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

In The Matter of the Application of SOUTHERN CALIFORNIA EDISON COMPANY (U338E) 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 03, 2017)

REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON THE PROPOSED DECISION ON SCE's APPLICATION TO LEASE FIBER OPTIC CABLES TO VERIZON WIRELESS UNDER A MASTER LEASE AGREEMENT

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REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON THE PROPOSED DECISION ON SCE's APPLICATION TO LEASE FIBER OPTIC CABLES TO VERIZON WIRELESS UNDER A MASTER LEASE AGREEMENT

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure ("Rule"), The Utility Reform Network ("TURN") files these reply comments in response to opening comments by Southern California Edison Company ("SCE") on the Proposed Decision ("PD") of Administrative Law Judge ("ALJ") Hallie Yacknin on SCE's application to lease fiber optic cables to Verizon Wireless under a Master Lease Agreement ("MLA").

I. THE COMMISSION SHOULD DISREGARD CONTRADICTING STATEMENTS FROM SCE REGARDING SHAREHOLDER INVESTMENTS

A. SCE's claim that most of the fiber leased to Verizon under the MLA will be funded solely by shareholders is in direct contradiction to the record

SCE argues in its Opening Comments, for the first time, that it "anticipates that most of the fiber leased to Verizon under the MLA will be newly built and therefore funded solely by shareholders" and therefore a 25/75 shareholder/ratepayer sharing mechanism is inappropriate.[1] SCE's statement not only lacks record support, but is in direct contradiction to the record. SCE has repeatedly claimed in its October Comments, responses to data requests from TURN, and responses to data requests from the Commission that it does not know the specific routes that will be used under the MLA.[2] SCE also claimed that it has not executed any Lease Route Order ("LRO") here,[3] and that there are no forecasts, estimates, analyses, business plans, or business models regarding potential revenues or costs from the MLA and related LROs.[4] Yet, SCE now purports to know that most of the fiber leased to Verizon under the MLA will be built and funded solely by shareholders. SCE's claim is notable for its lack of citation to any record support and its failure to acknowledge the ample record material undermining the claim. The Commission should disregard SCE's contradicting statements in its Opening Comments.

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[1] SCE Opening Comments, p. 3.

[2] *See, for example*, SCE October Comments, p. 8; see also, TURN November Comments Appendix A, DR TURN-SCE-01, Questions 6, 7, 9; see also, TURN November Comments Appendix A, DR CPUC-SCE-01, Question 3g.

[3] SCE October Comments, p. 12.

[4] TURN November Comments Appendix A, DR TURN-SCE-01, Questions 6, 7, 9.

Furthermore, as noted by the PD, when the Commission adopted the Affiliate Transaction Rules which authorized non-tariffed products & services ("NTP&S"), the intent was to utilize temporarily available capacity from incidentally underutilized utility assets that are necessary to provide the utility's tariffed services.[5] The intent was not to house and subsidize a shareholder funded business within the regulated utility by allowing the utility to apply an overly narrow definition of "incremental costs" and building utility assets that go far beyond the amount necessary to support its electric utility operations. Thus, if SCE's newly-asserted and contradicting statements about shareholder expense were true, they would be another reason (in addition to those cited in the PD) to find that the proposed MLA does not qualify as a NTP&S. If the majority of the assets necessary would need to be built solely in order to provide the dark fiber lease services, this is not using temporarily excess utility capacity, but something else.

B. SCE's claim that a new sharing mechanism would frustrate past shareholder investment is false and debunked by the record

SCE claims that the PD's adoption of a new sharing mechanism between shareholders and ratepayers for the MLA at issue here would change the economics of past shareholder investments, frustrating the shareholders' reasonable investment-backed expectations.[6] This is completely baseless. As SCE explained previously, shareholders would only fund the installation of new fiber optic cable and other necessary facilities when it is providing service over routes that do not have sufficient existing capacity.[7] Thus, any previous shareholder investments would have been incurred for past or existing fiber leases. The PD does not in any way modify past dark fiber leases that were authorized by the Commission, or the associated revenue sharing for those leases. SCE has been very clear that it has not executed any LROs with Verizon under this MLA and therefore has not constructed any fiber optic facilities with shareholder funds. Thus, nothing in the PD changes or frustrates the shareholder investment economics of the past investments to support other leases. The Commission should ignore SCE's overbroad and false claim.

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[5] PD, p. 6.

[6] SCE Opening Comments, p. 8.

[7] SCE Application, p. 5, SCE October Comments, p. 6. Indeed, the record shows that in the past five years, SCE shareholders have invested in 123 miles of fiber while ratepayers have footed the bill for over 320 miles, and SCE can use the excess capacity in that ratepayer-funded 320 miles for NTP&S as well. TURN November Comments Appendix A, DR TURN-SCE-01, Questions 1 & 3.

II. SCE'S CLAIM OF HAVING PRUDENTLY CONSTRUCTED SURPLUS FIBER OPTIC FACILITIES LACKS RECORD SUPPORT AND IS CONTRARY TO THE EVIDENCE.

