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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338E) for Applying the Market Index Formula and As-Available Capacity Prices adopted in D.07-09-040 to Calculate Short-Run Avoided Cost for Payments to Qualifying Facilities beginning July 2003 and Associated Relief.

Application 08-11-001
(Filed November 4, 2008)

And Related Matters.

Rulemaking 06-02-013
Rulemaking 04-04-003
Rulemaking 04-04-025
Rulemaking 99-11-022

**ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S
JOINT RULING AND AMENDED SCOPING MEMO FOR
CONSOLIDATED PROCEEDINGS**

1. Summary

This ruling and amended scoping memo confirms the schedule for consideration of the October 8, 2010 "Joint Motion for Approval of Qualifying Facility and Combined Heat and Power Program Settlement Agreement" (Joint Motion) in these consolidated proceedings, determines the scope of such consideration, and addresses other procedural matters.

2. Background

Since May 2009, proponents of the "Qualifying Facility and Combined Heat and Power Program Settlement Agreement" (Proposed Settlement) have

met to resolve outstanding disputes and to establish a new combined heat and power program. The proponents of the Proposed Settlement (Joint Parties) state that they conducted frequent and lengthy meetings and worked diligently to negotiate the Proposed Settlement.¹ Consistent with Rule 12.1(b) of the Commission's Rules of Practice and Procedure (Rules), on September 24, 2010 Joint Parties provided notice of a formal settlement conference to be conducted on October 7, 2010. The Proposed Settlement, if approved, would resolve numerous outstanding issues in each of the above-captioned proceedings.

By Administrative Law Judge's Ruling issued on October 11, 2010, the above-captioned proceedings were consolidated for purposes of considering the Proposed Settlement. Additionally, the time for filing comments in response to the Joint Motion was reduced from 30 days, as set in Rule 12.2, to October 25, 2010. The time for filing replies to the comments was reduced from 15 days, as set by Rule 12.2, to November 1, 2010.

3. Scope of the Proceeding

With respect to consideration of the Proposed Settlement, the issues to be addressed in this proceeding are:

1. Whether the Proposed Settlement is reasonable in light of the whole record of these proceedings;
2. Whether the Proposed Settlement is consistent with the law;
3. Whether the Proposed Settlement is in the public interest; and

¹ The Moving Parties are Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), The Utility Reform Network, California Cogeneration Council, Independent Energy Producers Association, Cogeneration Association of California, The Energy Producers and Users Coalition, and the Division of Ratepayer Advocates.

4. Whether the Proposed Settlement should be approved, and if so whether it should be approved in its entirety without change.

4. Schedule

<u>Event</u>	<u>Date</u>
Joint Motion for approval of Proposed Settlement filed.	October 8, 2010
Comments on Proposed Settlement filed; deadline to set forth with specificity any alleged disputed issues of material fact.	October 25, 2010
Reply Comments on Proposed Settlement filed.	November 1, 2010
Proposed decision issued by assigned Administrative Law Judge.	November 16, 2010
Comments on proposed decision filed.	December 6, 2010
Replies to comments on proposed decision filed.	December 13, 2010
Final decision on Commission agenda.	December 16, 2010

We intend that consideration of the Proposed Settlement will be processed under the foregoing schedule, assuming that evidentiary hearings will not be necessary (see following section). In any event, it is anticipated that this proceeding will be resolved within 18 months of the issuance of this Amended Scoping Memo pursuant to Public Utilities Code Section 1701.5.

The Administrative Law Judge (ALJ) may modify the schedule as necessary.

5. Categorization and Need for Hearing

Rulemaking (R.) 06-02-013, R.04-04-003, and R.04-04-025 were each determined to be ratesetting proceedings by scoping memos issued on September 25, 2006, June 4, 2004, and January 4, 2005 in the respective proceedings. These category designations shall continue in effect for purposes of considering the Proposed Settlement.

In Resolution ALJ 176-3224 dated November 6, 2008, the Commission preliminarily categorized Application (A.) 08-11-001 as ratesetting. We confirm this preliminary determination. This ruling, as to categorization for A.08-11-001 only, is appealable pursuant to Rule 7.6.

