

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

In The Matter of the Application of  
SOUTHERN CALIFORNIA EDISON  
COMPANY (U 338-E) for Authority to Lease  
Certain Fiber Optic Cables to CELLCO  
PARTNERSHIP D/B/A VERIZON  
WIRELESS under the Master Dark Fiber  
Lease Agreement Pursuant to Public Utilities  
Code Section 851.

A.17-02-001  
(Filed February 3, 2017)

**REPLY COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E)  
ON THE PROPOSED DECISION**

FRANK MCNULTY  
GLORIA M. ING  
Southern California Edison Company  
2244 Walnut Grove Avenue  
Post Office Box 800  
Rosemead, CA 91770  
Telephone: (626) 302-1999  
Facsimile: (626) 302-6693  
E-mail: [Gloria.Ing@sce.com](mailto:Gloria.Ing@sce.com)

HENRY WEISSMANN  
Munger, Tolles & Olson LLP  
350 South Grand Avenue, 50th Floor  
Los Angeles, CA 90071  
Telephone: (213) 683-9150  
Facsimile: (213) 683-5150  
E-mail: [Henry.Weissmann@mt.com](mailto:Henry.Weissmann@mt.com)

Attorneys for  
SOUTHERN CALIFORNIA EDISON COMPANY

Dated: February 5, 2018

**TABLE OF CONTENTS**

	<b>Page</b>
I. TURN’S POSITION IS BASED ON AN IMPERMISSIBLE COLLATERAL ATTACK ON PRIOR GENERAL RATE CASE DECISIONS.....	1
II. THERE IS NO RECORD EVIDENCE TO SUPPORT TURN’S ASSERTIONS .....	2
III. TURN’S SUGGESTED MODIFICATIONS .....	5

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>STATE STATUTES</b>	
Cal. Pub. Util. Code § 851 .....	4
Cal. Pub. Util. Code § 1709 .....	1-2
<b>CALIFORNIA ADMINISTRATIVE REGULATIONS AND ORDERS</b>	
Title 20, California Code of Regulations (Rules of Practice and Procedure) Rule 14.3.....	1
<b>COMMISSION DECISIONS</b>	
D.99-04-021, 1999 Cal. PUC LEXIS 228 .....	4
D.98-08-035, 1998 Cal. PUC LEXIS 594 .....	5
D.98-12-083, 84 CPUC 2d 468, 472 (Dec. 17, 1998) .....	5
D.99-09-070, 1999 Cal. PUC LEXIS 653 .....	4-5
D.07-04-017 (Apr. 12, 2007) .....	2
D.07-05-033 (May 3, 2007) .....	2
D.12-11-051 (Dec. 10, 2012) .....	2
D.15-01-054 (Jan. 29, 2015) .....	2
D.15-11-021 (Nov. 12, 2015) .....	2-3

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

In The Matter of the Application of  
SOUTHERN CALIFORNIA EDISON  
COMPANY (U 338-E) for Authority to Lease  
Certain Fiber Optic Cables to CELLCO  
PARTNERSHIP D/B/A VERIZON  
WIRELESS under the Master Dark Fiber  
Lease Agreement Pursuant to Public Utilities  
Code Section 851.

A.17-02-001  
(Filed February 3, 2017)

**REPLY COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E)  
ON THE PROPOSED DECISION**

Pursuant to California Public Utilities Commission (“Commission”) Rule of Practice and Procedure 14.3(d), Southern California Edison (“SCE”) respectfully submits these Reply Comments. SCE responds to the opening comments of The Utility Reform Network (“TURN”).

**I. TURN’S POSITION IS BASED ON AN IMPERMISSIBLE COLLATERAL  
ATTACK ON PRIOR GENERAL RATE CASE DECISIONS**

TURN asserts that “SCE has used ratepayer funds to build excessive capacity on its fiber optic network, adding unreasonable expenses to its ratebase.”<sup>1</sup> This claim, which is the basis for TURN’s position that the January 9, 2018 Proposed Decision’s (“PD”) modification of the gross revenue sharing mechanism (“GRSM”) should be adopted, constitutes an impermissible collateral attack on the Commission’s prior final General Rate Case decisions approving SCE’s investment in fiber optic facilities.

Such a collateral attack on the Commission’s prior decisions is barred by Cal. Pub. Util. Code § 1709, which provides: “In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.”<sup>2</sup> A collateral attack “is an attempt to invalidate the judgment or order of the Commission in a proceeding other than that in

---

<sup>1</sup> Opening Comments of The Utility Reform Network on the Proposed Decision at 1 (Jan. 29, 2018) (“TURN Opening Comments”).

