

Decision **PROPOSED DECISION OF ALJ WILSON** (Mailed 4/25/2011)**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 Modification of Decision 05-09-018 to Extend EDR-Retention Rates.

Application 09-10-012  
(Filed October 13, 2009)

Application of Pacific Gas and Electric Company for Modification of Decision 05-09-018 to Extend the Economic Development Rate (U 39 E).

Application 09-11-010  
(Filed November 13, 2009)  
(amended January 27, 2010)

**DECISION MODIFYING DECISION 10-06-015****1. Summary**

On February 10, 2011, Southern California Edison Company filed a petition for modification of Decision 10-06-015 issued in Application (A.) 09-10-012 and A.09-11-010. This decision modifies Decision 10-06-015 as set forth in Attachment A to this decision. These proceedings are closed.

**2. Background**

Public Utilities Code Section 740.4 requires the Commission to authorize economic development programs to the extent they provide ratepayer benefit. Decision (D.)05-09-018 authorized Southern California Edison Company (SCE) and Pacific Gas & Electric Company (PG&E) to file customer specific Economic Development Rate (EDR) tariffs for: (1) new customers; (2) customers expanding businesses with new load; and, (3) customers who would otherwise move all or a portion of their operations outside of California. The goal of the EDR program is

to attract and retain those businesses in California that would otherwise go out of business or leave the state, thus reducing the number of jobs available to Californians. Another benefit of the program is to reduce the amount of fixed costs that would otherwise be borne by remaining ratepayers if these businesses go out of business or leave the state.

In D.10-06-015, the Commission approved a settlement between SCE, PG&E, the Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN), and the Energy Users Forum (EUF) (collectively, all these parties are hereinafter referred to as “Settling Parties”). The settlement addressed modification of the EDR programs of SCE and PG&E. Two other parties, Tamco Steel Mini Mill (Tamco) and the Greenlining Institute (Greenlining), did not join the settlement, but indicated that they did not oppose the settlement.

In adopting the settlement agreement in D.10-06-015, the Commission authorized SCE and PG&E to extend the EDR program to December 31, 2012, increase the EDR program cap to 200 megawatts (MW) per utility,<sup>1</sup> revise selected terms regarding the application for EDRs, revise the discount available to EDR customers, revise various calculations related to EDR, revise qualifying terms for new EDR customers, revise selected language of the EDR contract between the utility and customer, and revise the information provided to the Commission in annual reports regarding the EDR program.<sup>2</sup> In particular, the

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<sup>1</sup> EDR Program Cap – the maximum number of megawatts customer load allowed in the EDR program. For example: if one EDR customer uses 200 MW, then no other customer would be able to participate in the EDR program; or, 20 customers who each use 10 MW may receive EDR rates.

<sup>2</sup> See D.10-06-015 at 7-9.

settlement adopted in D.10-06-015 defines a pre-existing customer as one that is enrolled in the EDR program at the time the Commission adopted the settlement in D.10-06-015.<sup>3</sup> This adopted settlement also provides detailed guidance regarding both new and pre-existing customers as to the discount received, consideration of load toward program cap, and calculation of rates. With regards to the program cap, the load of pre-existing EDR customers and new ones would be counted towards the cumulative total load permitted under the EDR program. The settlement adopted in D.10-06-015 addressed the required qualifications of, applicable discounts and rates, and load allowed for both new and pre-existing customers, but did not address the situation of a pre-existing customer that wants to file a new application for EDR service after its current contract expires.

On February 10, 2011, SCE timely filed a petition for modification of D.10-06-015, requesting that the Commission allow pre-existing customers whose EDR contract has expired, to apply a second time for and receive the EDR, as long as that pre-existing customer qualifies under the specific eligibility standards authorized in D.10-06-015, its load is counted again toward the program cap of 200 MW, and the addition of this load does not cause the utility to exceed its program cap of 200 MW.

### **3. Procedural Requirements Under Rule 16.4**

Rule 16.4 governs the process for the filing and consideration of petitions for modification. Rule 16.4(b) requires that a petition for modification concisely

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<sup>3</sup> See D.10-06-015, Appendix A, Section 3.g.

state the justification for the proposed relief and propose specific wording for all requested modifications. SCE's Petition contained a concise but thorough statement of justification for the proposed modifications. Hence, this requirement has been fulfilled.

Rule 16.4(d) requires that a petition for modification must be filed and served within one year of the effective date of the decision for which modification is being proposed. SCE filed its petition for modification of D.10-06-015 within one year, so there is compliance with this requirement.

Hence, we conclude that SCE's Petition complies with the procedural requirements of Rule 16.4 regarding the requested modifications related to the Amendment.

#### **4. Discussion of the Requested Relief**

Both D.05-09-018 and D.10-06-015 are silent as to whether a pre-existing customer may request an EDR a second time, after its first EDR contract expires. SCE requests clarification as to whether this is allowed or not, and if allowed, requests the addition of a Conclusion of Law to D.10-06-015. SCE proposes that pre-existing customers of the EDR program be allowed to request and receive EDRs a second time, as long as these customers qualify under the eligibility requirements authorized in D.10-06-015, their load is counted towards the EDR program cap,<sup>4</sup> and such load shall not cause the utility to exceed its EDR

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<sup>4</sup> For example, the pre-existing customer had a load of 3 MW that counted towards the EDR program cap under its first contract. Assuming it qualifies for an EDR contract a second time and still has 3 MW of load, another 3 MW of load would be added towards achievement of the utility's EDR program cap of 200 MW, in addition to the load from the first contract.

program cap authorized in D.10-06-015. SCE requests that all applicable requirements in D.10-06-015 be applied to such a “new” customer; therefore, this request is only a clarification as to whether a pre-existing customer may apply a second time for EDR rates.

