BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Application of Southern California Edison Company (U338E) for a Commission Finding that its Procurement-Related and Other Operations for the Record Period January 1 Through December 31, 2022 Complied with its Adopted Procurement Plan; for Verification of its Entries in the Energy Resource Recovery Account and Other Regulatory Accounts; and for Recovery of $51.442 Million Recorded in Five Accounts.	Application No. 23-04-003

REPLY BRIEF OF CALIFORNIA COMMUNITY CHOICE ASSOCIATION

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SUMMARY OF RECOMMENDATIONS

- Southern California Edison Company's (SCE) Opening Brief overstates the burden the California Community Choice Association (CalCCA) and other intervenors bear in a Commission ratesetting application.

- CalCCA's proposal to refund customers that SCE double-charged for franchise fees during the record year 2022 not only meets the actual burden intervenors' bear but also meets the burden SCE erroneously states intervenors must bear.

- Similarly, the cost of penalties from the California Independent System Operator that SCE incurred due to its mistakes as a scheduling coordinator are not reasonable; the Commission already determined Pacific Gas and Electric Company should not pass those costs onto its customers and should hold SCE to the same standard.

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REPLY BRIEF OF CALIFORNIA COMMUNITY CHOICE ASSOCIATION

Pursuant to Rule 13.12 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission) and the *Assigned Commissioner's Amended Scoping Memo and Ruling* (Scoping Ruling),[1] the California Community Choice Association (CalCCA)[2] hereby submits this Reply Brief regarding the *Application of Southern California Edison Company (SCE) for a Commission Finding that its Procurement-Related and Other Operations for the Record Period January 1 Through December 31, 2022 Complied with its Adopted Procurement Plan; for*

[1] Application (A.) 23-04-003, *Assigned Commissioner's Amended Scoping Memo and Ruling*, p. 5 (January 5, 2024) (Scoping Ruling). The Scoping Ruling lists April 28, 2024, as the due date for reply briefs in this proceeding; however, that day is a Sunday. Per Rule 1.15, this brief is timely filed on April 29, 2024.

[2] California Community Choice Association represents the interests of 24 community choice electricity providers in California: Apple Valley Choice Energy, Ava Community Energy, Baldwin Park Resident Owned Utility District, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, Energy For Palmdale's Independent Choice, Lancaster Energy, Marin Clean Energy, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Santa Barbara Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

Verification of its Entries in the Energy Resource Recovery Account (ERRA) and Other Regulatory Accounts; and for Recovery of $51.442 Million Recorded in Five Accounts (Application).[3]

The Commission should order SCE to reimburse its customers. The utility's Opening Brief argues it cannot refund ratepayers' money because the utility already spent it. SCE admits it double-charged customers for franchise fees, then remitted inflated franchise fee amounts to its franchisor municipalities, and concludes customers should pay these double-charges. However, the facts in this case show SCE knew the franchise fees were inflated at the time they remitted the fees back to municipalities in Spring of 2023. Prior to doing so, SCE should have corrected course; no tariff required SCE to double-charge its customers or remit inflated franchise fees amounts. The customers should be refunded through a vintage-specific credit to their Power Charge Indifference Adjustment (PCIA) rates. SCE itself should fund that reimbursement.

Likewise, SCE should not require customers to pay for its penalties at the California Independent System Operator (CAISO). Commission precedent belies the claim in SCE's Opening Brief that its complex generation system somehow allows it to charge the costs of sanctions to customers. The CAISO penalties were not reasonably incurred and, in an almost identical situation, Pacific Gas & Electric Company (PG&E) not only agreed to refrain from passing through these same penalties to its customers in its 2020 ERRA Compliance case, it also agreed never to recover these CAISO penalties from its customers again. Likewise, companies holding Power Purchase Agreements (PPAs) with SCE must pay CAISO sanctions, especially if SCE is not their scheduling

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[3] A.22-04-001, *Application of Southern California Edison Company (U 338-E) for a Commission Finding that its Procurement-Related and Other Operations for the Record Period January 1 Through December 31, 2021 Complied with its Adopted Procurement Plan; for Verification of its Entries in the Energy Resource Recovery Account and Other Regulatory Accounts; and for Recovery of $25.706 Million Recorded in Five Accounts* (April 1, 2022).

coordinator. It is unreasonable to hold SCE to a lower standard than either PG&E or these third parties.

