



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED

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Application of Southern California Edison Company (U 338-E) for Order Approving Settlement Agreement Between Southern California Edison Company and Duke Energy Trading and Marketing, L.L.C.

Application 06-05-018

PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES

Pursuant to Rule 44 of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA), protests the above-captioned Application.

I. INTRODUCTION

On May 10, 2006, Southern California Edison Company (SCE) submitted Application (A.) 06-05-018 requesting Commission approval of a settlement agreement between SCE and Duke Energy Trading and Marketing, L.L.C. (Duke). The agreement would settle a dispute between SCE and Duke related to 10 power purchase contracts executed in late 2000 but terminated by Duke in January 2001. The dispute was over the value of the contracts to SCE and how much Duke owed SCE for exercising its termination rights.

II. SETTLEMENT AGREEMENT

SCE will receive from Duke a confidential settlement amount plus accrued interest. (Application p. 8.) SCE estimates that it is receiving certain percent of estimated value of the 10 power purchase contracts. (Application p. 17.) SCE proposes to distribute these settlement proceeds to ratepayers through the Energy Resource Recovery Account (ERRA) Balancing Account, less escrow and arbitrator fees.

III. ISSUES

DRA identifies three issues with this application. (1) Is the settlement reasonable? (2) Is SCE's proposal to distribute the proceeds to ratepayers reasonable? (3) Did SCE comply with Decision (D.) 00-08-023 when seeking approval of its power purchase contracts with Duke?

A. Reasonableness Of Settlement

Based on the information provided in the application, and discussions with SCE, DRA does not seek to conduct a reasonableness review of the SCE/Duke settlement agreement. If the Commission determines that a more extensive review is necessary, DRA is prepared to assist the Commission in conducting such a review.

B. Distribution Of Proceeds

It appears reasonable to distribute the settlement proceeds through the ERRA Balancing Account. DRA has one concern. SCE identifies a confidential amount of money for energy delivered by Duke for which SCE never paid or charged its ratepayers. (SCE-1, p. 18.) SCE further states that it will not distribute that confidential amount to ratepayers. Yet, SCE states that it will reverse that confidential amount (among other liabilities). DRA is not clear that this is the appropriate treatment of the confidential amount. SCE should provide a more detailed explanation as to why this confidential amount should not be part of distribution to ratepayers.

C. Compliance With D.00-08-023

Decision 00-08-023 states:

For medium term contracts, SCE proposes that it make a compliance filing for pre-approval of the bilateral contract with justifying support for the contract. The Energy Division would then approve or disapprove the contract within 10 calendar days, with the terms afforded Section 583 confidentiality.

This procedure for review follows those used by the Commission in telecommunications markets as competition emerged, and with one modification, can offer a reasonable approach for reviewing these contracts. The ten-day review period is too short, and we adopt a review period of 30 days. If the Energy Division

believes modification to or rejection of the contract is required, it may place a proposal to do so on the Commission's Agenda at the earliest possible date. If such an item is placed on the Agenda, the contract will not be considered approved until full Commission approval is granted, or Energy Division withdraws the Agenda item. (D.00-08-023, p.10.)

In discussions with DRA, SCE has indicated that it believes that it was in compliance with the decision and has the documentation to demonstrate its compliance. SCE should provide all such documentation and any further explanation required to demonstrate compliance with D.00-08-023.

IV. PROPOSED CATEGORY, NEED FOR HEARING & PROPOSED SCHEDULE

DRA agrees with SCE that this application should be designated as a "ratesetting" proceeding. The issues identified in this Protest should not require hearing. SCE should submit the additional information within 15 days of this Protest. A Prehearing Conference (PHC) should be convened shortly thereafter to discuss the next procedural steps. If, at the time of the PHC, there are issues in dispute, DRA recommends that these issues be addressed through briefing.

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V. ISSUES TO BE CONSIDERED

As indicated above, SCE should provide additional information to this docket regarding (1) The appropriateness of its proposed treatment of the confidential liability discussed at -1, p. 18; and (2) SCE's compliance with D.00-08-023.

Respectfully submitted,

/s/ REGINA M. DE ANGELIS

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June 21, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document **“PROTEST BY THE DIVISION OF RATEPAYER ADVOCATES”** in **A.06-05-018**.

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on the **21st of June, 2006** at San Francisco, California.

/s/ HALINA MARCINKOWSKI

Halina Marcinkowski

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 and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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