As discussed in D.10-06-015, the lower rates charged through the EDR program provide benefits to ratepayers and the state of California, by attracting and retaining those businesses that would otherwise go out of business, leave California, or not come to the state at all. By assisting businesses, local employment and economic vitality increase.

In January 2011, the United States Bureau of Labor Statistics showed an unemployment rate of 12.4% in California,<sup>5</sup> higher than the rate referred to in D.10-06-015 in support of the need for the EDR program.<sup>6</sup> Retaining pre-existing customers that qualify for the EDR program for a second time would continue to provide assistance to local businesses throughout California. We also clarify that a business customer previously served on an EDR may not benefit from an EDR for more than two terms total.

Since the pre-existing customer would follow all requirements detailed in D.10-06-015, the customer load would be added towards the utility’s EDR program cap, the program cap may not be exceeded, and the California economy is still suffering, we find SCE’s proposed modifications to D.10-06-015 to be reasonable. In addition to the one modification to D.10-06-015 proposed by SCE, we find several other changes are necessary in order to accurately implement the

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<sup>5</sup> <http://www.bls.gov/news.release/laus.nr0.htm>.

<sup>6</sup> See D.10-06-015 at 11.

requested modification. We therefore authorize modifications to D.10-06-015 as set forth in Attachment A to this decision.

PG&E did not request the clarification discussed herein, but since D.10-06-015 is applicable to both SCE and PG&E, our order herein applies to both utilities. As detailed in D.10-06-015, the sunset date for the EDR program is December 31, 2012.

### **5. Comments of Proposed Decision**

The proposed decision of ALJ Wilson in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code, and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. ~~Comments were filed on \_\_\_\_\_ and~~ No reply comments were filed ~~on \_\_\_\_\_ by \_\_\_\_\_.~~

### **6. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Seaneen M. Wilson is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. The settlement approved in D.10-06-015 authorized modifications to the EDR programs of SCE and PG&E.
2. SCE's amended Petition for Modification of D.10-06-015 was filed within one year of its issuance.
3. Under SCE's proposal, pre-existing customer would follow all the requirements detailed in D.10-06-015, the customer load would be added toward the utility's EDR program cap, and the program cap may not be exceeded.
4. The unemployment rate for California in January 2011 was 12.4%, which is higher than the rate referenced in D.10-06-15 as support for the EDR program.

**Conclusions of Law**

1. SCE's Petition satisfies the procedural requirements of Rule 16.4 regarding the proposed modifications related to EDR program.
2. The proposed modifications to D.10-06-015 as set forth in Attachment A, should be adopted.
3. This order should be effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. Southern California Edison's February 10, 2011 Petition for Modification of Decision (D.) 10-06-015 is granted as shown in Attachment A. All other language in D.10-06-015 must be read and understood to conform to the modifications set forth in Attachment A.
2. This order is applicable to both Southern California Edison and Pacific Gas and Electric Company.
3. Application (A.) 09-10-012 and A.09-11-010 are closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

## ATTACHMENT A

### Changes to Decision 10-06-015

#### **Section 4- Add an Item 14 to list**

14. A pre-existing EDR customer whose contract has expired may apply for another EDR contract. This pre-existing customer must qualify under the same requirements as a new EDR customer, as detailed in Appendix A to this decision. If the pre-existing EDR customer qualifies under such terms, its load must be counted toward the utility's EDR program cap, in addition to its load under its previous EDR contract.

#### **Additional Conclusion of Law**

5. It is reasonable for a business customer whose previous EDR contract expires to sign a new EDR-retention contract for the same load *provided* that (a) the customer meets the eligibility requirements laid out in the Settlement Agreement attached as Appendix A to this decision; and (b) the load subject to the new EDR contract is counted towards the Program Cap defined in the attached Settlement Agreement. Moreover, it is reasonable to conclude that a customer previously served on an EDR may not benefit from an EDR for more than two terms total.

#### **Add a New Ordering Paragraph 3 and Renumber Existing Ordering Paragraph**

3. A business customer whose previous Economic Development Rate (EDR) contract expires, may sign a second new EDR-retention contract for the same load *provided* that (a) the customer meets the eligibility requirements laid out in the Settlement Agreement attached as Appendix A to this decision; and (b) the load subject to the new EDR contract is counted towards the Program Cap

defined in the attached Settlement Agreement. A business customer previously served on an EDR may not benefit from an EDR for more than two terms total.

Ordering Paragraph 3 shall be renumbered as Ordering Paragraph 4.

**Appendix A - Settlement Agreement, Add Sections 3.i. and 4.n.**

3.i. “New Pre-existing EDR Customer” means a customer whose EDR contract has expired and has applied for a second EDR contract.

4.n. A New Pre-existing EDR Customer may apply for a second EDR contract after its first EDR contract has expired. The New Pre-existing EDR Customer must meet the eligibility requirements laid out in this Settlement Agreement and the load subject to the new EDR contract must be counted towards the Program Cap defined in this Settlement Agreement in addition to load counted from the New Pre-existing EDR Customers first EDR contract.

**(END OF ATTACHMENT A)**

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