

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
OF THE STATE OF CALIFORNIA**

In the Matter of the Notices of  
Violation and Notice of Defect Against  
Southern California Edison Company

OAH Case No. 2023010012

**SOUTHERN CALIFORNIA EDISON COMPANY'S COMMENTS ON THE  
APRIL 3, 2023 PROPOSED DETERMINATION IN THE WRITTEN HEARING ON  
CERTAIN NOTICES OF VIOLATION AND NOTICE OF DEFECT**

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Pursuant to 14 CCR § 29104(f), Southern California Edison Company (SCE) respectfully submits the following comments on the April 3, 2023 Proposed Determination (PD) in the written hearing on 22 Notices of Violation (NOVs) and one Notice of Defect (NOD) issued by the Office of Energy Infrastructure Safety (Energy Safety) to SCE.

### **INTRODUCTION**

SCE thanks Administrative Law Judge Julie Cabos-Owen and the Office of Administrative Hearings for their efforts in connection with the PD and the written hearing process. SCE also expresses its appreciation to Energy Safety for its collaboration in developing the written hearing procedures and its participation in the hearing. The written hearing involved two categories of allegations in connection with SCE's compliance with its 2021 Wildfire Mitigation Plan Update (2021 WMP): (1) an NOD alleging that the separation of strands on a particular conductor—known as “bird-caging”—increased the risk of an ignition on a specific power line that Energy Safety inspected in 2021, and (2) several NOVs that all concerned SCE's alleged failure to install vibration dampers in certain locations in 2021. On the bird-caging issue, the PD correctly concludes that Energy Safety “did not establish by a preponderance of the evidence that the bird-caging identified in the NOD increased the risk of ignition,” and that “the NOD should be dismissed.”<sup>1</sup> However, on the vibration damper issue, the PD mistakenly concludes that the NOVs should be upheld based on a series of critical errors. As explained below, a final determination should (1) adopt the PD's findings on the bird-caging issue and recommendation that the NOD be dismissed, and (2) correct the PD's erroneous findings on the vibration damper issue such that the NOVs be dismissed.

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<sup>1</sup> PD, p. 41.

## DISCUSSION

### **I. A Final Decision Should Correct the PD’s Erroneous Findings Concerning the Vibration Damper Supply Shortage in 2021**

SCE explained in the written hearing that the NOV’s should be dismissed because vibration damper manufacturing disruptions and supply shortages caused by the COVID-19 pandemic in 2021 made procurement of vibration dampers impracticable.<sup>2</sup> The PD dispenses with this argument based on flawed findings and by overlooking evidence in the record. Once the critical errors identified below are corrected, a final determination should provide that the NOV’s be dismissed.

#### **A. The PD’s Finding that Utilities Must Account for the Impacts of Exogenous Factors Such As Global Supply Chain Disruptions in Their WMPs Is Fundamentally Flawed**

The PD is flawed in its apparent reasoning that SCE should have accounted for unforeseen exogenous factors such as pandemic-driven supply shortages in its 2021 WMP. Due to a shortage of vibration dampers and uncertainty as to the duration of supply chain disruptions, SCE issued internal guidance in 2021—an “Interim Deviation from Standards”—providing that vibration damper installations on covered conductors may be postponed at locations where dampers were unavailable because of supply constraints.<sup>3</sup> Although the PD acknowledges the Interim Deviation from Standards, the PD states that “the evidence failed to establish that the Interim Deviation from Standards on Vibration Damper for Covered Conductor (or Edison’s

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<sup>2</sup> SCE’s Memorandum of Law in Response to Notices of Violation and Notice of Defect, pp. 2, 6, 11-12.

