BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

Order Instituting Investigation into the Creation
of a Shared Database or Statewide Census of
Utility Poles and Conduit in California.

And Related Matters.

Investigation 17-06-027
Rulemaking 17-06-028
Rulemaking 17-03-009

SOUTHERN CALIFORNIA EDISON COMPANY’S (U 338-E) COMBINED OPENING
COMMENTS AND PREHEARING CONFERENCE STATEMENT ON RULEMAKING
RELATING TO ACCESS TO POLES, CONDUIT, AND RIGHTS-OF-WAY

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Dated:  September 8, 2017
I. INTRODUCTION

Pursuant to Section 8.5 of the California Public Utilities Commission’s (CPUC or Commission) Order Instituting Investigation (OII or I.) 17-06-027 and Order Instituting Rulemaking (OIR or R.) 17-06-028 and the Administrative Law Judge’s Ruling dated August 11, 2017, Southern California Edison Company (SCE) submits the following combined Opening Comments and Prehearing Conference statement.

II. BACKGROUND AND OVERVIEW

The overview provided in Section 8 describes the basis for R.17-06-028 and the Commission’s intent to address:

- New telecommunication services and market entrants.
- Telecommunication networks.
Recent developments at the Federal Communications Commission (FCC) related to broadband providers.

Problems with ‘pole management.’

General concerns with the safety and reliability of electric supply and communication infrastructure.

How to harmonize the Rights-Of-Way (ROW) rules with respect to the CPUC’s concerns.1

SCE has been a longstanding party and active participant in Commission proceedings to develop and revise ROW rules and also craft new and revised General Order rules. Given the strong connection between the revised ROW rules and the Commission’s General Orders 95 and 128, SCE believes it is appropriate to address any safety concerns in this proceeding. While it is clear that the telecommunication industry is rapidly evolving, it is also clear that electric supply company systems are also modernizing. Investor Owned Utilities (IOUs) like SCE and others are working to create more resilient and reliable transmission and distribution systems to serve their residential, commercial, and industrial customers, which includes the telecommunication companies. Although these efforts are intertwined and in some respects complimentary, it is important to balance the objectives of both industries and the needs of ratepayers and customers.

SCE provides safe, reliable, and affordable electric service to roughly 14 million people across a 50,000 sq. mi. service territory. This is accomplished by dedicated employees working so that over 90 thousand miles of overhead and underground electric distribution lines and nearly 13,000 miles of overhead and underground transmission lines are designed, constructed, inspected, maintained, and safely operated. SCE is also a facilities-based competitive local exchange carrier (CLEC). Edison Carrier Solutions operates one of the largest fiber-optic networks in Southern California and provides connectivity to over 140 locations via 5,000+ route miles of fiber cable.

SCE looks forward to participating in this rulemaking proceeding, taking a leadership role, and contributing to the development of a robust record to assist the Commission’s effort to make sound, fact based decisions that balances safety and costs.

A. **Phase 1 Preliminary Scope – Facilities Devoted to Broadband Internet Access Services (BIAS)**

SCE believes Broadband Internet Access Service (BIAS) providers should be subject to the Commission’s safety authority. While it is foreseeable that certain BIAS providers would claim that the Commission’s rules and regulations governing overhead and underground construction, and non-discriminatory access to utility poles and conduits will restrict their entry into California's broadband market, SCE believes that to do otherwise would discriminate against CLEC and CATV companies already complying with the Commission’s rules and regulations. The decision as to whether the Commission should apply “certification requirements’ to all entities covered by the ROW rules in a manner consistent with the federal framework, may need to be deferred until the FCC completes its ongoing proceedings.

With respect to the six items identified for comment regarding BIAS providers, SCE offers the following:

1. **How BIAS providers should be classified under state or other law for purposes of extending section 224 rights to them.**

   *SCE’s Comment:* Presently, SCE agrees with the Commission’s intent to classify BIAS providers as “telecommunication carriers” if the Commission is able to do so.

