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November 9, 2023

Decision 23-11-046 November 2, 2023

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338-E) for Authority to Establish Its Authorized Cost of Capital for Utility Operations for 2022 and Reset the Annual Cost of Capital Adjustment Mechanism.	Application 21-08-013
And Related Matters.	Application 21-08-014 Application 21-08-015

ORDER MODIFYING DECISION 22-11-018, AND DENYING REHEARING, AS MODIFIED

In this Order, we dispose of the application for rehearing of Decision (D.) 22-11-018 filed jointly by Energy Producers and Users Coalition and Indicated Shippers, The Utility Reform Network, Wild Tree Foundation, Protect Our Communities Foundation, and Walmart Inc. (collectively, rehearing applicants). We have determined that D.22-11-018 should be modified to add an additional Finding of Fact. As modified, rehearing of D.22-11-018 should be denied because good cause has not been demonstrated to grant rehearing.

I. BACKGROUND

In D.22-11-018 (Decision), we resolved the issues of whether the extraordinary circumstances requirements of D.08-05-035 had been met and whether the Cost of Capital Mechanism (CCM) adjustment should apply to the return on equity (ROE) for the year 2022 for Southern California Edison Company, San Diego Gas & Electric Company, and Pacific Gas and Electric Company (collectively, the Utilities). The Decision found that the Utilities experienced the circumstances caused by the COVID-19 pandemic differently as compared to the proxy utilities groups and the overall

financial markets. The Decision further found that these extraordinary circumstances warranted a departure from the CCM adjustment for 2022, finding that the CCM adjustment failed to result in a fair and reasonable ROE given the extraordinary circumstances, and therefore, it should not apply in 2022. The Decision determined that it was reasonable to retain the ROE and other cost of capital components at levels as previously approved by D.19-12-056.

The underlying Commission proceedings (Applications 21-08-013, 21-08-014, 21-08-015) involve compliance with the CCM and changes to the ROE outside of the three-year application cycle. Established by the Commission in 2008, the CCM requires utilities to file cost of capital applications with the cost of capital components and the structure every three years. (D.08-05-035, pp. 15–16, 20–21 [Ordering Paragraph (OP) 1].) During the three-year cycle, the return on revenue may change in two ways as described in D.08-05-035. One way is the CCM adjustment, which operates as follows:

> In any year where the difference between the current 12-month October through September average Moody's utility bond rates and the benchmark exceeds a 100-basis point trigger, an automatic adjustment to the utilities' ROE shall be made by an October 15 advice letter to become effective on January 1 of the next year . . . .

(Id. at p. 21 [OP 2].)

If the CCM adjustment is triggered by the change in Moody's utility bond rates during the measurement period, then the ROE adjusts the next year, without a full cost of capital proceeding. The adjustment mechanism represents a fair rate of return if the underlying assumptions hold true, including that changes to the cost of equity approximately track increases or decreases in utility bond interest rates. Under normal circumstances, the October 1, 2020 to September 30, 2021 measurement period should represent a change in ROE for the next year, 2022.

Another way the Utilities' ROE can change during the three-year cycle is by filing a cost of capital application outside the CCM process:

> [Filing] a cost of capital application outside the CCM process upon an extraordinary or catastrophic event that materially impacts their respective cost of capital and/or capital structure and impacts them differently than the overall financial markets.

(Id. at p. 19 [Conclusion of Law 6].)

In 2019, D.19-12-056 set the cost of capital for 2020 through 2022. (D.19-12-056, pp. 54–55.) The next application cycle would begin with the April 20, 2022 applications, to set the cost of capital for 2023 through 2025. Instead, on August 23, 2021, the Utilities filed off-cycle applications outside the CCM process, asserting extraordinary circumstances related to the COVID-19 pandemic as justifying a departure from the CCM adjustment.

In their applications, the Utilities requested relief from the CCM adjustment because, in the 12-month period starting on October 1, 2020 until September 30, 2021, the difference between the average Moody's utility bond rates and the benchmark exceeded a 100-basis point trigger. This would result in an automatic adjustment, reducing the ROE, which would then reduce the revenue requirement associated with cost of capital. In their applications, the Utilities asked the Commission to reject the CCM adjustment due to the COVID-19 pandemic, conduct a full review of the authorized cost of capital using test year 2022, and modify the three-year cost of capital cycle thereafter. (See D.08-05-035.) Instead of the next cycle beginning with the 2023 test year in the April 20, 2022 applications, the Utilities proposed that the August 23, 2021 applications would begin a new cycle with the 2022 test year, which would set the cost of capital for 2022 through 2024. In the alternative, PG&E and SCE asked the Commission to suspend the operation of the CCM adjustment in 2021, maintain their current ROE for 2022, and proceed in the regular course to submit a full cost of capital application in April 2022.[1]

[1] Application of Pacific Gas and Electric Company (U39M) for Test Year 2022 Cost of Capital or, in the Alternative, for Suspension of Cost of Capital Adjustment Mechanism for 2021,

(footnote continued on next page)

The Utilities asserted that they filed the August 23, 2021 applications in lieu of the October 15, 2021 advice letters notifying the Commission of the CCM adjustment, as required by D.08-05-035. The assigned Commissioner and the assigned Administrative Law Judges (ALJs) rejected that argument, emphasizing that D.08-05-035 requires an October 15 advice letter when the difference between the current 12-month average Moody's utility bond rates and the benchmark exceeds a 100-basis point trigger. (Ruling of the Assignment Commissioner and Assigned Administrative Law Judges Ordering Compliance with D.08-05-035, Oct. 28, 2021.)

The assigned Commissioner and the ALJs ordered the Utilities to submit compliance filings in the underlying proceedings that included the information the Utilities would have submitted if they had filed the required October 15, 2021 advice letters. (Id.) The Utilities submitted the compliance filings on November 8, 2021. We affirmed the ruling of the assigned Commissioner and ALJs in D.21-12-029, emphasizing that the Utilities cannot unilaterally decide to replace the October 15 advice letters with off-cycle applications. (D.21-12-029, p. 8.)