<sup>2</sup> Cal. Pub. Util. Code § 1709.

which the judgment or order was rendered.”<sup>3</sup> SCE’s two most recent General Rate Cases specifically authorized investments in fiber optic facilities for utility operations.<sup>4</sup> As such, the Commission necessarily found that those investments were reasonable and prudent to meet utility needs. TURN’s assertion that those investments were “unreasonable”<sup>5</sup> conflicts directly with the Commission’s approval in the General Rate Cases. TURN “essentially challenges rates and ratemaking issues already decided in [those] general rate case[s],”<sup>6</sup> which is precisely what § 1709 prohibits. TURN actively participated in both proceedings and “had the opportunity to file a timely application for rehearing or a petition for modification.”<sup>7</sup> After failing to do so, TURN “is now foreclosed from challenging any of [those] decision[s]’ determinations” here.<sup>8</sup>

In addition, the Commission did not provide notice that it would consider modifying its General Rate Case decisions in this proceeding. TURN’s invitation to do so would lead to a violation of the rule that a decision may not resolve issues beyond those identified in the Scoping Memo, as well as § 1709.<sup>9</sup>

## **II. THERE IS NO RECORD EVIDENCE TO SUPPORT TURN’S ASSERTIONS**

As noted, TURN asserts that “SCE has used ratepayer funds to build excessive capacity on its fiber optic network, adding unreasonable expenses to its ratebase.”<sup>10</sup> The PD similarly states that SCE has engaged in a “systematic build-up of assets funded by ratepayers.”<sup>11</sup> Yet TURN and the PD cite no record evidence suggesting that any fiber facilities in rate base are not needed for utility purposes or that SCE has added fiber facilities to rate base based on the business opportunities of Edison Carrier Solutions. Instead, TURN cites evidence that “SCE is

---

<sup>3</sup> D.07-04-017, at 8 (Apr. 12, 2007).

<sup>4</sup> D.15-11-021, at 230-33 (Nov. 12, 2015); D.12-11-051, at 402-05 (Dec. 10, 2012).

<sup>5</sup> TURN Opening Comments at 1.

<sup>6</sup> D.07-05-033, at 5 (May 3, 2007).

<sup>7</sup> D.07-04-017, at 8.

<sup>8</sup> D.15-01-054, at 3 (Jan. 29, 2015).

<sup>9</sup> See Comments of Southern California Edison Company (U 338-E) on the Proposed Decision Approving and Adopting 25/75 Revenue Allocation for Revenues Under the Master Dark Fiber Lease Agreement Between Southern California Edison Company and Verizon Wireless at 10-11 (Jan. 29, 2018) (“SCE Comments”).

<sup>10</sup> TURN Opening Comments at 1.

<sup>11</sup> PD at 5-6.

currently using only 17.8% of its fiber optic network for internal communications and electric system monitoring and automation” and “SCE uses a greater percentage of its network (19.1%) to provide non-tariffed products and services than it does its core electric services . . . [while] 63% of the network capacity is unused.”<sup>12</sup> These conclusions do not follow from this evidence.

First, as noted in SCE’s Comments, SCE adds to rate base only those facilities needed for utility operation. In doing so, SCE takes a long-term view of projected future utility bandwidth needs and installs sufficient excess capacity in the near term to adequately meet those future needs at de minimis marginal cost. This planning is guided by the estimated useful life of the fiber cable SCE installs, which is estimated to be 25 years.<sup>13</sup> Thus, excess capacity is the result of SCE’s long-term planning and indicates nothing more than prudent decision-making by SCE.

Second, the percentages referenced by TURN (and relied on by the PD)<sup>14</sup> are for SCE’s existing network *as a whole*, which includes both rate base and shareholder-funded cable. In other words, 17.8% of SCE’s total existing fiber optic network (rate base and shareholder-funded) is used for utility purposes, not 17.8% of the rate base network. And 19.1% of SCE’s total existing fiber optic network, not just the rate base network, is used for non-tariffed products and services (“NTP&S”). These statistics derive from SCE’s response to a data request from TURN.<sup>15</sup> Statistics specific to SCE’s rate base network are not part of the record in this proceeding. It should be noted, however, that Commission staff also sent SCE a data request with a pre-formatted spreadsheet specifically requesting statistics on “SCENet”—SCE’s rate base network—and specifying statistics for “strand miles in rate base,” which indicated that SCE is using a greater percentage of its ratepayer funded network for energy utility operations than for NTP&S. SCE subsequently shared responses to this and other data requests with TURN.<sup>16</sup>

Third, beyond the absence of record evidence regarding the proportion of SCE’s rate base network used for utility purposes versus NTP&S, that proportion has no bearing on the question presented by this Cal. Pub. Util. Code § 851 application or on applying the GRSM to the Master

---

<sup>12</sup> TURN Opening Comments at 1-2.

<sup>13</sup> See D.15-11-021, at 410 (SCE’s proposal based on a 25-year life was uncontested and approved).

<sup>14</sup> PD at 7, 19.

