

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Safety and Enforcement Division
Electric Safety and Reliability Branch**

**Resolution SED-5
December 16, 2021**

RESOLUTION

**RESOLUTION SED-5 APPROVING ADMINISTRATIVE CONSENT
ORDER AND AGREEMENT OF THE SAFETY AND ENFORCEMENT
DIVISION AND SOUTHERN CALIFORNIA EDISON COMPANY
(U338-E) REGARDING THE 2017/2018 SOUTHERN CALIFORNIA
FIRES PURSUANT TO RESOLUTION M-4846**

SUMMARY

In this Resolution, the California Public Utilities Commission (Commission) approves an Administrative Consent Order and Agreement between the Commission's Safety and Enforcement Division (SED) and Southern California Edison Company (SCE) to resolve all issues involving the 2017 Liberty, Rye, Meyers, and Thomas Fires and the 2018 Woolsey Fire (collectively, the 2017/2018 Southern California Fires), whereby SCE agrees to fines, safety measures and disallowances totaling \$550,000,000 as follows: \$110,000,000 fine to the General Fund of the State of California; \$65,000,000 in shareholder-funded safety measures; and \$375,000,000 in permanent disallowances of cost recovery.

BACKGROUND AND DISCUSSION

Resolution ESRB-4, issued in June 2014, directs all investor-owned electric utilities, including SCE, to take remedial measures to reduce the likelihood of fires started by or threatening utility facilities.

In 2017, the Liberty, Rye, Meyers and Thomas Fires occurred in SCE's service territory. In 2018, the Woolsey Fire occurred in SCE's service territory. SED conducted investigations of the Liberty, Rye, Meyers, Thomas and Woolsey Fires and, in its investigation report on each incident, identified alleged violations by SCE of provisions of the California Public Utilities Code and the Commission's General Orders. SED's investigation reports are being provided for reference on the Commission's website.¹ These investigation reports are not incorporated by reference into this Resolution.

¹ <https://www.cpuc.ca.gov/industries-and-topics/wildfires/wildfires-staff-investigations>

Resolution M-4846, issued in November 2020, adopted the Commission Enforcement and Penalty Policy (Enforcement Policy) and authorized Commission staff to negotiate and propose an Administrative Consent Order to resolve an enforcement matter, subject to review and consideration by the Commission.²

On October 21, 2021, SED and SCE executed the attached Administrative Consent Order and Agreement, pursuant to and consistent with the Enforcement Policy, which resolves all issues related to SED's investigations of the 2017/2018 Southern California Fires and any enforcement action SED might have brought related to or arising from the 2017/2018 Southern California Fires.

In accordance with the Enforcement Policy,³ the proposed settlement between SED and SCE (collectively, Parties) is memorialized in the attached Administrative Consent Order and Agreement.

The Parties have bargained in good faith to reach the Administrative Consent Order and Agreement terms, including appendices. The Parties intend the Administrative Consent Order and Agreement to be interpreted as a unified, integrated order and agreement, and to be treated as a complete package and not as a collection of separate agreements on discrete issues. To accommodate the interests related to diverse issues, the Parties acknowledge that changes, concessions, or compromises by a Party in one section of the Administrative Consent Order and Agreement resulted in changes, concessions, or compromises by the other Party in other sections.

The Enforcement Policy provides that "the following general considerations should be evaluated as part of any proposed settlement to be submitted for Commission review: 1. Equitable Factors; 2. Mitigating circumstances; 3. Evidentiary issues; and 4. Other weaknesses in the enforcement action[.]"⁴ The Parties explicitly considered these factors in their confidential settlement communications. Without waiving the protections of Rule 12.6 of the Commission's Rules of Practice and Procedure, the Parties represent that they took into account, among other things, the substantial and continuing progress SCE has made since the 2017/2018 Southern California Fires, first through its Grid Safety & Resiliency Program and then through its successive Wildfire Mitigation Plans and Updates thereto, to reduce the risk of ignitions associated with its infrastructure. The Parties also considered the substantial commitment of shareholder funds for wildfire-related issues as a result of Assembly Bill 1054. SED recognizes SCE's cooperation and willingness to constructively engage with SED on the negotiation of the Administrative

² Resolution M-4846, Findings and Conclusions #8; Enforcement Policy, p. 11.

³ Enforcement Policy, p. 10.

⁴ Enforcement Policy, p. 15.