Walmart, Inc. (Walmart), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates), Environmental Defense Fund (EDF), The Utility Reform Network (TURN), Energy Producers and Users Coalition and the Indicated Shippers (EPUC/IS), and Wild Tree Foundation (Wild Tree) filed timely protests. On October 4, 2021, the Utilities filed replies to the protests.

A prehearing conference was held on October 15, 2021. The assigned Commissioner issued a Scoping Memorandum and Ruling on December 24, 2021. (Assigned Commissioner's Scoping Memorandum and Ruling, Dec. 24, 2021 (Scoping Memo).) Evidentiary hearings were held on February 24, 2022 and February 25, 2022.

On March 11, 2022, Utility Consumers' Action Network (UCAN), the Protect Our Communities Foundation (PCF), Cal Advocates, EDF, TURN, EPUC/IS,

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Aug. 23, 2021, at 2; Application of Southern California Edison Company (U338E) for Authority to Establish its Authorized Cost of Capital for Utility Operations for 2022 and Reset the Annual Cost of Capital Adjustment Mechanism, Aug. 23, 2021, at 13.

Wild Tree, and the Utilities filed concurrent opening briefs. On March 25, 2022, UCAN, PCF, Cal Advocates, EDF, TURN, EPUC/IS, Wild Tree, Federal Executive Agencies, and the Utilities filed concurrent reply briefs.

The Utilities filed a motion to establish cost of capital memorandum accounts to track the difference between the current authorized rate of return and the final authorized rate of return resulting from the applications. We granted the motion and permitted the Utilities to establish memorandum accounts effective on January 1, 2022. (See generally D.21-12-029.)

On March 11, 2022, PCF requested oral argument before the Commission. No responses were filed. Oral argument was held on July 22, 2022.

On November 4, 2022, we issued D.22-11-018, finding that the extraordinary circumstances of the COVID-19 pandemic warranted a departure from the CCM adjustment for 2022. On December 5, 2022, a joint application for rehearing of D.22-11-018 was filed by EPUC/IS, TURN, Wild Tree, PCF, and Walmart Inc. (collectively, rehearing applicants). In their rehearing application, rehearing applicants challenge the Decision on the following grounds: (1) the Decision unlawfully fails to follow the Commission's own process; and (2) the Decision violates Supreme Court precedent by failing to balance ratepayer interests.

A response to the rehearing application was filed by the Utilities on December 20, 2022.

We have reviewed the allegations of error contained in the application for rehearing of D.22-11-018 and have determined that the Decision should be modified to add an additional Finding of Fact. As modified, rehearing of D.22-11-018 should be denied because good cause has not been demonstrated to grant rehearing.

II. DISCUSSION

A. The Decision appropriately follows the Commission's process and past precedent.

Rehearing applicants first assert that the Decision amended D.08-05-035, D.13-03-015 and D.19-12-56 without providing parties notice and an opportunity to be

heard. (Rehearing Application (Reh. App.), pp. 4-8.) Rehearing applicants further assert that the Decision unlawfully exceeds the scope of this phase of the underlying Commission proceeding. (Reh. App., pp. 8-11.) Finally, rehearing applicants claim that the Decision improperly relies upon a different measurement period than established in D.08-05-035. (Reh. App., pp. 11-18.) These allegations of error are without merit.

As an initial matter, the Decision does not alter or amend any decisions of the Commission. D.08-05-035 established a utility's right to file an off-cycle application based on extraordinary circumstances. As acknowledged by rehearing applicants, D.08-05-035 does not prescribe a particular process or outcome when off-cycle applications are filed. (Reh. App., p. 5; see also D.08-05-035, p. 19 [Conclusion of Law 6]; D.13-03-015, p. 10 [OP 2]; D.19-12-056, p. 55 [OP 7].) When an off-cycle application is filed, the Commission may, within its discretion, grant appropriate relief based upon the extraordinary circumstances presented. In the underlying proceeding, several parties acknowledged that suspension of the CCM adjustment may be an appropriate form of relief in an off-cycle application. (See Cal Advocates Opening Brief. at 12; UCAN Opening Brief at 4.)

Rehearing applicants assert that they were not provided notice and opportunity to be heard in the underlying proceeding regarding suspension of the CCM and the ROE for 2022. (Reh. App., pp. 4-8.) This allegation of error is without merit. The Scoping Memo identified two issues to be determined by the Commission in the underlying proceeding if it appeared that the requirements for filing off-cycle applications had been satisfied: (1) Whether there extraordinary circumstances warranting a departure from the CCM for 2022; and if so (2) Should the Commission leave the cost of capital components at pre-2022 levels for the year 2022, or open a second phase to consider alternative cost of capital proposals for the year 2022? (Scoping Memo, December 24, 2021, p. 7.) The Scoping Memo further directed parties to provide information to the Commission as follows:

> The parties are directed to provide information on both questions in order to inform the Commission's determination of whether conditions warrant filing of off-cycle applications,

> and if so, whether the cost of capital components should stay at the authorized levels for 2022 or the Commission should open a new phase to consider alternatives. In answering the second question, the parties should not include technical analysis on modifications to the ROE. In this phase, parties also should not provide testimony appropriate for a full review and calculation of a new cost of capital. If determined to be necessary, the second phase would address the technical cost of capital material.

(Scoping Memo, p. 7.) The Scoping Memo indicated that we could, in our discretion, open a second phase of the proceeding, but we could also continue the underlying proceeding without opening a second phase. (Scoping Memo, p. 10.)