I. SCE'S OPENING BRIEF VASTLY MISSTATES CALCCA'S BURDENS IN THIS PROCEEEDING – BURDENS THE RECORD EVIDENCE EASILY MEETS.

SCE's Opening Brief discounts CalCCA's direct testimony, and all but ignores SCE's own admissions in discovery responses, suggesting "CalCCA has not met its burden" regarding its proposals to make customers whole after SCE's ratemaking and CAISO mistakes.[4] SCE's argument begins by turning the burden of proof on its head, suggesting CalCCA bears the evidentiary burden in this case.[5] In support of its contention, SCE cites Decision (D.) 87-12-067, which states:

> *[W]here other parties propose a result different from the utility, they have the burden of going forward to produce evidence, distinct from the ultimate burden of proof. The burden of going forward to produce evidence relates to raising a reasonable doubt as to the utility's position and presenting evidence explaining the counterpoint position.*[6]

Omitted from SCE's Opening Brief is the broader discussion surrounding the context of how the burden of going forward relates to the utility's burden of proof. In its Order, the Commission agreed the burden of proof and the burden of going forward are two distinct concepts.[7] The burden of going forward simply requires a party proposing a different result from the utility to produce

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[4] A.22-04-003, *Southern California Edison Company's (U 338-E) Opening Brief*, p. 3 (April 12, 2024) (SCE Opening Brief).

[5] *Id*. at 3.

[6] *Id*. at 3 (*citing Re Pacific Bell*, D.87-12-067, p. 25, 27 CPUC 2d 1, 22.)

[7] D.87-12-067 at 21.

evidence raising a reasonable doubt as to the utility's position, and that it presents evidence explaining its own position.[8]

The cases SCE itself references provide helpful context regarding the low bar the burden of going forward presents. In D.04-04-074, the Commission found that Universal had not met its burden of going forward because it did not offer *any* evidence through rebuttal testimony or cross examination as to its position.[9] In D.07-11-037, the Commission found the Division of Ratepayer Advocates had not met its burden of going forward as it *did not submit surrebuttal testimony* to refute the utility's extensive rebuttal arguments, and dedicated minimal cross examination to the relevant issue.[10] It is clear from Commission precedent that the burden of going forward is a low threshold merely requiring CalCCA to put forward *some* evidence supporting its proposals to refund customers and raising reasonable doubts as to SCE's request the Commission approve what it recorded to the Portfolio Allocation Balancing Account (PABA) and ERRA during 2023.

Moreover, while the quotation SCE references describes the burden of going forward, it is important to note *the burden of proof never shifts*.[11] Indeed, both SCE's Opening Brief and CalCCA's Opening Brief agree SCE has the burden of affirmatively establishing the reasonableness of all aspects of its application, and that burden of proof generally is measured based upon a preponderance of the evidence.[12] Only SCE must prove its requested relief should

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8 *Id*. at 22.

9 *Universal Studios, Inc. vs. Southern California Edison Company*, D.04-04-074, p. 47, 2004 Cal. PUC LEXIS 173 (April 28, 2004).

10 *Re Golden State Water Co*., D.07-11-037, Footnote 41, 2007 Cal. PUC LEXIS 648.

11 D.87-12-067 at 20.

12 SCE Opening Brief at 3 (stating "SCE has the ultimate burden of proof (by a preponderance of the evidence) in this proceeding"); A.23-04-003, *Opening Brief of the California Community Choice Association*, pp. 3-4 (April 12, 2024) (CalCCA Opening Brief).

be approved based on a preponderance of the evidence: here, that the Commission approve what SCE recorded to PABA and ERRA during 2023, *i.e.*, that it do nothing regarding its ratemaking and CAISO mistakes. An intervenor need only produce competent evidence to raise a reasonable doubt about SCE's requested relief.