2. **The identity of providers solely offering BIAS services in California, and which thus lack licensure either as a cable television corporation or a telephone corporation.**

   *SCE’s Comment:* Legislation may be needed to legally identify BIAS providers as “telecommunication carriers”.
3. **The types of equipment such BIAS providers are planning to deploy.**

*SCE’s Comment:* SCE believes BIAS providers should be required to describe and/or demonstrate in this proceeding the types of cables and equipment they intend to construct on utility poles or place within conduit.

4. **The types of service such BIAS providers are planning to offer.**

*SCE’s Comment:* SCE takes no position on the types of services BIAS providers intend to offer.

5. **Whether the CPUC should create a registration process for BIAS providers that desire access to poles and conduit under section 224 and the Commission’s Revised Right-of-Way rules.**

*SCE’s Comment:* SCE takes no position at this time, however, because SCE expects to develop new and/or execute existing license agreements with BIAS providers, it is imperative that pole owners (like SCE) be able to determine whether a potential licensee is recognized by and subject to the Commission’s regulatory authority.

   a. **To what extent is such a registration necessary to ensure that standalone BIAS providers received nondiscriminatory access to poles?**

    *SCE’s Comment:* SCE believes that registration with the Commission or inclusion in the revised ROW rules would help ensure BIAS providers receive nondiscriminatory access to poles.

   b. **To what extent is such a registration necessary to ensure that the CPUC can enforce its Revised Right-of-Way Rules, its safety rules (General Orders 95 and 128), and other rules related to safety and integrity of the network?**

    *SCE’s Comment:* SCE believes that ‘registration’ (in some form) or recognition in the revised ROW rules would help ensure the Commission can enforce ROW rules and applicable General Orders.
6. Whether BIAS infrastructure has some unique operational attributes which would require changes in the Revised Right-of-Way Rules or GOs 95 and 128.

*SCE’s Comment:* SCE takes no position, but is interested in finding out whether the operational attributes of a BIAS provider’s facilities warrants changes to the ROW rules or General Orders 95 and 128.

B. Phase II or Later: Rules for Conduit Access, Data Sharing, Joint Pole Associations, and Other Adjustments to ROW Rules to Facilitate Competition

SCE submitted its Opening Comments and PHC Statement related to Phase 1 of I.17-06-027 on August 21, 2017. Because the Commission intends to address the questions of pole and conduit management more generally after concluding its Investigation, SCE offers the following high level comments regarding conduit access, joint pole associations, make ready rules, and possible other amendments to ROW rules to promote competition. SCE has observed that new telecommunication companies seeking entry into the California market are often frustrated with the manner in which the ROW rules are administered by pole owners. There are several contributing factors, not the least of which is the incoming company’s goals and expectations are based on previous experiences outside of California where pole owners may employ less stringent policies, practices, and procedures than those applied by California’s IOUs and ILECs. In SCE’s view, a new, incoming communication company’s ‘speed to market’ approach can be blunted due in part to California’s regulatory environment and safety enforcement regime which greatly influences the actions of IOU and ILEC pole owners.

C. Other Issues

SCE does not propose any additional topics for Phase 2 at this time, but may do so at a later date. We suggest that the public and worker safety matters identified in Commission
Rulemaking 14-05-001 and Decision 16-01-046 be addressed in this proceeding. Ordering Paragraph 5 reads:

5. The Commission's Safety and Enforcement Division (SED) shall:

i. Evaluate whether the definition of “material increase” in Rule 44.2 of General Order (GO) 95 should be revised.

ii. Develop a proposed rule for inclusion in GO 95 that is similar to new Rule 94.6-C adopted by this Order with respect to interference with fall-protection gear, but which applies to all pole attachments. SED’s proposed rule may modify or replace Rule 94.6-C adopted by this Order.

iii. Develop a proposed rule for inclusion in GO 95 that is similar to new Rule 94.11 adopted by this Order, but which applies to all pole-top installations. SED’s proposed rule may modify or replace Rule 94.11 adopted by this Order, and may apply to facilities other than pole-top installations.