The schedule established in the underlying proceeding and the Scoping Memo provided numerous opportunities for parties to participate in and contribute to the determinations made in the proceeding. Specifically, rehearing applicants filed protests to the initial application on September 24, 2021. Rehearing applicants filed a joint prehearing conference statement on October 8, 2021. On December 6, 2021, rehearing applicants filed joint reply comments on the October 10, 2021 proposed decision. On January 10, 2022, the parties filed a joint list of stipulated facts in preparation for evidentiary hearings, and filed a joint motion for admission of evidence into the record on February 22, 2022. Evidentiary hearings in the proceeding were held on February 24-25, 2022. Rehearing applicants filed opening briefs in the underlying proceeding on March 11, 2022. Oral argument before the Commission was held on July 22, 2022. Finally, rehearing applicants filed comments on the proposed decision on October 20, 2022. Thus, the Commission provided rehearing applicants ample opportunity to provide evidence, testimony and legal analysis to the Commission in the underlying proceeding.

Further, the Scoping Memo provided dates for intervenor testimony, evidentiary hearings, and briefing by all parties. (Id.) The parties, including rehearing applicants, took advantage of these opportunities at various stages of the underlying proceeding. In addition, rehearing applicants addressed the questions set forth in the Scoping Memo at oral argument and in comments on the Proposed Decision and

Alternate Proposed Decision. (See, e.g., EPUC/IS Opening Comments on PD; EPUC/IS Opening Comments on APD; PCF Opening Comments on APD; TURN Opening Comments; Wild Tree Opening Comments.)

Rehearing applicants also assert that the Scoping Memo directed parties not to submit technical analysis on modifications to the ROE, and that this directive improperly limited their ability to present evidence on what the ROE for 2022 should be. (Reh. App., pp. 4, 6-7, 9-10.) However, the Scoping Memo specifically directed parties to address whether the COC for 2022 should continue as currently authorized, or should be determined in a second phase. (Scoping Memo, p. 7.) This broad directive in the Scoping Memo provided ample opportunity for rehearing applicants to present evidence and argument to the Commission regarding the issues addressed in the underlying proceeding.

Rehearing applicants next assert that the Decision is not supported by substantial evidence because parties did not present technical evidence on COC issues to set a new ROE for 2022. (Reh. App., p. 4.) This allegation of error lacks merit. The Scoping Memo determined that technical COC evidence would be presented and addressed in a second phase of the proceeding, but only if we determined that such a second phase was necessary. (Scoping Memo, p. 7.) Because the Decision determined that the COC set in D.19-12-056 was appropriate for 2022, we concluded that there was no need for a second phase to develop record evidence on technical COC issues.

Applicants next claim that the suspension of the CCM for 2022 and authorization of 2022 ROEs at 2019 rates exceeded the parameters set forth in the Scoping Memo. (Reh. App., p. 8.) This allegation of error lacks merit. As discussed above, the Scoping Memo established that we would resolve the off-cycle applications by deciding whether to depart from the CCM adjustment for 2022, and if so, whether to continue the COC set in D.19-12-056 or open a second phase of the proceeding. (Scoping Memo, p. 7.) The Scoping Memo explained that, if we determined that the off-cycle cost of capital applications were unwarranted, the regular CCM would be utilized to set a cost of capital for 2022, consistent with regular cost of capital cycle rules. (Scoping

Memo, p. 8.) On the other hand, if we determined that the extraordinary circumstances requirements of D.08-05-035 had been met, we would consider whether to keep the cost of capital components at pre-2022 levels or to initiate a second phase to consider alternative cost of capital proposals for the year 2022. (Id.) Our approach in the Decision followed the procedure and analysis laid out in the Scoping Memo, and did not exceed the parameters laid out in the Scoping Memo.

The cases cited by rehearing applicants, including *City of Huntington Beach v. Pub. Utils. Comm'n* (2013) 214 Cal.App.4th 566, and *Southern Cal. Edison Co. v. Pub. Utils. Comm'n* (2006) 140 Cal.App.4th 1085, are inapplicable as both involved clear departures from the scoping memos at issue in those proceedings. (See Reh. App., pp. 8-10; see also *City of Huntington Beach*, *supra*, 214 Cal.App.4th at 592-593 ("We see no authority in the commission's rules or elsewhere for the notion that the scope of the underlying proceeding can be expanded during the reconsideration process."); *Southern Cal. Edison Co., supra,* 140 Cal.App.4th at 1106 ("We cannot fault the parties for failing to respond to the merits of proposals that were not encompassed in the scoping memo absent an order amending the scope of issues to include the new proposals.").)

Applicants next assert that the Decision violates D.08-05-035 by utilizing a different time period, other than October to September, to determine whether there has been an extraordinary event and whether a departure from the CCM is warranted. (Reh. App., pp. 11-18.) This allegation of error is without merit.

In D.08-05-035, we established that, as a general matter, the CCM measurement period is October through September. (D.08-05-035, p. 16.) However, D.08-05-035 does not state that the only relevant time period for determining an extraordinary event is the measurement period for the CCM adjustment trigger (October to September). Moreover, D.08-05-035 indicates that the right to file an extraordinary event application is outside of the CCM process. (D.08-05-035, p. 19 [Conclusion of Law 6].) The Decision, citing D.08-05-035, states as follows:

> The Utilities must satisfy the requirements of D.08-05-035 showing extraordinary circumstances such that the Utilities

> may file off-cycle applications in the first place. The threshold issue is:
>
> > Do the financial impacts on the Utilities described in the applications, where they are largely attributed to the COVID-19 pandemic, constitute an extraordinary or catastrophic event that materially impacts their respective cost of capital and/or capital structure and impacts them differently than the overall financial markets?
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> If the answer to the threshold question is no, then the CCM adjustment applies, and we do not need to address the next questions. If the answer is yes, then the Commission would review the off-cycle applications while suspending the CCM adjustment or taking other appropriate actions. There is no prescribed outcome when the Utilities file off-cycle applications.

(D.22-11-018, p. 7 (footnotes omitted).)