<sup>3</sup> See Energy Safety Memorandum of Points and Authorities Supporting Notice of Defect and Notices of Violation (Energy Safety Br.), Ex. 5 (000759).

published standards) are incorporated into Edison’s 2021 WMP Update such that an exception was created.”<sup>4</sup>

The PD’s conclusion is problematic because it is unclear how the Interim Deviation from Standards could have been “incorporated into” the 2021 WMP. The 2021 WMP was published *before* it became apparent that global supply disruptions would impact SCE’s ability to procure vibration dampers. Utilities should not be required to predict or account for the impacts of unforeseeable events such as global supply chain issues in their WMPs. Applying such a standard as a means to measure WMP compliance improperly penalizes utilities based on after-the-fact events that are completely outside of the utility’s control.<sup>5</sup> The final determination on the NOV’s should not impose such an unfair and unreasonable standard of knowledge upon SCE informed by future developments.

B. The PD’s Finding that SCE Provided “No Evidence” of a Vibration Damper Supply Shortage at Locations Subject to NOV’s Is Incorrect and Inconsistent with the Record

The PD also erroneously concludes that “Edison provided no evidence that the vibration dampers required at the locations subject to the NOV’s were subject to shortage and that the absence of vibration dampers at those locations was due to procurement impossibility.”<sup>6</sup> This finding fails to take into account ample evidence in the record establishing that vibration damper

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<sup>4</sup> PD, p. 28; *see also* PD, p. 40 (“while Edison asserts a supply shortage prompted deviation from its prior standards, the evidence failed to establish Edison’s published standards and its ‘Interim Deviation from Standards on Vibration Damper for Covered Conductor’ are incorporated into Edison’s 2021 WMP Update such that an exception was created.”).

<sup>5</sup> *See* D.19-02-004, p. 8 (“the reasonableness of a particular management action depends on what the utility knew or should have known at the time that the managerial decision was made, not how the decision holds up in light of future developments”), *citing to* D.16-12-063 and D.02-08-064.

<sup>6</sup> PD, p. 28; *see also* PD, p. 40 (“Edison provided no evidence that the vibration dampers subject to the NOV’s were affected by the shortage and that the absence of those vibration dampers was due to procurement impossibility.”).

supply shortages caused by the COVID-19 pandemic in 2021 made procurement and installation of vibration dampers at the locations identified in the NOV's impracticable.

To start, SCE has repeatedly and consistently explained that extraordinary and prolonged supply disruptions beyond SCE's control due to a global pandemic precluded SCE from procuring and installing vibration dampers in the locations that are identified in the NOV's.<sup>7</sup> SCE's initial responses to the NOV's described that SCE "experienced supply chain issues that impeded our ability to install the vibration dampers" at the select locations identified in the NOV's.<sup>8</sup> Additional documentary evidence demonstrated that the unforeseen supply shortage in the midst of the global pandemic interfered with SCE's plans to install vibration dampers. This evidence included documents demonstrating manufacturing and shipping delays from SCE's vibration damper supplier.<sup>9</sup> SCE also submitted a declaration specifically addressing the "Notices of Violation alleging that SCE failed to install vibration dampers in certain locations in 2021."<sup>10</sup> SCE also submitted evidence that certain vibration damper components are procured overseas, attachment rods were unavailable, and "SCE's plans for installation of vibration dampers on covered conductors were significantly impacted by supply shortages during the COVID-19 pandemic" because SCE was only able to procure approximately 45% of the vibration dampers that SCE ordered in 2021.<sup>11</sup> Taken together, the evidence established that SCE was unable to install vibration dampers at the particular locations identified in the NOV's because of an extended vibration damper supply shortage. The PD's finding that SCE provided

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<sup>7</sup> See Energy Safety Br., Exs. 9, 12, 16, 18, 23, 28, 31, 33, 40, 44.

<sup>8</sup> See, e.g., Energy Safety Br., Ex. 9, p. 3 (000813).

<sup>9</sup> Declaration of Niousha Tavakoli (Tavakoli Decl.) ¶¶ 6-7; *id.* at Exs. 1-2 (e-mail correspondence and July 15, 2021 letter from SCE's vibration damper supplier describing continued manufacturing and shipping delays).