iv. Confer with the GO 95 Rules Committee with respect to Items i. ii., and iii. above.

v. Within 12 months from the effective date of this Order, stated below, file a petition for rulemaking pursuant to Rule 6.3 of the Commission’s Rules of Practice and Procedure. The petition shall seek to (A) revise the definition of “material increase” in Rule 44.2, and (B) add new rules to GO 95 as described in Item ii. and Item iii., above. SED may file the petition alone or with other parties. In lieu of including Item v.A in the petition, SED may file and serve notice in Rulemaking 14-05-001 that SED concludes, as a result of its evaluation performed pursuant to Item i., above, that no changes to Rule 44.2 are necessary.

vi. Serve the petition identified in Item v., above, on all entities listed in Order Instituting Rulemaking 15-05-006, Appendices B through E, and the service lists for Rulemaking (R.) 15-05-006, R.14-05-001, R.08-11-005, R.07-12-001, and R.05-02-023.

SCE notes that the Safety Enforcement Division filed the ordered petition on March 7, 2017, and the Commission recently issued a proposed decision to order rulemaking proceeding. SCE recommends that addressing the above listed safety matters in a 'technical track' of this rulemaking could benefit parties and the Commission.

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2 Decision 16-01-046, p. 138.
3 See Petition 17-03-004.
D. **Access Rulemaking - Schedule**

SCE is in general agreement with the preliminary scope and category assigned to this proceeding. Although the need for evidentiary hearings is not anticipated in Phase 1, a time allowance should remain in the procedural schedule. We also note that the Commission intends to complete this proceeding with 18 months of the initiation date.\(^4\) This goal is laudable, however, given the density and wide range of matters and concerns listed in Section 8 (8.1-8.4) and the anticipation of two or more phases, SCE recommends adequate time be dedicated to ensure a thorough vetting.

The following is a proposed draft schedule for Phase 1, Track 1-B of the Pole and Conduit Access/Management OIR for BIAS providers.