There is no dispute between the parties that the COVID-19 pandemic was an extraordinary event which began in approximately March 2020. Rehearing applicants do not contest this issue. The Decision reasonably evaluates the extraordinary event in question from the time that all parties agree the event began (D.22-11-018, pp. 8-9.), and evaluates the impacts of the event from March 2020 forward, including impacts on cost of capital and on the overall financial markets. (D.22-11-018, pp. 9-15.) As to these issues, the Decision states the following:

> The COVID-19 pandemic is an extraordinary event extending beyond the 12-month measurement period of October 1, 2020 through September 30, 2021. After initial infections in the United States in early 2020, starting on March 4, 2020, Californians sheltered in place, leaving home only for essentials. Even though strict shelter in place eventually eased, by August 2021, the COVID-19 virus caused tens of thousands of deaths and millions of Californians contracted the virus. A variety of U.S. government and State government programs tried to stimulate the economy and assist businesses and individuals. The Federal Reserve reduced interest rates and increased cash flow by purchasing

> billions of dollars in long-term assets, such as government bonds and debts.
>
> When evaluating whether there are extraordinary circumstances that warrant a departure from the CCM adjustment for 2022, the key question is whether the COVID-19 pandemic materially impacts the utilities' respective cost of capital and/or capital structure differently than the overall financial markets. During October 1, 2020, through September 30, 2021 (measurement period), the Utilities were materially impacted differently as compared to the overall markets based on their stock prices, stock price to earnings ratios (P/E ratio), and beta measurements.

(D.22-11-018, pp. 8-9 (footnotes omitted).) While the Decision determines that the extraordinary event of the COVID-19 pandemic began in March 2020, it further found that impact of this event continued from October 2020 to September 2021 (D.22-11-018 at 31-33 [Findings of Fact 10-22].) As such, rehearing applicants' allegation of error is without merit.

As discussed above, rehearing applicants have failed to establish legal error in terms of the underlying process employed by the Commission in reaching the Decision, or in terms of its adherence to past Commission precedent. For this reason, rehearing should be denied as to these issues.

B. The Decision follows case law precedent and appropriately balances ratepayer interests.

Rehearing applicants next assert that the law is clear that ratepayer interest must be considered (Reh. App., pp. 18-22), and that the Decision failed to afford proper weight to ratepayer considerations (Reh. App., pp. 22-34). Rehearing applicants further assert that record evidence demonstrates the ratepayer interest in accurate 2022 ROEs. (Reh. App., pp. 34-43.) These allegations of error are without merit.

Rehearing applicants argue that the Commission failed to consider ratepayer interests pursuant to the standards articulated by the United States Supreme Court in *Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm'n of W. Va.* (1923) 262 U.S. 679, and *Fed. Power Comm'n v. Hope Nat. Gas Co.* (1944) 320 U.S.

591 (1944). (Reh. App., pp. 3, 22-24, 29.) However, the Commission did address ratepayer interests in the underlying Decision, at pp. 21, 23, 25 and 27-28. The Commission noted that "tools like the CCM or analysis in opposition to it must help the Commission determine a fair and reasonable ROE balanced with ratepayer burden." (D.22-11-018, p. 23.) The Decision further noted that, "[b]y balancing ratepayer benefits, shareholder benefits, and a reduction in workload requirements and regulatory costs, the Commission has kept the cost of capital stable, sometimes for more than three years in a row." (D.22-11-018, p. 25 (fn. omitted).) The Decision also addresses ratepayer interest in the context of the transitory effects of the pandemic:

> Reevaluating the cost of capital given the transitionary effects of the pandemic will not promote rate stability. In 2009, the Commission took note that the interest rate increases were transitionary and therefore the impacts could reverse itself as the financial market stabilizes and that would cause ratepayers' bills to fluctuate. Subjecting ratepayers to fluctuating bills based on transitory circumstances is not in the public interest. Therefore, the transitory nature of the pandemic's effects on the Utilities provides further support for maintaining the cost of capital at the current level for 2022.

(D.22-11-018, p. 27 (fn. omitted).)

The Decision further discusses the issue of ratepayer interests as follows:

> The Scoping Memo highlighted the need to come to an efficient solution and avoid two fully litigated cost of capital cases in two consecutive years. After a detailed review, including six days of evidentiary hearing, the Commission determined a fair and reasonable cost of capital for 2022 in D.19-12-056. To consume more administrative resources and the resources of the parties to set the cost of capital a second time for 2022, based on unusual and transitory circumstances, is not in the interest of ratepayers.

(D.22-11-018, p. 28.)

Rehearing applicants are incorrect that we failed to consider ratepayer interests in issuing D.22-11-018. However, we will modify D.22-11-018 to include an additional Finding of Fact regarding our consideration of ratepayer interests.

Rehearing applicants further assert that the Decision is not supported by substantial evidence in light of the whole record. (Reh. App., p. 19.) However, an examination of the Decision reflects that the determinations made therein are supported by detailed findings and substantial evidence.

The Decision sets forth extensive findings of fact material to our determination to suspend the CCM adjustment for 2022. For example, the Decision examines the Utilities' stock prices, P/E ratios, and betas during the time period from the beginning of the COVID-19 pandemic through the end of the measurement period for the CCM adjustment, and finds as follows:

> 11. Lower stock price to earnings ratio relative to electric utility proxy groups and to the overall financial market means that a company needs to issue more shares than the average electric utility to attract capital and investors require a higher ROE to invest.
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> 12. From March 2020, the beginning of the COVID-19 pandemic to September 30, 2021, the end of the measurement period for the CCM adjustment, SCE's parent company, Edison International, experienced lower stock price to earnings ratio as compared to the proxy group of electric utilities and S&P's 500 Index.
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> 13. From March 2020, the beginning of the COVID-19 pandemic to September 30, 2021, the end of the measurement period for the CCM adjustment, SDG&E's parent company, Sempra Energy, experienced stock value that was 20% below its pre-pandemic level and failed to track the improvement of the overall financial markets.

14. From March 2020, the beginning of the COVID-19 pandemic to September 30, 2021, the end of the measurement period for the CCM adjustment, PG&E experienced lower stock price to earnings ratio as compared to the proxy group of electric utilities and S&P 500 Index.