Consent Order and Agreement, and SED explicitly considered a range of evidentiary and other matters, including SCE's factual disputes and legal defenses to the allegations set forth in SED's investigation reports, that would bear upon SED's pursuit of enforcement actions seeking penalties or citations on disputed issues of fact and law. When taken as a whole, the Parties agree that the agreed-upon fines, safety measures and disallowances are within the range of reasonable outcomes had the matters proceeded to formal litigation.

COMMENTS ON DRAFT RESOLUTION

The Draft Resolution was served by email to the service list on November 2, 2021, in accordance with Cal. Pub. Util. Code § 311(g). Comments were received from the County of Santa Barbara (Santa Barbara), and jointly from The Utility Reform Network (TURN) and the Public Advocates Office at the California Public Utilities Commission (Cal Advocates).

Santa Barbara recommended revisions to the sections of the Administrative Consent Order and Agreement that address Safety Measures, Community Engagement and Protection, and Financial Contributions to Safety and Wildfire Mitigation Focused Non-Profit Organizations, such as requiring that these efforts be prioritized to occur within areas impacted by the 2017/2018 Southern California Fires, and that they be coordinated with emergency management and fire response agencies in the impacted areas.⁵

Santa Barbara also expressed concern that the Commission's Administrative Consent Order process does not provide an opportunity for early input from impacted communities or the same level of transparency as in past enforcement matters.⁶

TURN and Cal Advocates argued that the use of the Administrative Consent Order process for fires of the severity of the 2017/2018 Southern California Fires is inappropriate, and that the Commission should have used an Order Instituting Investigation (OII) to open a formal proceeding. According to TURN and Cal Advocates, an OII would provide an opportunity for more parties to participate in the review of SCE's actions, and to weigh in on the appropriate fines, penalties, disallowances or other measures that should be imposed on SCE.⁷

TURN and Cal Advocates also raised other issues, including that the settlement is essentially a "black box" and it is difficult to determine the basis for and reasonableness of the proposed settlement and its elements such as tax treatment, and whether the

⁵ Santa Barbara Comments at 1-3.

⁶ Santa Barbara Comments at 3.

⁷ Joint Comments at 2-5.

proposed disallowance amount for third-party uninsured claims payments should be increased as a result of the uncertainty regarding SCE's prospects for recovering those costs in rates.⁸

Based on comments from TURN and Cal Advocates,⁹ SCE and SED agree to remove the following language in Paragraph 3.C. of the Administrative Consent Order and Agreement: "SED shall not participate as a party in any future cost recovery proceeding about SCE's conduct related to the 2017/2018 Southern California Fires, nor shall it oppose any request by SCE to recover costs related to the 2017/2018 Southern California Fires in any future cost recovery proceeding." SCE and SED represent that their intention was not to bar SED from offering information and/or testimony in relevant proceedings about matters bearing on its expertise, which could be accomplished through means other than party participation.

No other changes to the Draft Resolution have been made in response to comments.

FINDINGS AND CONCLUSIONS

1. Resolution M-4846 authorized Commission staff to negotiate and propose an Administrative Consent Order to resolve an enforcement matter, subject to review and consideration by the Commission.
2. SED and SCE have engaged in settlement negotiations and, consistent with Resolution M-4846 and the Enforcement Policy, have memorialized their proposed settlement in the attached Administrative Consent Order and Agreement.
3. SED and SCE have agreed that, with their modifications to Paragraph 3.C. described herein, which we adopt, the attached Administrative Consent Order and Agreement resolves all issues related to SED's investigations of and any enforcement action SED might have brought related to or arising from the 2017/2018 Southern California Fires.
4. The agreed-upon fines, safety measures and disallowances appropriately resolve all issues related to SED's investigations and any enforcement action SED may have brought, are reasonable in light of the circumstances, consistent with the law, and in the public interest.

THEREFORE, IT IS ORDERED that:

1. The attached Administrative Consent Order and Agreement between SED and SCE relating to the 2017/2018 Southern California Fires is adopted, which shows the

⁸ Joint Comments at 5-10.

⁹ Joint Comments, p. 9.

following sentence stricken from Paragraph 3.C.: “SED shall not participate as a party in any future cost recovery proceeding about SCE’s conduct related to the 2017/2018 Southern California Fires, nor shall it oppose any request by SCE to recover costs related to the 2017/2018 Southern California Fires in any future cost recovery proceeding.”

2. This Resolution is effective today.

I certify that the foregoing Resolution was adopted by the California Public Utilities Commission at its regular meeting on December 16, 2021, and the following Commissioners approved favorably thereon:

RACHEL PETERSON
Executive Director