<table>
<thead>
<tr>
<th>Row</th>
<th>Event</th>
<th>Date</th>
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<tbody>
<tr>
<td>1</td>
<td>Commission issues BIAS Rulemaking</td>
<td>Day 0</td>
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<tr>
<td>2</td>
<td>Combined Opening Comments and Prehearing Conference Statements</td>
<td>Day 30</td>
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<tr>
<td></td>
<td>Filed and Served</td>
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<td>3</td>
<td>Reply Comments Filed and Served</td>
<td>Day 40</td>
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<tr>
<td>4</td>
<td>Prehearing Conference</td>
<td>TBD</td>
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<td>5</td>
<td>Ruling Issued Setting Final Scope, Discovery and All-Party Meeting</td>
<td>Reset Day ‘0’</td>
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<td></td>
<td>Dates</td>
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<tr>
<td>6</td>
<td>Parties may submit discovery requests to the BIAS Parties regarding</td>
<td>Day 45</td>
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<td></td>
<td>the nature and details of BIAS pole attachments and services.</td>
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<td></td>
<td>• Any party submitting a discovery request to the BIAS Parties</td>
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<td></td>
<td>shall serve a copy of the request simultaneously on all parties.</td>
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<td></td>
<td>Discovery requests shall <strong>not</strong> be served on the assigned ALJ.</td>
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<td></td>
<td>Discovery requests may encompass other matters within the scope</td>
<td></td>
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<td></td>
<td>of this proceeding.</td>
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<tr>
<td>7</td>
<td>• BIAS Parties arranges an informational, all-party meeting of the</td>
<td>Notice of All-Party</td>
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<td>parties’ subject matter experts (SMEs) and serves notice of the</td>
<td>Meeting Served</td>
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<td></td>
<td>all-party meeting.</td>
<td>Day 50</td>
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<tr>
<td></td>
<td>• At the all-party meeting, BIAS Parties shall:</td>
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<td></td>
<td>o Have their SMEs respond informally to discovery requests</td>
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<td></td>
<td>regarding the nature and details of BIAS pole attachments</td>
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<td>and services.</td>
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<td></td>
<td>o Have their SMEs respond to additional questions from the</td>
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<td></td>
<td>parties regarding BIAS pole attachments and services.</td>
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\(^4\) I.17-06-027 / R.17-06-028, p. 46.
<table>
<thead>
<tr>
<th>Row</th>
<th>Event</th>
<th>Date</th>
</tr>
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<tbody>
<tr>
<td>8</td>
<td>BIAS Parties hosts a two-day, all-party at a time and place determined by BIAS Parties. The purpose of the informational, all-party meeting is described in Row 2, above.</td>
<td>Day 70</td>
</tr>
<tr>
<td>9</td>
<td>BIAS Parties serve formal written responses to the discovery requests described in Row 1, above. Responses shall not be served on the assigned ALJ, but shall be served on Commission staff who request such service by e-mail to BIAS Parties.</td>
<td>Completed by Day 90</td>
</tr>
<tr>
<td>10</td>
<td>• Deadline for all parties to file and serve supplemental written comments regarding topics listed in OIR 17-xx-xxx. Factual assertions in the comments shall be verified in accordance with Rule 1.11.</td>
<td>Day 100</td>
</tr>
<tr>
<td></td>
<td>• BIAS Parties shall file supplemental written comments that address the matters listed below this schedule. Other parties may address these matters in their supplemental written comments.</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Deadline for all parties file and serve supplemental written reply comments. Factual assertions in the reply comments shall be verified in accordance with Rule 1.11.</td>
<td>Day 114</td>
</tr>
<tr>
<td>12</td>
<td>Deadline to file and serve motions for evidentiary hearings. Motions for evidentiary hearings shall address the matters listed below this schedule.</td>
<td>Day 121</td>
</tr>
<tr>
<td>13</td>
<td>Deadline to file and serve responses to motions for evidentiary hearings.</td>
<td>Day 128</td>
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<tr>
<td>14</td>
<td>Proposed Decision Mailed (if no hearings).</td>
<td>Day 158-Day 188</td>
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<tr>
<td>15</td>
<td>Hearings (if needed), Briefs, and Proposed Decision Mailed (if hearings are held).</td>
<td>TBD</td>
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<tr>
<td>16</td>
<td>Submission Date (if hearings are held).</td>
<td>TBD</td>
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III.

SCE’S COMMENTS TO ITEMS 3-16 IN SECTIONS 8.5.2

A. BIAS Rulemaking Issues

3. Whether it is in the public interest to apply the Revised ROW Rules adopted by D.16-01-046 for CMRS carriers’ pole attachments to BIAS providers’ wireless pole attachments.

*SCE’s Comment:* SCE reserves comment, but is interested in participating in this proceeding and assisting in the development of a robust record to determine whether or not it is in the public interest to apply revised ROW Rules adopted by the Commission in D.16-01-045 for CMRS carriers’ pole attachments to BIAS providers.

4. The specific amendments to the Revised ROW Rules that are necessary to provide BIAS providers (as defined above) with nondiscriminatory access to utility ROW for pole and/or conduit attachments.

*SCE’s Comment:* SCE believes it is premature to offer specific amendments to the revised ROW rules to recognize BIAS providers due to the Commission’s admitted uncertainty of BIAS provider’s legal standing and regulatory status. However, it is foreseeable that a definition of BIAS provider will need to be included in the ROW rules.

5. Which BIAS providers are currently attaching to utility poles in California pursuant to private contractual agreements?