CalCCA has certainly provided such evidence and created such doubt. The proposals CalCCA supports are detailed in Witness Shuey's testimony, including not only explanations of those solutions, but also both the numerical details necessary to implement them.[13] Where SCE raised obstacles to CalCCA's proposals in its rebuttal testimony, its own admission in data requests, issued in lieu of cross examination, demonstrate how those obstacles can be overcome.[14] CalCCA's Opening Brief also cites decisions and testimony showing how PG&E was able to overcome similar obstacles when it made *six years' worth* of ratesetting errors and how it committed to no longer passing through CAISO sanctions to its customers.[15] It is clear CalCCA has put forward sufficient record evidence for the Commission to move forward.

Even if the Commission determines CalCCA's burden somehow extends beyond raising a reasonable doubt regarding SCE's proposal to do nothing, the record put forward by CalCCA in this proceeding easily meets that standard. In SCE's own words, CalCCA's responsibility is to present "competent evidence in support of such challenges and in support of their ratemaking disallowances."[16] There can be no question Witness Shuey's testimony on this issue and SCE own

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[13] Exh. CalCCA-01 at 6:3-8:5.

[14] *See* Exh. CalCCA-02 (SCE Responses to CalCCA Data Requests 3.01, 3.03, 3.04, 3.07-3.08, 3.10, 4.02-4.07).

[15] CalCCA Opening Brief at 11-12.

[16] SCE Opening Brief at 3-4 (citing *Re Pacific Bell, D.87-12-067, p. 25, 27 CPUC2d 1, 22. See also Universal Studios Inc. v. Southern California Edison Co., D.04-04-074, p 32, 2004 Cal. PUC LEXIS 173;*

admissions constitute evidence in support of CalCCA's challenges to SCE's requested relief and request for disallowances.

II. THE COMMISSION SHOULD ORDER SCE TO REFUND CUSTOMERS WHOM IT DOUBLE CHARGED FRANCHISE FEES.

After double-charging its customers and failing to follow CAISO rules, SCE proposes to do nothing to address its mistakes. Any reasonable company in an unregulated, competitive market that overcharged its customers would simply refund the customers, especially when the amount at stake is insignificant compared to the company's overall revenues. Such actions make sense because customers that catch wind of a company treating them unfairly would turn to another company to obtain the same services. Here instead, SCE leverages its status as a regulated monopoly to state it is both unwilling and unable to refund customers it overcharged. Since competitive market forces are absent, the Commission must take action to make customers whole. The Commission should direct SCE to correct the mistakes SCE committed during the record year.

Re Golden State Water Co., D.07-11-037, p. 101, 2007 Cal. PUC LEXIS 648.). Not only do CalCCA Exhibits 1-2 meet this low standard, those exhibits also meet the substantial evidence standard *SCE* must meet in this proceeding, which requires the Commission's final decision be "supported by the findings," and those findings be "supported by substantial evidence in light of the whole record," *i.e.*, they are based on the record or inferences reasonably drawn from the record. The Scoping Ruling categorized this proceeding as ratesetting. Scoping Ruling at 7. The Commission has previously determined that Section 1757 of the Public Utilities Code applies to ratesetting, establishing that the Commission's final decision must be "supported by the findings," and those findings must be "supported by substantial evidence in light of the whole record," *i.e.*, they are based on the record or inferences reasonably drawn from the record. Cal. Pub. Util. Code § 1757; *see, e.g.,* D.20-05-027, pp. 5-6 (Order Denying Rehearing of D.18-06-027, stating "As an initial matter, SDG&E cites to the wrong statute, because Public Utilities Code section 1757.1 does not set forth the applicable standards for a ratesetting proceeding like this one. Rather, section 1757 provides the appropriate standard and requires a finding as to whether the Commission's findings are not supported by substantial evidence in light of the whole record.").

A. SCE Should Reimburse Customers for Franchise Fees It Over-Collected During the Record Year.

In its Opening Brief, SCE summarizes CalCCA's proposal as retroactive;[17] cites to its own testimony—but not CalCCA's testimony—to conclude there is no dispute SCE followed its tariffs;[18] and cites to CalCCA's *direct* testimony to argue Witness Shuey failed to respond to SCE's *rebuttal* testimony.[19] None of these arguments should sway the Commission.

