

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of Southern California Edison
Company (U 338-E) Regarding the
Distribution of SO2 Allowance Sale
Proceeds Related to the Suspended Operation
of Mohave Generating Station.

Application 06-12-022
(Filed December 20, 2006)

**THE NAVAJO NATION PROPOSAL FOR ALLOCATION OF THE PROCEEDS FROM
THE SALE OF SO2 CREDITS RESULTING FROM THE SHUTDOWN OF THE
MOHAVE GENERATING STATION**

LOUIS DENETSOSIE
ATTORNEY GENERAL
THE NAVAJO NATION
NAVAJO NATION DEPARTMENT OF
JUSTICE
P.O. Drawer 2010
Window Rock, Arizona 86515
Telephone: (928) 871-6345
Facsimile: (928) 871-6177
Email: louisdenetsosie@yahoo.com

STEEFEL, LEVITT & WEISS
A Professional Corporation
LORI ANNE DOLQUEIST
SARAH E. LEEPER
One Embarcadero Center, 30th Floor
San Francisco, CA 94111-3719
Telephone: (415) 788-0900
Facsimile: (415) 788-2019
Email: LDolqueist@steeffel.com
Email: Sleeper@Steeffel.com

Attorneys for
The Navajo Nation

Date: March 9, 2007

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Southern California Edison
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**THE NAVAJO NATION PROPOSAL FOR ALLOCATION OF THE PROCEEDS FROM
THE SALE OF SO₂ CREDITS FROM THE SHUTDOWN OF THE MOHAVE
GENERATING STATION**

The Navajo Nation circulates its proposal in accordance with the procedural schedule established by Administrative Law Judge Carol Brown in her *Ruling Requesting Proposals for Treatment of Proceeds from Sale of SO₂ Allowances and Scheduling Workshop and Prehearing Conference*, issued on February 8, 2007 (“Ruling”).

I. SUMMARY OF THE NAVAJO NATION’S PROPOSAL

The Navajo Nation proposes that the proceeds from the sale of Southern California Edison’s (SCE) existing share of the sulfur dioxide (SO₂) credits as well as any future credits be used to develop a clean energy project that will utilize the Navajo Nation’s natural resources to replace or complement the Mohave Generating Station (Mohave) power output. The proceeds from the sale of existing SO₂ credits or future SO₂ credits (in the event Mohave is decommissioned or not restarted) should be used to (1) fund further studies of potential clean energy projects utilizing the Navajo Nation’s natural resources and land to replace the Mohave power plant output; and (2) fund the construction of facilities necessary for a potential clean energy project that utilizes the Navajo Nation’s natural resources and land. If Mohave is restarted as a coal-fired plant utilizing Navajo coal, the proceeds from any SO₂ credits, if any, should be allocated to the owner/operator of Mohave.

As explained below in more detail, the Navajo Nation proposal will remediate some of the harm caused by the shutdown of Mohave to the Navajo Nation by providing important revenue sources for this Federally Recognized Indian Tribe. Applying the proceeds from the sale of the Mohave credits towards the development of clean energy project alternatives is consistent with Commission precedent and in the public interest.

II. THE NAVAJO NATION PROPOSAL TO ALLOCATE THE PROCEEDS FROM THE SALE OF SO₂ CREDITS

The Navajo Nation proposes that the proceeds from the sale of SCE's share of the SO₂ credits be deposited in a fund for the development of clean energy utilizing the Navajo Nation's natural resources and land. The fund would be administered by a board created by the Navajo Nation with a mandate to ensure that the funds are administered properly and for the purpose of developing clean energy alternatives. Because it is unknown at this time if Mohave will be restarted and utilize Navajo coal, the Navajo Nation proposes that the proceeds from the sale of existing credits be used towards the development of clean energy resource alternatives; and future credits be used in a way that will best benefit the Navajo Nation.

Although the Commission has traditionally allocated the gains on sale of utility assets to ratepayers as a matter of ratemaking, there is no question that the Commission has the legal authority to allocate the proceeds to a group or entity other than ratepayers, despite SCE's claim to the contrary. In the absence of the temporary or permanent shutdown of Mohave, SCE's shareholders would have no expectation of profit from the emissions credits at the time Mohave was constructed. The Navajo Nation proposes that if necessary this issue be briefed by the parties as part of this proceeding. Moreover, crediting the proceeds from the sale of SCE's Mohave credits to promote clean energy would lessen the impacts of the shutdown of Mohave on the Navajo Nation by enabling it to pursue the development of renewable and clean coal generation projects.