15. Stock price beta measures the risk of an asset. Higher beta equals greater systematic risk. Beta is an input for the Capital Asset Pricing Model, one of the models for estimating the cost of equity.

16. From March 2020, the beginning of the COVID-19 pandemic to September 30, 2021, the end of the measurement period for the CCM adjustment, SCE's parent company, Edison International, experienced higher beta compared to its proxy group of electric utilities.

17. From March 2020, the beginning of the COVID-19 pandemic to September 30, 2021, the end of the measurement period for the CCM adjustment, SDG&E's parent company, Sempra Energy had higher increases in beta as compared to its proxy group of electric utilities.

18. From March 2020, the beginning of the COVID-19 pandemic to September 30, 2021, the end of the measurement period for the CCM adjustment, PG&E had higher betas as compared to its proxy group of electric utilities.

19. The stock prices, stock price to earnings ratios, and beta measurements show that SCE, SDG&E, and PG&E experienced impacts from the COVID-19 pandemic differently from the proxy groups of utilities and the financial markets overall.

(D.22-11-018, pp. 31-33 [Findings of Fact 11-19].)

The Decision further determined that, from the beginning of the COVID-19 pandemic until September 30, 2021, the perceived risk of the Utilities increased, as compared to the overall financial markets, finding as follows:

20. Through the beginning of the COVID-19 pandemic until September 30, 2021, the economy improved while interest rates were low, which is consistent with the underlying theory of the CCM adjustment, that if interest rates decrease, then the cost of equity should decrease as well.

21. Through the beginning of the COVID-19 pandemic until September 30, 2021, when interest rates were low, the perceived risk of SCE, SDG&E, and PG&E increased, measured by beta, as compared to the overall financial markets.

22. SCE, SDG&E, and PG&E experienced the impacts of the COVID-19 pandemic differently as compared to the overall financial markets because the underlying theory of the CCM adjustment - when interest rates decrease then ROE decreases as well - held true for the market overall, but not for SCE, SDG&E, and PG&E.

23. The CCM adjustment does not represent a fair and reasonable return because the underlying theory of the CCM adjustment – when interest rates decrease then ROE requirements decreases as well – is not consistent with the stock prices, stock price to earnings ratios, and betas for SCE, SDG&E, and PG&E.

24. The CCM adjustment fails to reflect SCE's, SDG&E's, and PG&E's risk, and fail to estimate a level of ROE adequate to attract capital for 2022.

25. Because the CCM adjustment did not represent the elevated risk and a level of ROE adequate to attract capital, then the CCM adjustment as applied to SCE, SDG&E, and PG&E would not be fair and reasonable.

(Id. at pp. 33-34 [Findings of Fact 20-25].)

Finally, the Decision addressed the transitory nature of the low interest rates and general effects of the COVID-19 pandemic, stating that "[i]nterest rates have

rebounded since the CCM measurement period and the effects of the COVID-19 pandemic are transitory." (Id. at p. 34 [Finding of Fact 26].)

Rehearing applicants clearly disagree with our determinations as to these issues, but such disagreement does not amount to legal error. Our authority to weigh conflicting evidence and reach findings as to such evidence is well-established, and our findings as to such determinations are generally considered final. (See *Ponderosa Tel. Co. v. Cal. Pub. Utils. Comm'n* (2019) 36 Cal.App.5th 999, 1013 (2019); *City of L.A. v. Pub. Utils. Comm'n* (1972) 7 Cal.3d 331, 351.)

As to the issue of the continuation of the COC for 2022, as established in D.19-12-056, the Decision evaluates numerous factors relevant to this issue, including shareholder and ratepayer interests, policy goals such as rate stability, mitigating regulatory uncertainty, and conserving resources of the Commission and parties. In evaluating these issues in light of the transitory nature of the impacts of the COVID-19 pandemic, we concluded that it is reasonable to continue the COC for 2022 as authorized in D.19-12- 056. (D.22-11-018 at p. 35 [OP 2].) The Decision contains sufficient findings of fact material to that determination, including that maintaining the COC at levels authorized by D.19-12-056 will mitigate regulatory uncertainty, conserve resources of the Commission and parties, and avoid re-litigation of D.19-12-056, and that the effects of the COVID-19 pandemic are transitory. (D.22-11-018, pp. 34 [Findings of Fact 26-28].)

Rehearing applicants next assert that, following suspension of the CCM adjustment in an off-cycle application, we were required to open a second phase of the proceeding to evaluate the ROE for 2022 set in D.19-12-056. (Reh. App., p. 32.) This argument is without merit. The underlying rationale of the CCM framework articulated in D.19-12-056 is not impacted by the fact that the Decision found extraordinary circumstances present due to the COVID-19 pandemic. This determination in D.22-11-018 does not call into question our determination in D.19-12-056 that currently authorized ROEs are reasonable. (See D.22-11-018, pp. 2-3, 33 [Findings of Fact 22-23].)

There is no question that ROEs set in D.19-12-056 were intended to continue through the end of 2022, absent operation of the CCM adjustment. The Decision confirms that the cost of capital for 2022 was fully litigated in 2019 and was determined to be reasonable. (D.22-11-018, p. 34 [Finding of Fact 27].) The Decision also determined that the transitory nature of the pandemic's effects on the Utilities provided further support for maintaining the cost of capital at the current level for 2022. (D.22-11-018, pp. 26-27.)

Rehearing applicants further assert that a second phase is required because the Decision results in ROE increases from the ROE established for 2022 under the terms of D.19-12-056 for the 2020-2022 cycle. (Reh. App., p. 32.) However, that argument was specifically addressed and rejected by the Commission in the Decision as follows:

> Intervenors argue that if the Commission finds the CCM adjustment does not apply to 2022, then a second phase is necessary to determine a fair and reasonable ROE, consistent with Pub. Util. Code § 451. Intervenors argue that if the Commission finds that the CCM adjustment does not apply, then the Utilities will receive a $400 million increase. Intervenors arguments are unpersuasive. As explained in Section 3.2, extraordinary circumstances warrant a departure from the CCM adjustment, and, therefore, there is no increase because the potential decrease was never authorized. With this decision, the cost of capital will not change from the levels already authorized by the Commission in 2019.