*SCE’s Comment:* SCE has reviewed agreements with incoming communication companies during the last two years, and has not yet determined whether it has entered into license agreement with a BIAS provider for the installation of wireline attachments on poles or cable installations in conduit. To SCE’s knowledge, these communication companies have not identified themselves as BIAS providers

a. Pole owners and attachers: please provide all commercial agreements *in operation and effect* at any time during the last two (2) years. (If you

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claim these documents are confidential, you may submit to staff with the required declaration.)

b. Conduit owners: please provide copies of all commercial agreements in operation and effect at any time during the last two (2) years. (If you claim these documents are confidential, you may submit to staff with the required declaration.)

*SCE’s Comment:* SCE believes BIAS providers should address items 5 a-b.

6. Please provide a list and description of the types of equipment BIAS providers are attaching, or may wish to attach, to utility poles (and conduit).

   a. For each such equipment type, please provide:

      i. the amount of pole space needed for such attachments;

      ii. the weight of such attachments;

      iii. the wind load of such attachments; and

      iv. the amount of pole space and pole load bearing capacity (weight and wind load) that will be needed for all elements of various BIAS pole attachments and/or installations.

   *SCE’s Comment:* SCE believes BIAS providers should address item 6 a (i-iv) so that parties can discuss in workshops or technical meetings.

   b. Specifically as to Wireless Internet Service Providers (WISPs) in California which are providing fixed wireless BIAS using licensed and/or unlicensed spectrum (the latter referred to as WiFi). We request that WISPs provide a detailed description of the WiFi equipment they intend to install on poles and provide diagrams or pictures of any existing WiFi pole installations. In addition, WISPs should provide the dimensions of the equipment they plan to place on the poles, as well as the weight, windload, and amount of pole space required for such equipment.

   *SCE’s Comment:* SCE believes that WISPs should address item 6.b so that parties can discuss in workshops or technical meetings.

   c. Have WISPs requested and been denied pole attachment authority? If so, please describe in detail.

   *SCE’s Comment:* SCE believes that WISPs should address item 6 c.
7. What services are BIAS providers offering today, and what services might they offer in the future? Please provide a list and description of the services that BIAS providers may offer to the public or other communications carriers using pole and/or conduit attachments that are installed pursuant to amended Revised ROW Rules that may be adopted in this proceeding. Such services might include, but are not limited to, the following:

   a. Fixed Wireless BIAS;
   b. Fixed Wireline BIAS;
   c. Wireless or Mobile BIAS;
   d. Wi-Fi service;
   e. Providing wholesale services to other carriers; or
   f. Other wireless and wireline services (list and describe).

   *SCE’s Comment:* SCE believes that BIAS providers should address item 7 a-f.

However, SCE does not object to BIAS providers offering any type of wireline or wireless service it is lawfully entitled to provide.

8. BIAS providers – please provide the estimated number of existing utility poles to which you have attached facilities pursuant to commercial agreements or otherwise.

   *SCE’s Comment:* SCE believes that BIAS providers should address item 8.

9. Do existing or anticipated BIAS equipment and services have unique operational attributes which would require further changes in the Revised Right-of-Way Rules or GOs 95 and 128?

   a. Are there additional rules would facilitate BIAS access and GO 95 enforcement related to BIAS attachments? Will existing Commission regulations for the design, construction, operation, inspection, and maintenance of pole attachments, such as GO 95, adequately protect public safety, worker safety, and the reliability of co-located utility pole attachments (e.g., power lines and telephone lines)? If not, the party’s comments shall provide the following information:

      i. A detailed explanation regarding why existing regulations do not adequately protect safety and/or reliability.

      ii. Detailed proposal(s) to mitigate the threat(s), such as the text for new or amended GO 95 or GO 128 rules that could be necessary to accommodate BIAS providers.
SCE’s Comment: SCE believes that BIAS providers should address item 9 a (i-ii). Although it is possible the cables, equipment, and facilities intended for installation on poles by BIAS providers and WISPs facilities do not have any unique attributes that necessitate new or revised GO 95 rules or regulations concerning design, construction, operation, inspection, and maintenance, BIAS providers and WISPs should be required to demonstrate in workshops or technical meetings to parties, stakeholders, and Commission staff that this is indeed the case.