A. Allocation of the Proceeds from the Sale of Existing Credits.

The proceeds from the sale of existing SO2 credits should be applied to fund the development of clean energy projects utilizing the Navajo Nation's natural resources and land, including further studies of potential projects and funding for the construction of such a clean energy project. Clean energy proposals, such as clean coal generation and solar power, are very costly and should not be pursued on the backs of the most vulnerable and poorest members of society. The Navajo Nation, a nation which already faces staggering unemployment and high levels of poverty, cannot be expected to carry the burden of paying for the costs to develop clean energy projects. Applying the Mohave credits to fund the development of these clean energy resource alternatives and provide seed money to construct the facilities may make them more economically feasible.

The studies completed in connection with Application A.02-05-046 enumerated numerous potential clean power generation technologies to replace or complement Mohave power output. These studies, however, are superficial and fail to adequately address any potential energy resource projects in sufficient detail. The Navajo Nation supports further study of the Integrated Gasification Combined Cycle (IGCC) process, the Natural-Gas Combined Cycle (NGCC) technologies, and possibly CO2 sequestration as a potential alternative to replace Mohave power output, and renewable energy technologies, including solar, wind generation, and possibly biomass technologies, to complement Mohave power output. These alternatives are significantly more costly than continuing Mohave as a coal combustion power plant. For example, the IGCC proposal would require an expensive new coal gas pipeline. The proceeds from the sale of existing credits could be applied towards funding the construction of such a project.

B. Allocation of the Proceeds from the Sale of Future Credits.

If Mohave is decommissioned, the proceeds from future SO2 credits could continue to be used to fund the development of cleaner energy resources on tribal lands to

replace Mohave energy output, including the actual construction of the facilities. Regardless of whether the owner(s) of Mohave successfully implements renewable or gas-fired generation alternatives, the future SO2 credits should be used for the development of energy resources that will benefit the Navajo Nation.

In the event that Mohave is restarted as a coal-fired plant utilizing Navajo coal, the proceeds from any future SO2 credits, if any, should be awarded to the owner/operator of Mohave.

III. THE NAVAJO NATION PROPOSAL IS IN THE PUBLIC INTEREST

The Navajo Nation proposal will protect the interests of the Navajo Nation going forward. Using the proceeds of the Mohave credits to perform the feasibility studies and provide seed money is in the public interest because it will assist the stakeholders in moving closer to developing an alternative project that will minimize the impacts of the closure of Mohave on the Navajo Nation, as well as benefit California electricity ratepayers.

A. The Gain to be Realized From a Shutdown of Mohave Should be Used for the Benefit of the Navajo Nation.

The past treatment of the Navajo Nation and the history of the development of its natural resources for the benefit of California energy users are important to consider in order to understand the position of the Navajo Nation regarding the disposition of the SO2 credits. In the late 1960's environmental concerns over further damming of the Colorado River and the resulting inability to expand inexpensive hydroelectric power generation gave rise to a plan to develop Navajo coal resources to fuel power plants to provide electricity to California and other western states. The Navajo Nation executed long term coal leases under terms dictated by the United States government functioning as its trustee which undervalued its coal resources and permitted the construction of a large scale coal mining and power generation complex including Mohave. The coal mining enterprise was the only significant economic infrastructure on the

Navajo reservation and was of great economic significant to the Navajo Nation. It provided jobs in an area where unemployment rates have been extraordinarily high and persistent. While the coal enterprise was essential to the Navajo Nation's ability to provide basic governmental services on its reservation in the form of roads, schools, law enforcement and social services to its citizens, it also exposed the Navajo Nation to the environmental problems of the mines, including air and water pollution.

For many years California ratepayers benefited by paying less for electricity while the Navajo Nation's mineral, land, water and air resources have been exploited and degraded by the coal mining. The Navajo Nation has carried the burden from the environmental effects associated with the operation of the coal mines on its valuable resources as well as the relocation of tribal members from their traditional homeland to permit mining activities. Mohave operated for years after the consent decree was entered and avoided the cost of installing mandatory pollution control costs, new water and coal slurry supply systems, and the other costs associated with improving the plant, and thereby allowing California ratepayers to benefit from reduced electricity costs.

The Navajo Nation remains extremely dependent on the revenue generated as a result of the Mohave plant operation. Equity demands that the gain to be realized from the temporary or permanent shutdown of Mohave be used for the benefit of the Navajo Nation.

- B. The Proceeds From the SO₂ Credits Should Be Used to Remediate the Economic Harm Caused by the Shut-down of Mohave until Operation is Restarted.