SCE's Opening Comments claim, again for the first time, that the utility's construction of excess fiber optic capacity was prudent because "increasing the installed fiber optic capacity involves only *de minimis* additional cost."[8] This claim is contrary to the record. From 1999 to 2017, with the exception of 2015, SCE has been using ratepayer dollars to construct additional fiber optic network facilities every single year.[9] If SCE's claim were true, such that it had in the past prudently installed excess fiber optic capacity for future years, then the Commission could reasonably expect that SCE would have stopped installing more fiber optic network facilities of late and instead relied on that excess capacity. Instead, SCE continued to expand its unnecessary excess capacity at ratepayer expense and add to the rate base, resulting in the current situation where it uses more of its fiber optic network to generate revenue that flows 90% to shareholders than it uses to provide internal communications and electric system monitoring and automation, while 63% of the capacity remains unused.[10] Rather than accept SCE's arguments here and revise the PD to allow a utility's windfall from these practices, the Commission should adopt the PD as a reasonable approach to balancing these interests.

III. SCE'S ARGUMENTS THAT THE PD ATTEMPTS TO MODIFY PAST DECISIONS OR THAT THE PD GOES BEYOND THE SCOPE OF THE PROCEEDING ARE BASELESS AND UNFOUNDED

A. The PD does not attempt to modify the Commission's past decisions, particularly D.99-09-070

SCE claims that the PD "rescinds D.99-09-070 with respect to dark fiber leasing under the MLA" and therefore "the Commission must first comply with the requirements § 1708."[11] This is a misrepresentation of the PD, as it in no way attempts to modify or rescind D.99-09-070. The PD clearly states that, because the dark fiber that would be subject to this particular lease does not meet the conditions for NTP&S established in D.98-08-035, the revenue sharing

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[8] SCE Opening Comments, pp. 6 – 7.
[9] DR CPUC-SCE-01, Question 6.
[10] PD, p. 7.
[11] SCE Opening Comments, pp. 12 – 13.

mechanism established in D.99-09-070 does not apply.[12] The PD does not modify the sharing mechanism established in D.99-09-070 as applied to products and services that qualify as NTP&S, including the sharing mechanism for dark fiber leases previously approved by the Commission. Similarly, SCE asserts that "at no point did the Commission make clear, in the scoping memos or otherwise, its intent to reconsider D.99-09-070."[13] But, there is no reconsideration of D.99-09-070, rather there is a determination that the decision does not govern this transaction. The Commission should disregard SCE's unfounded claim that the requirements of PUC Code § 1708 apply here.

B. Whether the MLA meets the requirements of a non-tariffed product & service and revenue sharing between shareholders and ratepayers are squarely within the scope of this proceeding

SCE also argues that whether the MLA meets the requirements of a NTP&S and whether the sharing mechanism is reasonable are not within the scope of the proceeding.[14] SCE went as far as to suggest that the PD is an abuse of the Commission's discretion and violates SCE's procedural rights.[15] Yet, the Scoping Memo stated, as SCE acknowledges,[16] "Does SCE's application meet the requirements for revenue sharing established in D.99-07-070 [sic]?" and asks whether the 90/10 split is "reasonable."[17] The plain meaning of the above statement clearly indicated the Commission's intent to examine whether the MLA meets the requirement for revenue sharing of NTP&S. The Scoping Memo further identifies "Revenue sharing between SCE shareholders and ratepayers" and "What steps can the Commission take to ensure that SCE does not subsidize its CLEC business with its gas and electric customers" as issues in the proceeding.[18] Clearly, the Scoping Memo indicated that an appropriate revenue sharing mechanism between shareholders and ratepayers was one of the issues to be addressed. Inexplicably, SCE argues that the "PD's consideration of NTP&S revenue sharing mechanisms

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[12] PD, p. 4.
[13] SCE Opening Comments, p. 13.
[14] *Id.*, p. 11.
[15] *Id.*, p. 10.
[16] *Id.*, p. 11.
[17] Assigned Commissioner's Amended Scoping Memo and Ruling, p. 3-4.
[18] *Id.*

other than the GRSM … was not identified in either scoping memo."[19] The Commission should reject SCE's self-serving assertion that when the Scoping Memo included revenue sharing between SCE shareholders and ratepayers as an issue, it did not *actually* intend to include revenue sharing between SCE shareholders and ratepayers as an issue. Addressing this clearly-scoped issue does not represent an abuse of the Commission's discretion and violation of SCE's procedural rights.

IV. SCE'S UNSUPPORTED PROPOSED EDITS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW SHOULD BE REJECTED

The Commission should reject SCE's attempt to use proposed edits to Findings of Fact and Conclusions of Law as a means of affecting changes beyond those described in the text of its comments. For example, SCE proposes to strike Findings of Fact #1, #2, and #3, which were all clearly established and undisputed facts based on SCE's responses to TURN's data requests.[20] SCE may not be happy with the way these facts are used in the PD, but that does not justify this attempt to eliminate them without explanation in the utility's comments. Other examples include SCE's insertion of a Conclusion of Law that "[t]his leasing arrangement is exempt from CEQA" or its removal of Conclusions of Law #5, #6, #8, and #9; none of these modifications are supported in SCE's Opening Comments. The Commission should reject all of SCE's proposed edits to Findings of Fact and Conclusions of Law.

Dated: February 5, 2018

Respectfully submitted,

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[19] SCE Opening Comments, p. 11.
[20] TURN November Comments, pp. 3 - 4; PD, pp. 6 - 7.