10. Is some form of registration for BIAS carriers necessary?
   a. To what extent is some form of registration necessary to ensure that standalone BIAS providers receive nondiscriminatory access to poles?
   b. To what extent is a registration necessary to ensure that the Commission can enforce its Revised Right-of-Way Rules, its GOs 95 and 128, and other rules related to safety and integrity of the network?

SCE’s Comment: SCE believes this question may depend in part on the outcome of federal proceedings and that it is too soon to tell whether requiring ‘registration’ is a legally viable option. However, while some sort of registry could prove useful to pole owners in their future dealings with BIAS providers, there may be other means of identifying BIAS providers that are entitled to nondiscriminatory access. For example, CATV companies are not required to register but are recognized as being subject to the Commission's jurisdiction and the beneficiaries of non-discriminatory access rights under the ROW rules. Including a concise definition of 'BIAS providers' and the necessary references within the revised ROW rules may be a viable option.

11. If some form of registration is necessary, of what should it consist so as not to inhibit market entry or otherwise be inconsistent with the FCC’s classification of BIAS as a “jurisdictionally interstate” telecommunications service, as set forth in the Open Internet Order? What form of registration for BIAS carriers would be most appropriate and workable?

SCE’s Comment: Commission registration obligations for BIAS carriers could follow the registration requirements and performance bond requirements applicable to non-dominant
interexchange carriers, available at: http://www.cpuc.ca.gov/general.aspx?id=1019, with the following revisions:

i. to specify the form applies to BIAS providers not Interexchange Carriers;

ii. to remove question 4 because it is inapplicable to BIAS;

iii. to add a question similar to question 3 in the CMRS registration form that states: “The applicant’s Federal Communications Commission (FCC) Federal Registration Number (FRN) and Universal Licensing System (ULS) wireless license call sign, as applicable”; and

iv. to revise question 7 to replace the phrase “voice and data telecommunications” with “BIAS”.

Because of safety and reliability concerns, utilities must be able to identify and contact their attachers, understand what and where they intend to attach, and be assured they have obtained a performance bond. The BIAS registration form provides this information and assurance. To verify the information provided on the form, the Commission should perform due diligence if they do not verify such information already.

A BIAS registration form would not be needed if the BIAS provider is also an entity that has already registered with the Commission as a provider of another service requiring registration, or has been issued a certificate of public convenience and necessity (“CPCN”) applicable to another service it might offer.

The Commission’s authority to impose registration requirements on BIAS providers, however, might be subject to and limited by the extent to which the Commission has jurisdiction to regulate BIAS at all. This potential legal issue is discussed in response to Question 12 below.

12. If the FCC re-reclassifies BIAS service as a Title I information service, may the CPUC proceed to craft rules that would allow BIAS providers on poles?

SCE’s Comment: As explained below, there appears to be some legal question whether an entity which only provides BIAS service qualifies as a “telephone corporation” or “public utility” under Pub. Util. Code §§ 216, 233, and 234. If the BIAS-only provider does not qualify
as a “public utility,” then it would similarly be questionable whether Pub. Util. Code §§767, 767.5 or 767.7 gives the CPUC jurisdiction to regulate attachments by a BIAS-only provider.

Pub. Util. Code § 767 requires access by a public utility to the facilities of another public utility. Although Pub. Util. Code § 767.5 defines “public utility” broadly enough to encompass BIAS-only providers, that section appears to apply only to attachments by cable television corporations.

Since BIAS-only providers are not cable television corporations and as explained below might not legally qualify as a “public utility” under Pub. Util. Code §§ 216, 233, and 234, it is uncertain whether the Commission has any statutory authority to regulate attachments by BIAS-only providers.

If the Commission decides it does have authority to grant BIAS-only providers access to utility poles, or should California enact new legislation to provide the CPUC authority over attachments made by BIAS-only providers, then any such access should be permitted only if is safe, does not impair electric utility service, and does not result in electric ratepayers subsidizing the BIAS providers in any way.

a. Is there a rationale under state or other law or our reverse-preemption authority that would allow this?

