.

#### **6.2.5. Constitutional Limit on Excessive Fines**

The Settling Parties state that this factor is not applicable here and the CPUC agrees. By reaching a settlement, the Settling Parties have implicitly agreed that shareholder payments of \$15 million are not excessive.

#### **6.2.6. The Public Interest**

D.98-12-075 states that "[i]n all cases, the harm will be evaluated from the perspective of the public interest." (D.98-12-075, 84 CPUC 2d at 127.)

The Commission provided the following guidance in D.13-09-028, which approved the SCE/SED settlement of the Malibu Canyon Fire:

The public interest is always considered in determining the size of a fine. Here, we accord great weight to SED's

judgment . . . that the settlement fine . . . is in the public interest. SED is the public's representative in Commission enforcement proceedings and has extensive experience with both litigated outcomes and negotiated settlements. SED is intimately familiar with the facts and circumstances of this case . . . . Moreover, it would undermine SED's ability to negotiate fines if the counterparty lacked confidence in the Commission's willingness to approve the negotiated fine. This situation would virtually guarantee that every enforcement proceeding would be fully litigated, resulting in an inefficient use of scarce public resources. (D.13-09-028 at 39-40.)

The Settling Parties argue persuasively that these public interest considerations apply to this Settlement Agreement. First, the Settling Parties underscore that SED investigated the July and August 2015 outages and prepared its Investigation Report before settlement negotiations commenced. Second, the Settling Parties assert the Settlement Agreement takes immediate steps to reduce the likelihood of recurrence of such events or the harm they might cause, through the four System Enhancement Projects. Third, the Settling Parties state the General Fund penalty negotiated as part of the settlement is based on a fair evaluation of the facts of this case, the resource demands and uncertainties of litigation, and the significance of the comprehensive corrective actions developed to improve how SCE operates, maintains and responds to network reliability issues. The Settling Parties accurately observe that in approving other settlements that included negotiated penalties the CPUC has emphasized that the public interest is served by reducing the expense of litigation, conserving scarce CPUC resources and allowing Settling Parties to eliminate the risk of an unfavorable litigated outcome. (*See for example, D.15-07-014, at 21, citing other precedent.*)

For these reasons, we hesitate to second guess the penalty negotiated by SED without good cause. We see no good cause here.

### **6.2.7. Consistency with Commission Precedent**

By way of precedent, SED and SCE highlight several settlements that they consider on point in evaluating the proposed settlement in this case. With reference to D.14-08-009, which approved the settlement between SED and SCE in the windstorm that struck San Gabriel Valley, the Settling Parties note similarities and differences. Like the settlement here, that settlement included a penalty (\$5 million) and targeted remediation measures (\$3 million). Neither incident resulted in any deaths, injuries or major property damage. In that incident, SCE deliberately disposed of failed poles in violation of General Order 95, Rule 19 whereas in this proceeding there were no allegations of intentional misconduct. Although the 2011 Windstorm outages affected far more people for a longer time, a larger settlement amount is reasonable here because the Long Beach outages are linked to how SCE operated and maintained its network. Additionally, a larger amount of the settlement will be used on network system enhancements.

D.06-02-003 approved a settlement between PG&E and SED involving a fire at the PG&E's Mission Substation. In that settlement, PG&E agreed to pay \$500,000 to the State General Fund and to allocate \$6 million in shareholder funding for a number of remedial measures. The settlement also included the Settling Parties' stipulation that PG&E did not commit any violations.<sup>4</sup> Compared to D.06-02-003, a larger payment is appropriate in the current

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<sup>4</sup> D.06-02-003, Appendix A at 3, Paragraph 1.

proceeding because the Long Beach outages were more extensive and SCE admits to multiple violations.

D.13-09-018 conditionally approved a settlement agreement between SCE and SED regarding the Malibu Canyon Fire Investigation (I.09-01-018). Like the settlement here, SCE agreed to pay a penalty (\$20 million) and remediation measures (\$17 million), both shareholder-funded. While the penalty and shareholder funding in the Malibu OII is larger, there were multiple Rule 1.1 violations admitted in that case, and there was extensive property damage from the wildfire caused by the downed poles.

D.12-09-019 conditionally approved SED's settlement with three communications carrier respondents to the Malibu Canyon Fire OII (AT&T, Sprint, and Verizon Wireless). Under that settlement, the three carriers agreed to pay \$12 million (in equal, one-third shares,) divided between a \$6.9 million penalty and a safety enhancement fund contribution of at least \$5.1 million. Even though that settlement involved Rule 1.1 admissions as well as far more extensive property damage, the three carriers together paid a total that is \$3 million less than SCE will pay in this case.

In D.13-09-026, the Commission conditionally approved a third settlement in the Malibu Canyon Fire OII, which SED negotiated with the communications carrier NextG Networks (NextG). NextG acknowledged that it was informed by SCE that its equipment would overload a pole but installed its equipment anyway. The monetary payments under the settlement totaled \$14.5 million, \$8.5 million identified as a penalty and \$6 million for a statewide safety audit of NextG's pole attachments. While the total paid by NextG is comparable to the value of this settlement, NextG's misconduct and the extent of the resulting property damage indicate the present settlement is in the public interest.

The CPUC finds the settlement penalty of \$4 million and \$11 million in System Enhancement Projects is in the public interest when compared to the outcome of other, comparable SED settlements described above and outcomes in CPUC investigations. This case involved no allegations of deliberate misconduct, no Rule 1.1 allegations, and no criticism of SCE's investigation of the outages. In contrast to some of the above mentioned cases, there were no comparable personal injuries or major property damage. SCE performed corrective actions and SED will monitor SCE's implementation of the System Enhancement Projects.

