



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

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Application of San Diego Gas & Electric
Company (U 902 E) for Authorization to
Recover Costs Related to the 2007 Southern
California Wildfires Recorded in the Wildfire
Expense Memorandum Account (WEMA)

Application 15-09-010

**SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E)
NOTICE OF *EX PARTE* COMMUNICATION**

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Dated: **October 09, 2017**

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NOTICE OF *EX PARTE* COMMUNICATION**

Pursuant to Rule 8.4 of the California Public Utilities Commission (Commission or CPUC) Rules of Practice and Procedure, Southern California Edison Company (SCE) provides notice of an ex parte communication in this proceeding. The communication was an in-person meeting that took place on October 4, 2017 at approximately 11 am with Rachel Peterson, Advisor to Commissioner Liane Randolph at the Commission's office located at 505 Van Ness Avenue, San Francisco, California. The meeting was requested by Pacific Gas & Electric Company (PG&E) on behalf of PG&E and SCE. Attendees at the meeting were Ms. Peterson, J. Eric Isken, SCE Assistant General Counsel, David Heller, Edison International Vice President Enterprise Risk Management and General Auditor, Laura Genao, SCE Managing Director Regulatory Affairs, Meredith Allen, PG&E Senior Director Regulatory Relations, Janaize Markland, PG&E Director Enterprise Risk Management and Insurance and Kevin Dasso, PG&E Vice President Electric Asset Management. SCE participated only in the first portion of the meeting, lasting approximately 15 minutes, addressing the topics noted below. SCE left the meeting at the conclusion of the discussion of those topics.

SCE left a handout, a copy of which is attached as Appendix A. Mr. Isken led the discussion. He discussed appellate decisions applying the inverse condemnation doctrine to utilities, including most recently *Pac Bell v. So Cal Edison*, (2012) 208 Cal.App.4th 1400, which assume all costs incurred by a utility resulting from inverse condemnation claims will be collected from customers in rates. Those decisions assume no portion of such costs will be paid by utility shareholders. He noted some parties contend passing on inverse costs to customers would create a “moral hazard.” But that argument conflicts with the policy basis for applying inverse condemnation to utilities-that utilities can socialize costs through rates.

He noted Section 451 of the California Public Utilities Code, which provide rates must be just and reasonable, does not authorize the Commission to review an IOU’s system operation and management prudence as a condition to the recovery of inverse condemnation-related costs. The Commission’s authority under that statute as applied to inverse condemnation costs is limited to determining if such costs are reasonable, were the amounts paid to settle inverse condemnation claims and the defense costs incurred by the utility reasonable. He cited the *Monterey Peninsula Water Management District v. PUC*, (2016) 62 Cal.4th 693. In that matter, the California Supreme Court ruled the Commission lacked jurisdiction under Section 451 to review a water district’s fee which had been appropriately assessed by an agency over whom the Commission lacked jurisdiction. Similarly, inverse condemnation costs are imposed on utilities by judicial rulings which the Commission lacks power to review.

Mr. Isken pointed out the Commission has other tools to address prudence by the utility in the operation and management of their electrical systems, principally the authority to initiate enforcement proceedings and levy penalties, potentially up to \$50,000 per day. Public Utilities Code Section 2107. Mr. Isken pointed out an enforcement proceeding was conducted related to the 2007 San Diego wildfires raising virtually the identical arguments about San Diego Gas & Electric Company’s (SDG&E’s) imprudence being raised here. That proceeding was resolved by a settlement involving a substantial payment, acknowledgements of violations and other

substantial commitments by SDG&E. That settlement resolved all issues and it is inappropriate and unlawful to conduct another prudence review here.

Respectfully submitted,

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/s/ J. ERIC ISKEN

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Appendix A

Peterson Ex Parte Handout

SDG&E WEMA PD

SCE COMMENTS ON INVERSE, COST RECOVERY AND PRUDENCE REVIEW

1. Wildfire is a statewide problem and everyone should be aligned on the goal of reducing the occurrence and mitigating the impacts of these unwanted events.
2. Inverse condemnation is applied to IOUs in California by the state courts, notwithstanding vigorous opposition by the IOUs
3. Inverse condemnation in California imposes a strict liability standard, meaning that there is no standard of care. IOUs are liable without regard to fault.
 - a. Inverse in California also allows for plaintiffs to recover attorney's fees, which are often a significant part of wildfire costs, and would not apply to IOU's in a negligence trial
4. When the inverse condemnation doctrine is applied to a liability case, it is premised on the idea that the strict liability is paid for by socializing costs, via the governments taxing or other authority
5. The socialization of costs under the inverse condemnation doctrine is not subject to a negligence or prudence test.
6. IOUs are caught between the court imposed strict liability of inverse condemnation with no standard of care, premised on the socialization of costs, and the CPUC's prudence requirements
 - a. This State created conflict and incongruence needs to be resolved as it is unlawful as applied to IOUs, and may constitute a taking
 - b. Arguments by intervenors that socialization of costs creates a so called "moral hazard" should be made to the Legislature or in a request to the Courts to overturn the inverse doctrine. The courts, by applying inverse, have already decided the costs are to be socialized.
7. We agree costs must be just and reasonable. The Commission meets this standard by determining the costs were the result of the inverse doctrine *and* if IOUs were financially prudent in resolving the inverse cases (e.g., were settlement amounts prudent). Cite to *Monterey Peninsula Water Mgmt District v. PUC* (2016) 62 Cal. 4th 693 (California Supreme Court holds Commission lacks authority to independently review costs legitimately assessed on a utility by another government agency).
8. We also agree the Commission must regulate the prudence of a utility's system management and operation. The Legislature has prescribed a path for such regulation, Public Utilities Code Section 2107 which authorizes the Commission in appropriate circumstances and in accordance with standards established by the Commission to fine a utility for failure to comply with applicable laws and rulings of the Commission, including setting fines of up to \$50,000 per day and the authority to seek other relief.
9. The Commission can exercise its power under Section 2107 in at least two ways. It can initiate an enforcement proceeding (an "OII"), something it has done on a number of occasions. Or it can exercise authority under the Electric Safety Citation Program, which authorizes the Safety and Enforcement Division to levy fines in certain circumstances without a formal proceeding subject to a utility's right to appeal.
10. Imposing a prudence requirement on a utility's ability to collect fees imposed via the inverse doctrine unlawfully conflates the Commission's obligation to socialize inverse-related costs and the Commission's obligation to regulate prudence, which should be done via the above enforcement regime.