(D.22-11-018 at 28-29 (footnotes omitted).)

Rehearing applicants next assert that the Decision fails to refer to or analyze the record evidence submitted in the underlying proceeding by parties representing ratepayer interests. (Reh. App., p. 36.) This allegation is without merit. The Decision contains extensive discussion and analysis of these arguments. For example, the Decision specifically addresses why these arguments regarding stock prices and P/E ratios were unpersuasive, stating the following:

> We are not persuaded by the Intervenor's arguments that the utility equity market tracked the overall financial markets, or

> that the utility equity market surpassed the overall financial markets. Federal Executive Agencies (FEA) presented comparisons of the Dow Jones Utilities Average and the Dow Jones Industrial Average in a graph that confounded the larger scale of the Dow Jones Industrial Average (18,000 to 37,000) with the much smaller scale of the Dow Jones Utilities Average (600 to 1,000). When a graph accounts for the scale of each index, it shows that the utility industry underperformed the overall financial markets. EPUC/IS compares the S&P 500 to the S&P Utility Index from June 30, 2021 through mid-January 2022, inappropriately ignoring the first nine months of the measurement period. Based on the same data as EPUC/IS, but for the time period of February 2020 to December 2021, SCE shows that utilities lagged behind the overall financial markets.
>
> We are not persuaded by PCF's showing that forward looking P/E ratio based on investor expectations are more helpful than P/E ratio based on historical performance. As pointed out by SCE, whether historical or forward looking, utilities have underperformed the overall markets.

(D.22-11-018 at 11–12 (footnotes omitted).)

The Decision further addressed the argument and evidence as to whether lower stock prices and higher betas were caused by factors other than the COVID-19 pandemic and whether catastrophic financial impacts must be demonstrated to satisfy the standard for filing off-cycle applications, noting the following:

> First, other factors such as wildfires and bankruptcy, unrelated to the COVID-19 pandemic, do not overshadow the effects of the COVID-19 pandemic on the Utilities' stock P/E ratios and betas. The Utilities must show that the financial impacts were "largely attributed to the COVID-19 pandemic," not that the COVID-19 pandemic was the one and only cause….
>
> Second, the threshold for filing off-cycle applications does not require events such as a credit downgrade or lack of access to capital. The key language is whether the COVID-19 pandemic "constitute[s] an extraordinary or

> catastrophic event that materially impacts their [the Utilities] respective cost of capital and/or capital structure . . . . " A credit downgrade or lack of access to capital would materially impact the Utilities cost of capital, but comparatively low P/E ratios and high betas demonstrated by the Utilities during the measurement period qualify as well. The extreme end of the spectrum where entire companies face imminent collapse does not eliminate other possible qualifying scenarios. Here, the focus is on the CCM adjustment and impacts associated with the CCM. With commonly used economic tools in cost of capital cases, the Utilities describe how their respective costs of capital were materially impacted differently from the proxy groups of utilities and the overall financial markets.

(D.22-11-018, pp. 16, 18-19 (footnotes omitted).)

Finally, the Decision addressed various arguments regarding the transitory nature of the extraordinary circumstances of the COVID-19 pandemic, discussing the issue as follows:

> Intervenors provide contradictory arguments. On one hand Intervenors argue that the Utilities did not experience impacts differently from the overall financial markets because of the COVID-19 pandemic, especially that the impacts were temporary, interest rates are increasing, and the Utilities' betas and stock prices are starting to track the overall financial markets. On the other hand, Intervenors argue that the CCM adjustment should apply simply because the trigger occurred. If the low interest rates associated with the pandemic in 2020 and 2021 have subsided, and the environment of the COVID-19 pandemic was atypical and temporary, then the CCM adjustment should not serve as a proxy for the cost of capital in 2022. Also, if the Utilities are now trending towards pre-pandemic levels with lower betas, then it is inappropriate to apply the CCM adjustment in 2022 when the adjustment is based on volatility that does not represent 2022. In essence, if the Intervenors agree that the CCM adjustment is not representative of the ROE for 2022, then it is illogical to apply the CCM adjustment.

(D.22-11-018, pp. 23-24 (footnotes omitted).)

These discussions in the Decision are sufficient to satisfy Public Utilities Code section 1705, which requires Commission decisions to inform parties of the reasoning and basis for the decision and to provide a meaningful opportunity to understand the principles and facts relied upon by the Commission. (Pub. Util. Code, §1705.) The discussions in the Decision referenced above are sufficient to satisfy the requirements of section 1705, as they address the arguments raised by parties and explain our determinations based on record evidence.

For the reasons discussed above, rehearing applicants' allegations of error are without merit. As such, rehearing should be denied as to these issues.

III. CONCLUSION

As discussed above, we have determined that D.22-11-018 should be modified to add an additional Finding of Fact. As modified, rehearing of D.22-11-018 should be denied because no legal error has been demonstrated.

THEREFORE, IT IS ORDERED that:

1. The following additional Finding of Fact is added to D.22-11-018 as Finding of Fact 29:

> 29. Subjecting ratepayers to fluctuating bills based on transitory circumstances is not in the public or ratepayer interest, and to consume more administrative resources and the resources of the parties to set the cost of capital a second time for 2022, based on unusual and transitory circumstances, is not in the interest of ratepayers and does not promote rate stability.

2. Rehearing of D.22-11-018 is hereby denied because legal error has not been demonstrated.

3. This proceeding is closed.

This order is effective today.

Dated November 2, 2023, at Sacramento, California

ALICE REYNOLDS
President
GENEVIEVE SHIROMA
JOHN REYNOLDS
KAREN DOUGLAS
Commissioners

I reserve the right to file a dissent.