<sup>10</sup> Tavakoli Decl. ¶ 4.

<sup>11</sup> Tavakoli Decl. ¶¶ 5, 7, 9; *id.* at Ex. 2.

“no evidence” that vibration dampers could not be installed at the locations subject to the NOVs because of a supply shortage is inaccurate and cannot be reconciled with the evidentiary record.

A final determination should correct this critical error.

## **II. The PD Incorrectly Conflates Installation of Vibration Dampers with Installation of Covered Conductor**

SCE argued in the written hearing that Energy Safety did not meet its burden to show alleged violations for failure to install vibration dampers because the 2021 WMP did not require installation of a specific quantity of vibration dampers at specific locations by a date certain.<sup>12</sup> SCE also explained that vibration dampers may be installed separate and apart from covered conductor, and that covered conductor’s wildfire mitigation effectiveness is not impacted in the short term by the presence or absence of a vibration damper.<sup>13</sup>

The PD concludes that vibration dampers were required to be installed simultaneously with covered conductor installations.<sup>14</sup> In reaching this conclusion, the PD mistakenly conflates installation of vibration dampers with SCE’s initiative to install covered conductor, even though these are two separate and independent activities. Specifically, the PD finds that “since the 2021 WMP Update indicates vibration dampers ‘will be part of standard covered conductor installations’ (Exhibit 1, p. A303),” a separate timeline for installation of vibration dampers “would be superfluous.”<sup>15</sup> The PD reads far too much into individual statements in the 2021 WMP in isolation and misconstrues the fact that installation of vibration dampers was not a formal initiative in SCE’s 2021 WMP. The 2021 WMP sets forth SCE’s planned initiatives explicitly, including installation of covered conductor, and SCE’s compliance with each

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<sup>12</sup> SCE’s Memorandum of Law in Response to Notices of Violation and Notice of Defect, p. 10.

<sup>13</sup> *Id.* at p. 5 (citing Declaration of Arianne Luy, ¶ 6).

<sup>14</sup> PD, pp. 9-10.

<sup>15</sup> *Id.*

initiative is tracked in quarterly notifications to Energy Safety. The initiative for installation of covered conductor in the 2021 WMP, SH-1, only provided that SCE expected to install 1,000 circuit miles of covered conductor in SCE's high fire risk areas (HFRA) and would strive to install as many as 1,400 circuit miles of covered conductor in SCE's HFRA.<sup>16</sup> Because they were not part of the covered conductor WMP initiative, vibration damper installations were not included or even mentioned as part of the program target in the 2021 WMP or in the related quarterly notifications to Energy Safety.<sup>17</sup> Indeed, unlike covered conductor installations, vibration damper installations are not measured by numbers of circuit miles. SCE exceeded its covered conductor installation target and its higher "strive" target for the 2021 WMP.<sup>18</sup> Under these circumstances, SCE should not be penalized for the absence of an unspecified quantity of vibration dampers on a timeline that SCE had not committed to in the 2021 WMP.

### **CONCLUSION**

For the foregoing reasons, SCE respectfully requests that a final determination (1) adopt the PD's findings on the bird-caging issue and recommendation that the NOD be dismissed, and (2) correct the PD's erroneous findings on the vibration damper issue such that the NOV's be dismissed.

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<sup>16</sup> See Energy Safety Br., Ex. 1 at 6, row 1 (000008) (listing target for circuit miles of covered conductor installations).

<sup>17</sup> See SCE's Feb. 1, 2022 Quarterly Notification Pursuant to Pub. Util. Code § 8389(e)(7) Regarding the Implementation of Its Approved Wildfire Mitigation Plan and Its Safety Culture Assessment and Safety Recommendations.

<sup>18</sup> *Id.* at Attachment A, p. 5 (noting that "SCE met target by installing ~1,500 circuit miles of covered conductor in HFRA in 2021").

Respectfully submitted,

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