<sup>15</sup> See Reply Comments of The Utility Reform Network to Comments by Southern California Edison on September 11, 2017 Amended Scoping Memo Appendix A, Data Request Set A.17-02-001 TURN-SCE-01, Question 01 (Nov. 13, 2017) (“TURN Scoping Memo Reply Comments”).

<sup>16</sup> See TURN Scoping Memo Reply Comments Appendix A (responses to some of staff’s requests).

Dark Fiber Lease Agreement (“MLA”). As discussed in SCE’s Comments, the MLA unambiguously qualifies as an NTP&S offering subject to the GRSM adopted in D.99-09-070.<sup>17</sup> Additionally, as a matter of Commission ratemaking policy, the proportion of rate base assets used for NTP&S is not probative of the appropriateness of the GRSM or any other revenue sharing mechanism. The GRSM provides shareholders the amount needed to incentivize them to make the additional investments necessary to enable beneficial secondary uses without affecting service to customers or exposing customers to additional risks.<sup>18</sup> As the Commission noted in approving the GRSM, the “guiding principle [is] not a slavish adherence to a preset ratio” but rather “devis[ing] a treatment that may benefit ratepayers while providing an incentive for Edison to spend the time and money necessary” to pursue NTP&S.<sup>19</sup> Indeed, without such additional shareholder investment, customers would receive *zero* revenue for rate base assets.

In D.99-09-070 the Commission adopted a settlement between SCE and the Office of Ratepayer Advocates and determined that the GRSM is the appropriate mechanism to incentivize sufficient shareholder investment. Under the GRSM, customers receive the first \$16.7 million of gross revenue each year, and gross revenue beyond the \$16.7 million threshold is split between shareholders and customers 70/30 for “passive” NTP&S and 90/10 for “active” NTP&S.<sup>20</sup> This revenue sharing mechanism is considerably more generous to ratepayers than Pacific Gas & Electric’s 50/50 *net* revenue sharing mechanism approved in D.99-04-021.<sup>21</sup> There is no evidence that a lower shareholder share of gross revenues would be sufficient to incentivize additional investments.

TURN asserts, and the PD finds, that the Commission intended NTP&S to “stem from only incidentally underutilized utility assets, not from the systematic build-up of assets funded by ratepayers,”<sup>22</sup> and thus applying the GRSM to the MLA would be “unreasonable.”<sup>23</sup> This is not the case. In D.98-08-035, the Commission eliminated the prior 1% limit on the size of a utility’s

---

<sup>17</sup> In D. 99-09-070, the Commission explicitly identified dark fiber as an NTP&S. *See* D. 99-09-070, 1999 Cal. PUC LEXIS 653, Attachment A (identifying “Dark fiber” as an “active” NTP&S offering).

<sup>18</sup> *E.g., id.* at \*35-36.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at \*6 & n.4.

<sup>21</sup> D.99-04-021, 1999 Cal. PUC LEXIS 228.

<sup>22</sup> PD at 6; TURN Opening Comments at 1.

<sup>23</sup> PD at 8.

NTP&S business activities.<sup>24</sup> In doing so, the Commission recognized the potential for growth in NTP&S offerings. There is nothing in D.99-09-070 approving the GRSM to suggest that it is applicable only to businesses of a small size or to a small proportion of rate base assets. Further, in its decision granting SCE a certificate of public convenience and necessity to operate as a facilities-based competitive local carrier (issued before the decision adopting the GRSM), the Commission noted: “SCE anticipates that 19% of SCENet’s existing fiber optic capacity will be utilized in connection with its proposed telecommunications services; 36% will be used for electric utility operations; and 45% will be used by other carriers pursuant to existing licenses or leases.”<sup>25</sup> Thus, even at the time of D.98-08-035 and adoption of the GRSM, the Commission understood that SCE anticipated utilizing a greater share of the rate base network for commercial services (64% total) than for its utility operations (36%).

**III. TURN’S SUGGESTED MODIFICATIONS**

TURN recommends that Lease Route Orders also be forwarded to the Energy Division and that staff conduct a review midway through the term of the MLA. SCE interprets these suggestions by TURN to give direction to Commission staff to conduct a review, not to impose an additional filing burden on SCE. Therefore SCE does not oppose them but reiterates its position regarding the confidential submission of the Lease Route Orders to the Commission, including, as suggested by TURN, to the Energy Division.

Date: February 5, 2018

Respectfully Submitted,

FRANK MCNULTY  
GLORIA M. ING  
HENRY WEISSMANN

        /s/ Henry Weissmann          
By: Henry Weissmann

Attorneys for  
SOUTHERN CALIFORNIA EDISON COMPANY

---

<sup>24</sup> D.98-08-035, 1998 Cal. PUC LEXIS 594, at \*31-33.

<sup>25</sup> D.98-12-083, 84 CPUC 2d 468, 472 (Dec. 17, 1998).