/s/ DARCIE L. HOUCK
Commissioner

Decision 23-11-046
Applications 21-08-013, 21-08-014, 21-08-015

Dissent of Commissioner Darcie L. Houck

In the Matter of Decision 23-11-046 Order Modifying Decision 22-11-018 and Denying Rehearing as Modified.

Decision (D.) 22-11-018 suspended Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Pacific Gas and Electric Company's (PG&E) (collectively "the Utilities") cost of capital mechanism (CCM) return on equity (ROE) adjustment for 2022, which I discuss in more detail below. D.23-11-046 denied applicants rehearing of D.22-11-018. The decision errs in that it failed to consider whether the Utilities' cost of capital and capital structure could have been impacted by other factors besides COVID-19 that might have affected their stock prices and price-to-earnings (P/E) ratio. In addition, the decision fails to fairly balance ratepayer and shareholder interests, as required by *Federal Power Commission et al. v. Hope Natural Gas Co.* ("*Hope")*[1] and *Bluefield Waterworks & Improvement Co. v. Public Service Commission of West Virginia et al* ("*Bluefield")*.[2] For these reasons, I cannot support the decision with the majority of my colleagues, and I respectfully register my dissent.

Procedural and Legal Errors

D.22-11-018 resolved Applications (A.) 21-08-013, 21-08-014, 21-08-015. In those applications, applicants, the Utilities requested that the Commission reject the CCM adjustment for 2021 due to "circumstances caused by the COVID-19 pandemic."[3] In D.22-11-018, the Commission found that "the Utilities experienced the circumstances caused by the COVID-19 pandemic differently as compared to the proxy utilities group and the overall financial markets, and that… maintaining ROE at the levels adopted in 2019 is appropriate."[4] The Commission thus chose to retain the Utilities' authorized ROEs at the level set by D.19-12-056, and rejected implementing a 58 basis point reduction in each authorized ROE for 2022.[5] This collective 58 basis point reduction in

[1] *Federal Power Commission et al. v. Hope Natural Gas Co.* ("*Hope*," 320 U.S. 591, 64 S.Ct. 281 (1944)).

[2] *Bluefield Waterworks & Improvement Co. v. Public Service Commission of West Virginia et al.* ("*Bluefield,*" 262 U.S. 679, 43 S.Ct. 675 (1923)).

[3] *See* D.22-11-018 at 2.

[4] D.22-11-018 at. 26.

[5] *See* D.22-11-018 at 20.

authorized ROEs would have resulted in "an approximate $403 million total reduction to the Utilities' customers' 2022 rates."[6]

In December 2022, the Energy Producers and Users Coalition (EPUC), the Indicated Shippers, The Utility Reform Network (TURN), Wild Tree Foundation (Wild Tree), The Protect Our Communities Foundation (PCF), and Walmart, Inc. (Walmart) (collectively, "Joint Applicants") filed an application for rehearing of D.22-11-018. In their application for rehearing, the Joint Applicants noted that the Decision contained procedural and legal errors, stating that, inter alia,

> [t]he Decision failed to balance ratepayer interests as required by the United States Supreme Court in *Hope, Bluefield,* and *Duquesne,* [and] [t]he Decision is not supported by substantial evidence in light of the whole record, in violation of Public Utilities Code section 1757 and due process.[7]

History and Purpose of the Cost of Capital Mechanism

The CCM was established in D.08-05-035 in part to reduce the frequency of cost of capital proceedings and to "maintain fair and reasonable capital structures and ROEs for the major energy utilities while… simplifying workload requirements and regulatory costs."[8] D.08-05-035 required a full cost of capital application every three years (as opposed to annually) and established the CCM to automatically adjust authorized ROE if utility bond rates changed significantly relative to an established benchmark. If the difference between the average October through September Moody's utility bond rate and the benchmark exceeds 100 basis points,[9] the Utilities may each file an advice letter to adjust their ROEs by "one-half of the difference between… [the] utility bond average… and the benchmark… [and] [t]he 12-month October through September average that triggered an ROE adjustment becomes the new benchmark."[10] In essence, the CCM functions to automatically adjust ROEs when interest rates vary significantly between utility cost of capital applications.

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[6] Application For Rehearing of Energy Producers and Users Coalition, Indicated Shippers, the Utility Reform Network, Wild Tree Foundation, Protect Our Communities Foundation, and Walmart Inc. ("Joint Application for Rehearing"), December 5, 2022 at 2.

[7] Joint Application for Rehearing at 3.

[8] *See* D.08-05-035 at 3.

[9] A basis point is 1/100th of a percentage point. 100 basis points is one percentage point.

[10] *See* D.08-05-035 at 15-16.

Legal Standard in D.08-05-035 and D.22-11-018

Pursuant to D.08-05-035,

> ...the utilities have a right to file a cost of capital application outside of the CCM process upon an extraordinary or catastrophic event that materially impacts their respective cost of capital and/or capital structure and affects them differently than the overall financial markets.[11]

Therefore, in order for the Commission to suspend the electric IOUs' CCM adjustment for 2022 and 2023, the electric IOUs must first meet their burden to demonstrate that: (1) an extraordinary or catastrophic event occurred, (2) that event materially impacted their respective cost of capital and/or capital structure, and (3) they were affected differently than the overall financial markets.

While D.22-11-018 correctly states:

> [w]hen evaluating whether there are extraordinary circumstances that warrant a departure from the CCM adjustment for 2022, the key question is whether the COVID-19 pandemic materially impacts the utilities' respective cost of capital and/or capital structure differently than the overall financial markets,[12]

it failed to analyze whether the resulting effects on the IOUs stock prices were solely as a result of the COVID-19 pandemic or were caused by other events or circumstances. In fact, D.22-11-018 asserts that

> other factors such as wildfires and bankruptcy, unrelated to the COVID-19 pandemic, do not overshadow the effects of the COVID-19 pandemic on the Utilities' stock P/E ratios and betas. The Utilities must show that the financial impacts were 'largely attributed to the COVID-19 pandemic,' not that the COVID-19 pandemic was the one and only cause.[13]

However, these statements are purely conclusory as there was no discussion on how other factors such as wildfires and bankruptcy could have materially impacted the stock prices of the IOUs and why they do not overshadow the effects of the COVID-19 pandemic.