*SCE’s Comment:* Should the Commission determine that it does have jurisdiction to regulate attachments by BIAS-only providers, or should California enact legislation to provide the CPUC authority over attachments made by BIAS-only providers, then nothing in the federal Pole Attachment Act or FCC pole attachment regulations would prevent the CPUC from promulgating regulations to govern such attachments.

b. Do BIAS providers meet the definition of a telephone corporations under Public Utilities Code §§ 216, 233-234? Are there legal impediments to classifying them as such?

*SCE’s Comment:* There appears to be a legal question whether BIAS providers qualify as “telephone corporations” under Public Utilities Code §§216, 233-234, because BIAS providers do not appear to be entities that are subject to CPUC regulation. The FCC classified BIAS as a
jurisdictionally interstate telecommunications service in the FCC’s 2015 *Open Internet Order*, which subjected BIAS to regulation under Title II of the Communications Act of 1934, as amended. And under the federal Communications Act, the FCC has exclusive jurisdiction over interstate telecommunications services and over interstate telecommunications carriers. 47 USC § 152(a) (“The provisions of this chapter shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio.”).

The states have jurisdiction over intrastate telecommunications services and providers of intrastate services. As a result of the FCC’s 2015 *Open Internet Order*, BIAS providers are not and cannot be providers of intrastate services. Because BIAS providers cannot be intrastate service providers, BIAS providers are different from a number of other communications providers, including CMRS providers, non-dominant interexchange carriers, incumbent local exchange carriers and competitive local exchange carriers, which are all entitled to provide intrastate telecommunications services.

Collectively, the definitions of “public utility” under Public Utilities Code §§ 216(a) and (b) and “telephone corporation” under Public Utility Code § 234(a), are analogous to the federal definitions of “telecommunications service” under 47 USC §153(52) and of “telecommunications carrier” under 47 USC §153(51). Regardless, the definition of “public utility” in the California Public Utilities Code cannot empower the CPUC to regulate wholly-interstate services like BIAS service or BIAS-only providers.

This legal analysis whether BIAS service is an interstate service that might be outside of CPUC regulation would apply even if the FCC were to reclassify BIAS from a Title II telecommunications service to a Title I information service. Broadband Internet Access Service and all Internet access services have been consistently regulated as interstate services subject to the FCC’s exclusive jurisdiction. *See Nat’l Cable & Telecomms. Ass’n v. Brand X Internet*
13. Whether the “per-foot” fee adopted in D.16-01-046 for CMRS pole attachments and installations should apply identically to BIAS providers’ pole attachments and installations. If so, why? Any party that contends a different rate should apply, should address the following matters:

a. What a reasonable rate would be for various BIAS provider attachments, and why; and

b. The rationale for a different rate or rates.

c. How to distinguish the elements of a BIAS pole installation that are subject to the “per-pole” fee adopted by D.98-10 056 from the elements that are subject to the “per-foot” fee adopted by D.16-01-046

*SCE’s Comment:* SCE believes that at this early stage of the proceeding it may be too soon to decide whether a ‘per-foot’ or a ‘per-pole’ fee should be applied to a BIAS pole attachments. However, it remains SCE’s position that the “per-pole” fee adopted by D.98-10-058 should apply to wireline (cable) attachments. For wireless attachments (including any fixed wireless attachments that include an antenna and ancillary equipment) both BIAS providers and WISPs should pay the “per-foot” fee adopted by D.16-01-046.

14. Are there any CEQA ramifications of BIAS providers attaching to poles? Would a Commission decision to amend the Revised ROW Rules to apply to BIAS providers be exempt from the CEQA and, if so, why. Any party asserting that CEQA does or does not apply must cite relevant law and/or regulations in support of that position.