By Scoping Memo issued in R.99-11-022 on January 4, 2000, that proceeding was determined to be quasi-legislative. Pursuant to Rule 7.1(e), we determine that in light of the consolidation of R.09-11-022 with the other captioned proceedings, it is appropriate to categorize this proceeding as ratesetting. This ruling, as to categorization for R.99-11-022 only, is appealable pursuant to Rule 7.6.

Moving Parties assert that there are no disputed issues of material fact related to the Proposed Settlement that require hearings and therefore request that the Proposed Settlement be approved without evidentiary hearings. Any party claiming that hearings on the Proposed Settlement are necessary shall, in its comments on the Proposed Settlement, state with specificity the disputed issues of material fact related to the Proposed Settlement that are claimed to require hearings and why the facts are material to the resolution of the motion. If necessary, the assigned Commissioner or assigned ALJ will rule on the need for hearings.

6. Ex Parte Communications

Ex parte communications are permitted in ratesetting proceedings subject to the requirements of Rule 8.2 and must be reported pursuant to Rule 8.3.

On October 14, 2010 the representative of Californians for Renewable Energy, Inc. (CARE) addressed an e-mail message to the ALJ that included

arguments and allegations on substantive matters in this proceeding.² Although this communication is not part of the record, it is an *ex parte* communication and therefore is subject to the reporting requirements noted above. CARE is directed to file an appropriate notice of *ex parte* communication regarding the October 14, 2010 communication. While SCE's e-mail on behalf of itself, PG&E, and SDG&E in response to the CARE e-mail is arguably procedural in nature, in an abundance of caution we direct SCE to file an appropriate notice of *ex parte* communication regarding its October 14, 2010 communication.

7. Assistance with Procedural Questions

Parties may contact the Commission Public Advisor's Office by phone at (866) 849-8390 or by e-mail at public.advisor@cpuc.ca.gov for assistance with procedural questions.

8. Designation of Presiding Officer

ALJ Mark S. Wetzell will be the presiding officer for consideration of the Proposed Settlement.

Therefore, **IT IS RULED** that:

1. With respect to consideration of the "Qualifying Facility and Combined Heat and Power Program Settlement Agreement" (Proposed Settlement), the scope of these proceedings is as set forth herein.

2. With respect to consideration of the Proposed Settlement, the schedule for these proceedings is as set forth herein.

² Although CARE addressed the e-mail to the ALJ, it does not appear that CARE actually sent the e-mail to him. The ALJ became aware of the e-mail when he received a subsequent e-mail from SCE on behalf of itself, PG&E, and SDG&E, that referenced the CARE e-mail.

3. The presiding officer for consideration of the Proposed Settlement is ALJ Mark S. Wetzell.

4. The preliminary determination in Resolution ALJ 176-3224 that Application (A.) 08-11-001 is categorized as ratesetting is confirmed. This ruling, as to categorization for A.08-11-001 only, is appealable pursuant to Rule 7.6.

5. The prior scoping memo determinations that Rulemaking (R.) 06-02-013, R.04-04-003, and R.04-04-025 are ratesetting shall continue in effect for purposes of considering the Proposed Settlement.

6. R.09-11-022 is re-categorized as ratesetting. This ruling, as to categorization for R.99-11-022 only, is appealable pursuant to Rule 7.6.

7. If necessary, the assigned Commissioner or assigned Administrative Law Judge will rule on the need for hearings.

8. Rules 8.2 and 8.3 apply with respect to *ex parte* communications.

9. Californians for Renewable Energy, Inc. shall file a notice of *ex parte* communication regarding its October 14, 2010 communication to the Administrative Law Judge.

10. Southern California Edison Company shall file a notice of *ex parte* communication regarding its October 14, 2010 communication to the Administrative Law Judge.

Dated October 19, 2010, at San Francisco, California.

/s/ MICHAEL R. PEEVEY
Michael R. Peevey
Assigned Commissioner

/s/ MARK S. WETZELL
Mark S. Wetzell
Administrative Law Judge

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated October 19, 2010, at San Francisco, California.

/s/ CRISTINE FERNANDEZ
Cristine Fernandez

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.