The Navajo Nation proposal will fairly allocate the gain on sale from the SO₂ credits to address the harm the Navajo Nation suffered from the shutdown of Mohave. Tremendous financial harm to the Navajo Nation has already taken place as a result of the temporary shutdown of Mohave. The devastating impact of the permanent shutdown of Mohave was spelled out in Application 02-05-046. The attached declaration of Mr. Martin E. Ashley, Assistant Controller for the Navajo Nation, sets forth the economic harm caused by the temporary shutdown of Mohave on the Navajo Nation. Additionally, the Navajo Nation is

prepared to update the evidentiary record of the harm caused by the temporary shutdown of Mohave on the tribes in this proceeding. While there is no way to fully restore the Navajo Nation if Mohave were permanently shut down, the development of an alternative project that utilizes the Navajo Nation's natural resources and land will remediate some of the economic harm caused by the shutdown of Mohave.

Forwarding the gain on sale from the emissions credits to the Navajo Nation serves the important purpose identified in the Commission's final decision in Application 02-05-046, namely, that if Mohave cannot continue as a coal-fired plant the Commission should restore Mohave's output and Mohave's economic benefits to the Navajo Nation. (D.04-12-016, 2004 Cal. PUC LEXIS 560, *6.) In that decision, the Commission found that the continuing operation of Mohave as a coal fired plant "is a matter of economic life or death" for the Navajo Nation and other affected persons. (*Id.*, *91, *104, Finding of Fact No. 25.) The Commission specifically ordered SCE to explore alternatives to Mohave's continued operation as a coal-fired plant, including "options that provide economic stability to the Hopi Tribe and Navajo Nation." (*Id.*, *108 (Ordering Para. No. 3).) Pursuant to the Commission's directive, the gains from the sale of Mohave credits resulting from the shutdown of Mohave should be used to remediate the economic impacts to the Navajo Nation.

C. The Navajo Nation Proposal Will Have the Additional Benefit of Mitigating the Effects of the Permanent Shutdown of Mohave.

The permanent shutdown of Mohave will permanently rob California ratepayers of a low-cost, highly reliable and fuel-diverse source of energy. If Mohave is permanently closed the station's electric production will continue to be replaced with short-term purchases from the market, most likely from natural gas-fired units owned by non-regulated third parties, which will expose SCE's ratepayers to natural gas risk. The Navajo Nation proposal will mitigate the effects of the permanent shutdown of Mohave by reducing California ratepayers' exposure to the dangers of price volatility in the natural gas market. The Navajo Nation proposal is a long-term solution and preferable to requiring SCE to make unspecified short-term purchases

in the market. The Navajo Nation proposal to pursue a replacement to Mohave energy output will also benefit California in general by minimizing the potential danger of California's over-reliance on natural gas for electric generation. Similarly, promoting investment in renewable energy resources will provide an additional resource to California's utility energy portfolio.

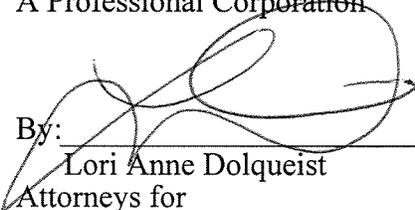
IV. CONCLUSION

As set forth above, the Commission should allocate the proceeds from the Mohave credits to find a solution to the shutdown of Mohave and promote investment in potential clean energy projects utilizing the Navajo Nation's natural resources and land. Importantly, the Navajo Nation proposal addresses the harm caused to the Navajo Nation resulting from the shutdown of Mohave and will mitigate some of the impacts of the Mohave shutdown.

Dated: March 9, 2007

Respectfully submitted,

STEEFEL, LEVITT & WEISS
A Professional Corporation

By: 

Lori Anne Dolqueist
Attorneys for
The Navajo Nation

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DECLARATION OF MARTIN E. ASHLEY

LOUIS DENETSOSIE
ATTORNEY GENERAL
THE NAVAJO NATION
NAVAJO NATION DEPARTMENT OF
JUSTICE
P.O. Drawer 2010
Window Rock, Arizona 86515
Telephone: (928) 871-6345
Facsimile: (928) 871-6177

STEEFEL, LEVITT & WEISS
A Professional Corporation
LORI ANNE DOLQUEIST
SARAH E. LEEPER
One Embarcadero Center, 30th Floor
San Francisco, CA 94111-3719
Telephone: (415) 788-0900
Facsimile: (415) 788-2019

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DECLARATION OF MARTIN E. ASHLEY

I, Martin E. Ashley, declare as follows:

1. I am the Assistant Controller for the Navajo Nation government. I am submitting this declaration in support of the Navajo Nation's Proposal for Allocation of the Proceeds From the Sale of SO2 Credits From the Shutdown of the Mohave Generating Station. The purpose of my declaration is to describe the economic harm that has occurred to the Navajo Nation government as a result of the temporary shutdown of the Mohave Generating Station (Mohave) and the related Black Mesa mine closure.