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[11] *See* D.08-05-035 at 16 and Conclusion of Law 6.

[12] *See* D.22-11-018 at 9.

[13] D.22-11-018 at 16.

The conclusion that the utilities must show that the impacts were "largely attributed to the COVID-19 pandemic" is also legally flawed because if other factors could have materially impacted the Utilities' cost of capital or capital structure, they must be evaluated in order to ensure that the resulting impacts were in fact caused by the COVID-19 pandemic, and not whether they were "largely caused by the COVID-19 pandemic." Instead, D.22-11-018 denounces these other contributing factors and focuses solely on the COVID-19 pandemic as the primary cause that impacted the IOUs stock prices and ignored evidence from PCF which showed that the Utilities made significant profits, "[a]s the country struggled with the hardships of COVID-19, profit margins for the market as a whole and nearly every other sector tracked by S&P sagged sharply in 2020."[14] This evidence demonstrates that COVID-19 may not have materially impacted the IOUs overall stock prices since it did not impact the IOUs profitability. In addition, Wild Tree stated in its testimony and opening brief that PG&E's stock price precipitously declined in the years leading up to the pandemic and, most critically, "PG&E's stock price was stable with almost no growth or loss [during the measurement period.]"[15]

This testimony at the very least, should have prompted a review of whether there was a material impact or if so whether other factors materially impacted the IOUs stock prices. PG&E's stock prices could very well have been impacted due to the wildfires in its service areas and due to its filing of bankruptcy. However, D.22-11-008 fails to analyze the impact that these events may have had on PG&E's stock performance.

D.22-11-018 states that "[i]t is reasonable to find that the Utilities' off-cycle applications are permitted because the financial impacts due to the COVID-19 pandemic materially affected the Utilities differently compared to the proxy utility groups and the overall financial markets."[16] However, the impact of the COVID-19 pandemic to the IOUs cost of capital and/or capital structure was not demonstrated. That the IOUs stock prices were impacted does not by itself demonstrate that their cost of capital and/or capital structure were materially impacted as required by D.08-05-035. Especially when the Utilities made significant profits during the COVID-19 pandemic, and the record contains evidence that their stock prices were already impacted prior to the COVID-19 pandemic.

Therefore, D.22-11-018 is legally flawed as it fails to conduct the analysis required by D.08-05-035 by failing to analyze other contributing factors to determine whether the COVID-19 pandemic materially impacted the IOUs respective cost of capital and/or capital structure or whether any material impacts were caused by other contributing factors. By failing to do so, D.22-11-018 unlawfully prevented ratepayers from realizing potential savings of $403 million by suspending the CCM.

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[14] D.22-11-018 at 18.

[15] Wild Tree Opening Brief at 52-53. Joint Application for Rehearing at 17.

[16] D.22-11-018 at 19.

Ratepayer Impacts

By choosing to retain the Utilities' authorized ROEs at the level set by D.19-12-056, ratepayers were unable to realize $403 million in potential savings. D.22-11-018 relies on prior decisions as authority for suspending the CCM and maintaining the previously approved ROEs. The decision failed to consider how other relevant factors impacted the Utilities' stock prices and whether they materially impacted the Utilities cost of capital and capital structure. I believe that failing to consider all of the evidence presented in conducting the balancing analysis resulted in a decision that unlawfully denied ratepayers the benefits of $403 million in savings.

In D.22-12-031, the Commission recognized that the legal standards established by *Hope*[17] and *Bluefield*[18] require that ROEs be "reasonably sufficient to ensure confidence in the financial soundness of the utility and enable it to attract capital."[19] Importantly, the Commission also asserted that the legal standards should "ensure the rates charged to customers for maintaining utilities' financial integrity will be just and reasonable."[20]

In *Hope*, the Court held that "...the fixing of "just and reasonable" rates, involves a balancing of the investor and the consumer interests."[21]

In *Bluefield,* the Court held that:

> [a] public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding, risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by

[17] *Hope*, 320 U.S. 591, 64 S.Ct. 281 (1944)).

[18] *Bluefield* 262 U.S. 679, 43 S.Ct. 675 (1923)).

[19] D.22-12-031 at 34, and Conclusion of Law 2.

[20] D.22-12-031 at 34.

[21] *Hope* , 320 U.S.at 603 (1944).

changes affecting opportunities for investment, the money market and business conditions generally.[22]

The Decision's failure to consider factors other than Covid-19 thus failed to ensure that the rates charged to customers were just and reasonable.

Affordability Concerns

The issues raised by intervenors highlight serious concerns with overall trends in rate and bill affordability and authorized ROEs.

California's electric and gas utility customers continue to face financial pressure from rate increases year after year. Customers continue to bear significant costs to maintain the Utilities' systems which impacts their rates and ability to pay for necessary utility services.

As the Joint Applicants pointed out in their application for rehearing, failing to reduce the Utilities' ROEs by 58 basis points resulted in $403 million in customer impacts in one year. This implies an increased cost to their ratepayers of nearly $7 million per basis point of authorized ROE awarded in excess of the Utilities' cost of capital. *Hope* and *Bluefield* require the Commission to balance both customers' and shareholders' interests when considering what constitutes a just and reasonable rate.

Conclusion

I am concerned with electricity rates that are increasing faster than the rate of inflation and becoming more and more unaffordable for Californians. As discussed above, D.22-11-018 failed to consider whether factors beyond COVID-19 might have affected the Utilities P/E ratios or stock prices, which resulted in an incomplete analysis of the evidence presented contrary to the applicable legal standard for determining whether to apply the CCM.

For the reasons articulated above, I respectfully dissent.

/s/ Darcie L. Houck
Commissioner

[22] *Bluefield* (262 U.S. 679, 43 S.Ct. 675 (1923)).