*SCE’s Comment:* At this time, SCE does not object to BIAS providers being treated similarly to CLECs, CATV companies, and CMRS providers as described in Conclusion of Law 40, (page 136) and Section 4 of D. 16-01-046, which reads:

40. *The regulations adopted by today’s decision are exempt from CEQA pursuant to one or more of the statutory exemptions or categorical exemptions identified in the body of this decision.*
15. **Whether a hearing is needed for Phase I of this Rulemaking, regarding BIAS providers.** Any party that requests a hearing must (A) identify the disputed material facts, (B) summarize the evidence that the party intends to offer at a hearing, and (C) provide a schedule for all hearing-related events.

* SCE’s Comment: At this time, SCE does not believe evidentiary hearings are needed. However, SCE reserves the right to request hearings if, after reviewing the BIAS providers’ or other parties’ comments, it becomes apparent that a factual dispute exists.

16. **A proposed schedule for Phase I this proceeding, including all major events contemplated by the party such as additional written comments, workshops, workshop reports, mediation, discovery cutoff, evidentiary hearings and/or briefs, requests for oral argument, etc.**

* SCE’s Comment: A proposed schedule for Phase 1, Track 1-B of this proceeding is included in Section II-D of this filing.

**IV. SCE’S COMMENTS TO THE GLOSSARY OF TERMS**

SCE does not object to the Commission's intent to include a glossary as part of a final decision in R. 17-06-028, because clarity is beneficial. However, SCE believes that the glossary provided in the ALJ ruling of August 11, 2017 should be vetted in technical workshops to ensure accuracy and provide a tangible link to the matters being adjudicated.

Initial observations:
- The '5G' definition should be refined;
- The 'BIAS' definitions should be refined;
- The 'DAS' Antenna definition is not needed; and
- The 'Pole' definition (as presented) is not the same as PUC 767.5 and may conflict with the definition of 'support structure' in the ROW rules.
SCE looks forward to participating in this rulemaking proceeding, taking a leadership role, and contributing to the development of a robust record to assist the Commission’s effort to make sound, fact based decisions that balances safety and costs.

Respectfully submitted,

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/s/ Gloria Ing
By: Gloria Ing

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September 8, 2017
VERIFICATION

Greg Ferree declares the following:

I am an officer of Southern California Edison and am authorized to make this verification on behalf of Southern California Edison. I am informed and believe that the matters stated in the foregoing SOUTHERN CALIFORNIA EDISON COMPANY’S (U 338-E) COMBINED OPENING COMMENTS AND PREHEARING CONFERENCE STATEMENT ON RULEMAKING RELATING TO ACCESS TO POLES, CONDUIT, AND RIGHTS-OF-WAY are true to my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 7, 2017 at Pomona, California.

/s/ Greg Ferree
Greg Ferree
Vice President – Distribution
Southern California Edison Company
BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

Order Instituting Investigation into the Creation of a Shared Database or Statewide Census of Utility Poles and Conduit in California.

Investigation 17-06-027

And Related Matters.

Rulemaking 17-06-028
Rulemaking 17-03-009

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission’s Rules of Practice and Procedure, I have this day served a true copy of SOUTHERN CALIFORNIA EDISON COMPANY’S (U 338-E) OPENING COMMENTS AND PREHEARING CONFERENCE STATEMENT ON RULEMAKING RELATING TO ACCESS TO POLES, CONDUIT, AND RIGHTS-OF-WAY on all parties identified on the attached service list for I.17-06-027 et al. Service was effected by transmitting copies via e-mail to all parties who have provided an e-mail address and by placing copies in sealed envelopes and causing such envelopes to be delivered via United States mail with first-class postage prepaid to the offices of the Assigned ALJ(s) or other addressee(s).

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Division of Administrative Law Judges
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ALJ Timothy Kenney
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Executed on September 8, 2017, at Rosemead, California.

/s/ Olivia Gutierrez
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Service Lists

PROCEEDING: I1706027 - OII INTO THE CREATION
FILER: CPUC
LIST NAME: LIST
LAST CHANGED: SEPTEMBER 6, 2017

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