First, the Commission's decision resolving PG&E's 2019 ERRA Forecast, cited in CalCCA' Opening Brief, disproves SCE's implication that the Commission cannot address past ratemaking mistakes. Decision 19-02-023 required the utility to address a $141.3 million error in allocating costs over six different ERRA Forecast proceedings from June 2012 to May 2018 related to Cost Allocation Mechanism (CAM)-eligible contracts.[20] Despite the fact incorrect rates were adopted previously, the Commission determined that all affected customers, including unbundled customers, should benefit from a refund related to PG&E's accounting errors.[21] It should do the same here; correcting past ratemaking mistakes is no bar to Commission action.

Second, opening briefs clearly demonstrate the two parties do not agree SCE's tariffs required it to double-charge its customers. At the threshold, it is appropriate for CalCCA to interpret SCE's tariffs during legal briefing and not in testimony. As SCE notes, the interpretation of SCE's tariffs is a legal issue.[22] CalCCA's Opening Brief demonstrates why no SCE tariff

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17 SCE Opening Brief at 8-9.

18 *Id*. at 9-11.

19 *Id*. at 11-12.

20 D.19-02-023 at 19, 25, 28; *see also* A.18-06-001, PG&E Prepared Direct Testimony at 11-2.

21 D.19-02-023 at 19, Finding of Fact 10.

22 SCE Opening Brief at 8-9 (stating "SCE's Commission-approved tariffs have the force and effect of law…".

required the utility to double-charge its customers. SCE's ratemaking was flawed in the first place: the culprit was in the spreadsheets, not the tariff.[23] The issue was not the recipe, *i.e.*, the PABA preliminary statement, it was the addition of brown sugar where the recipe only called for sugar, *i.e.*, it was a ratemaking error that "grossed up" the PCIA for franchise fees when it should not have done so.[24]

SCE's claim the Commission should not refund customers because Witness Shuey did not identify from whom remuneration should come ignores the fact-finding process laid out in the Scoping Ruling. SCE raised this argument for the first time in rebuttal testimony; it is not possible for Witness Shuey to address an argument in rebuttal testimony in opening testimony. Further fact-finding was necessary, and CalCCA issued two sets of data requests regarding SCE's rebuttal to better understand the factual underpinnings of SCE's argument. It then presented the remaining two solutions in its Opening Brief, relying on SCE's admissions: either SCE should fund the vintage-specific credit itself, via a disallowance, or all customers should bear the costs of SCE's errors.[25] There is no hole in the evidentiary record preventing the Commission from ordering SCE to refund its customers.

B. Customers Should Not Pay SCE's CAISO Sanctions.

SCE's Opening Brief argues its customers should pay for SCE's CAISO sanctions because its system is complex;[26] these penalties are relatively small;[27] mistakes happen;[28] there should not

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23 CalCCA Opening Brief at 8-13.

24 *Id*.

25 *Id*. at 13-18.

26 SCE Opening Brief at 12-13.

27 *Id*.

28 *Id*. at 13.

be a standard of perfection;[29] and, somewhat bewilderingly, CAISO sanctions are not evidence of imprudent management.[30] SCE's arguments about the complexity of its system, the size of the penalties, and the fact mistakes happen should be dismissed out of hand. As described in CalCCA's Opening Brief, PG&E operates just as complex of a system, made a similar mistake, and was charged similarly small amounts.[31] However, it not only agreed not to pass through these same penalties to its customers during the 2020 record year but also committed to no longer charging such penalties to customers in the future.[32] The Commission adopted this approach in D.22-04-041,[33] and it should adopt the same approach here.

As discussed in CalCCA's Opening Brief, when determining who is to bear responsibility for costs via a disallowance, it must not lose sight of the standard that the utility has the burden of showing the reasonableness of its activities.[34] The Commission expects the utilities to provide a substantial affirmative showing in support of all elements of its application.[35] Unless a utility meets the burden of proving, with clear and convincing evidence, the reasonableness of all the costs reflected in rates, those costs will be disallowed—regardless of whether a utility believes doing so

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29 *Id*. at 14.

30 *Id*.

31 CalCCA Opening Brief at 8-13.

32 *Id*.