## **7. Conclusion**

The settlement agreement is uncontested and the Settling Parties believe that the Settlement Agreement appropriately resolves the issues identified in the SED investigation and the Long Beach OII. The Settling Parties have considered and described how the settlement agreement comports with each of the criteria for evaluating reasonableness. Based on our review, the Settlement Agreement is reasonable in light of the record, consistent with the law and precedent, and in the public interest. Therefore, we approve the Settlement Agreement in the form presented.

As SCE and SED correctly recognize, the CPUC has a long standing policy favoring settlement in the public interest. Today's decision affirms that our staff must have reasonable discretion to negotiate settlements when circumstances warrant and indeed, that not every enforcement action need be fully litigated. It also affirms, however, that the Settling Parties to such a settlement must explain their rationale and the public interest therein, for settling on the terms they then ask us to approve.

## **8. Other Issues Raised by the Settlement Agreement**

The Settlement Agreement makes clear that the \$11 million in System Enhancement Projects are to be funded by shareholders but does not specify whether these shareholder funded investments will be eligible to earn a return. We clarify that SCE may not include the System Enhancement Project costs in its rate base, and ratepayers will not be responsible for any depreciation, or rate of return on these capital amounts.<sup>5</sup>

## **9. Categorization and Need for Hearing**

The Long Beach OII and Scoping Memo categorized this proceeding as adjudicatory and determined that hearings might be required. No hearings have been held and, following the filing of the uncontested, all-party settlement, we find that no hearings are needed to resolve this proceeding.

## **10. Comments on Proposed Decision**

The proposed decision of Administrative Law Judge (ALJ) Cooke in this matter was mailed to the parties in accordance with Pub. Util. Code § 311, and comments were allowed under Rule 14.3. Comments were filed on September 7, 2017 by the Settling Parties. Corrections have been made throughout the decision in response.

## **11. Assignment of Proceeding**

Michael Picker is the assigned Commissioner and Michelle Cooke is the assigned ALJ in this proceeding.

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<sup>5</sup> Ratepayers, will, however, be responsible for ongoing operation and maintenance of these facilities, unless those costs are otherwise required to be funded by shareholders, or disallowed.

### **Findings of Fact**

1. Although the Long Beach outages in 2015 lasted nine days, there was no physical and limited economic harm that resulted from the outages.
2. Following the Long Beach outages, SCE promptly conducted internal and independent analyses of the outages and took corrective actions to limit the likelihood of recurrence.
3. SCE's actions in advance of the opening of the OII are some of the mitigating factors considered in evaluating the reasonableness of the penalty.
4. SCE and SED are the only parties to this proceeding, they have negotiated an all-party settlement to resolve all of the issues in this OII, and they have filed a Joint Motion recommending we approve the Settlement Agreement.
5. SCE admits that it violated General Order 128, Rules 17.1, 17.2, and 33.6-A, §§ 451 and 768.6, and that none of the damaged and leaking conditions in its Long Beach Secondary Network were identified by inspections conducted prior to the outages.
6. As a result of the Settlement Agreement, SCE shareholders will invest \$11 million in specified System Enhancement Projects.
7. As a result of the Settlement Agreement, SCE shareholders will pay a \$4 million penalty, which will be transmitted to California's General Fund.

### **Conclusions of Law**

1. The Joint Motion should be granted.
2. The Settlement Agreement should be adopted without modification.
3. The Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest, consistent with Rule 12.1(d) of the CPUC Rules of Practice and Procedure.

4. The Settlement Agreement adequately addresses all the issues in the scope of this proceeding, including SED's recommendations.

5. The proposed penalty and System Enhancement Project investments are reasonable under D.98-12-075 analysis, § 2107 et seq., and in comparison to other CPUC decisions resolving enforcement actions.

6. SED should monitor, as set forth in the Settlement Agreement, SCE's implementation of: (1) installation of permanent lid restraint systems in underground structures containing facilities that are a part of the network system; (2) replacement of all Paper Insulated Lead Covered (PILC) and aluminum secondary conductors and all PILC primary conductors on the network system with copper conductors; (3) installation of underground fault indicators and automation of switch capability on the network; and (4) installation of current monitoring devices on network protectors to ensure the safety benefits are realized.

7. SCE should not include the System Enhancement Project costs in its rate base, and ratepayers should not be responsible for any depreciation, or rate of return on these capital amounts.

8. Hearings are not needed.

## **O R D E R**

**IT IS ORDERED** that:

1. The Settlement Agreement between the Safety and Enforcement Division and Southern California Edison Company, attached to this order as Appendix A, is approved and adopted, without modification.



2. The Joint Motion for Approval for Settlement Agreement filed by the Safety and Enforcement Division and Southern California Edison Company, on May 25, 2017, to resolve the issues in the herein proceeding, is granted.

3. Southern California Edison Company may not include the System Enhancement Project costs in its rate base, and ratepayers will not be responsible for any depreciation, or rate of return on these capital amounts.

4. Southern California Edison Company, as required under the Settlement Agreement approved in Ordering Paragraph 1, shall pay a fine totaling \$4,000,000 to the State of California General Fund within 30 days from the effective date of this order. Payment shall be made by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. Southern California Edison Company shall write on the face of the check or money order "For deposit to the State of California General Fund per Decision17-09-024" with "Decision 17-09-024" being the Commission-designated number for today's decision.

5. All money received by the Commission's Fiscal Office pursuant to Ordering Paragraph 4 shall be deposited or transferred to the State of California General Fund as soon as practical.

6. Hearings are not needed.

7. Investigation 16-07-007 is closed.

This order is effective today.

Dated September 28, 2017, at Chula Vista, California

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners

# **APPENDIX A**