33 D.22-04-041 at 8-9, Ordering Paragraph 1.

34 *See, e.g., In the Matter of the Application of the Southern California Edison Company for: (1) Authority to Revise its Energy Cost Adjustment Billing Factors, Its Electric Revenue Adjustment Billing Factor, Its Low Income Rate Assistance, and Its Base Rate Levels Effective January 1, 1993; (2) Authority to Review the Energy Reliability Index and Avoided Capacity Cost Pricing; and (3) Review of the Reasonableness of Edison's Operations During the Period From April 1, 1991 Through March 31, 1992*, 1994 Cal. PUC Lexis 158, 23 (citing D.92496 and *in Re Southern California Edison (1984) 16 CPUC2d 249*) (*In re SCE*)).

35 *In re SCE*, *24.

would hold it to a standard of perfection.[36] It is not on the parties or others to show where the utility erred or where it could have acted with more care; the burden is on SCE.[37]

SCE argues the Commission should not hold it to a standard of perfection and raises the prudent manager standard, concluding "CalCCA has not shown that SCE was imprudent in incurring the CAISO sanctions."[38] First, SCE assigns the incorrect burden to CalCCA—it is *SCE* that must show it has prudently managed its resources; it is not CalCCA's burden to demonstrate imprudence. Rather, CalCCA must present credible evidence that raises a reasonable doubt as to SCE's prudence, and Witness Shuey has done so by putting forth evidence showing SCE violated Tariff Section 37 Rules of Conduct and incurred sanctions for doing do.[39] SCE does not dispute this result but essentially argues CAISO sanctions are *reasonably incurred* utility expenses.

The Commission uses the prudent manager standard to evaluate whether SCE's requested costs are just and reasonable. The Commission has described this standard as follows:

> The term "reasonable and prudent" means that at a particular time any of the practices, methods, and acts engaged in by a utility follows the exercise of reasonable judgment in light of facts known or which should have been known at the time the decision was made. The act or decision is expected by the utility to accomplish the desired result at the lowest reasonable cost consistent with good utility practices. Good utility practices are based upon cost-effectiveness, reliability, safety, and expedition.[40]

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36 *Id.* (citing *In re Southern Counties Gas Co.*, 51 CPUC 533 (1952); D.83-04-089, Mimeo. p. 2.).

37 *Id.*, *24.

38 SCE Opening Brief at 15.

39 Exh. CalCCA-01 at 6:7-14.

40 D.14-06-007 at 36.

While the prudent manager standard is not a standard of perfection,[41] CalCCA is not asking the Commission to establish such a standard for all SCE activities in this record year or in the future. Instead, CalCCA asks the Commission to hold SCE to the standard set by PG&E and other third-party owners of generation that bear responsibility for CAISO penalties under their PPAs. Discussed above, D.22-04-041 required PG&E to forego CAISO penalties both during the 2020 record year and into the future.[42]

Moreover, as Witness Shuey explained in his testimony, an additional set of penalties were charged to SCE for similar CAISO sanctions, but those were passed through to contractual parties.[43] Clearly, since CAISO Rule 37 applies to scheduling coordinators,[44] contractual parties that act as their own scheduling coordinators have no choice but to pay these costs out of pocket as the project owners. It makes little sense for the Commission to hold PG&E and these other generators to a different standard than SCE.

Unless a utility meets the burden of proving, with clear and convincing evidence, the reasonableness of all the costs reflected in rates, those costs will be disallowed.[45] It makes no sense to conclude this CAISO penalty was a reasonably incurred expense; and, therefore, SCE should not be allowed to recover it from ratepayers.

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41 D.02-08-064 at 6 (quoting D.87-06-021).

42 D.22-04-041 at 8-9, Ordering Paragraph 1.

43 Exh. CalCCA-01C at 6:21, n. 11.

44 Exh. CalCCA-01 at 6:11-14.

45 *In re SCE*, *24 (citing *In re Southern Counties Gas Co.*, 51 CPUC 533 (1952); D.83-04-089, Mimeo. p. 2.).

III. CONCLUSION

For the foregoing reasons, CalCCA respectfully urges the Commission to take the actions discussed in its Opening Brief and herein and any other relief the Commission deems just and reasonable.

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