2. In my capacity as Assistant Controller, I am responsible for monitoring developments that affect the long-term fiscal solvency and stability of the Navajo Nation government, among other things.

3. The Navajo Nation owns mineral rights to the coal in the Black Mesa Mine, which has been the sole supplier of coal to Mohave for many years. The closure of the Black Mesa Mine has interrupted an important revenue stream from the sale of coal that will have a significant negative impact on annual revenues received by the Navajo Nation.

4. Annual revenues lost to the Navajo Nation by the closure of Mohave is \$18.5 million from coal royalties, water royalties and taxes. The loss of these funds has affected the Navajo Nation's ability to deliver essential governmental services to the Navajo people, including the development of water, sewer and electrification projects for local Navajo chapters.

5. In addition, more than 250 members of the Navajo Nation who were employed at the Black Mesa mine or the slurry pipeline have lost their jobs. As a result of the closure of Mohave, these workers have taken retirement or have had to find other employment; and many will be forced to travel or relocate outside of the Navajo Nation to maintain the work that they have been trained to perform. The Navajo Nation's ability to assist the individual workers or their families displaced by the closure of Mohave is limited. Direct financial assistance by the Navajo Nation through use of the Nation's General Fund Revenues is unlikely because, the mine closure that has cost the jobs of the mine workers, has also reduced the Nation's revenue sources from royalties and taxes on the mine operations.

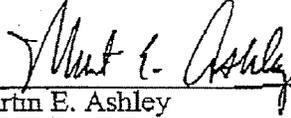
6. The Navajo Nation remains extremely dependent on the revenue generated as a result of the Mohave plant operation. This loss of income has the potential to undermine Navajo Nation government operations across the board, including the reduction of appropriations to support local chapter government. Unless the Navajo Nation is able to develop alternative economic activities that will replace the revenues historically generated by the sale of coal, the shutdown of Mohave and closure of the Black Mesa mine will permanently affect the financial picture of the Navajo Nation government. There are no economic alternatives immediately available to the Navajo Nation.

I have reviewed the facts stated in the Navajo Nation's Proposal for Allocation of the Proceeds From the Sale of SO₂ Credits From the Shutdown of the Mohave Generating

Station. I am informed and believe that such facts are true and correct.

I declare, under penalty of perjury, that the following statements are true and correct to the best of my knowledge, information and belief.

Executed this 9th day of March, 2007 at Window Rock, Arizona.



Martin E. Ashley

Assistant Controller for the Navajo Nation

**BEFORE THE PUBLIC UTILITIES COMMISSION
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A.06-12-022
(Filed December 20, 2006)

PROOF OF SERVICE

LOUIS DENETSOSIE
ATTORNEY GENERAL
THE NAVAJO NATION
NAVAJO NATION DEPARTMENT OF
JUSTICE
P.O. Drawer 2010
Window Rock, Arizona 86515
Telephone: (928) 871-6345
Facsimile: (928) 871-6177

STEEFEL, LEVITT & WEISS
A Professional Corporation
LORI ANNE DOLQUEIST
SARAH E. LEEPER
One Embarcadero Center, 30th Floor
San Francisco, CA 94111-3719
Telephone: (415) 788-0900
Facsimile: (415) 788-2019

Attorneys for
The Navajo Nation

Date: March 9, 2007

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PROOF OF SERVICE

I, Michelle Chavez, declare as follows:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is STEEFEL, LEVITT & WEISS, One Embarcadero Center, 30th Floor, San Francisco, California 94111-3719. On March 9, 2007, I served the within:

The Navajo Nation Proposal for Allocation of the Proceeds From the Sale of SO2 Credits Resulting From the Shutdown of the Mohave Generating Station; and Declaration of Martin E. Ashley

on the interested parties in this action addressed as follows:

See Attached Service List.



(BY E-MAIL SERVICE) By transmitting such document(s) electronically from Steefel, Levitt & Weiss, San Francisco, California, to the electronic mail addresses listed above. I am readily familiar with the practices of Steefel, Levitt & Weiss for transmitting documents by electronic mail, said practice being that in the ordinary course of business, such electronic mail is transmitted immediately after such document has been tendered for filing. Said practice also complies with Rule 1.1 of the Public Utilities Commission of the State of California and all protocols described therein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on March 9, 2007, at San Francisco, California.


Michelle Chavez

SERVICE LIST
A.06-12-022

VIA ELECTRONIC MAIL:

Administrative Law Judge Carol A. Brown
ALJ Division
505 Van Ness Avenue, Room. 5103
San Francisco, CA 94102 3298
(415) 703-2971
cab@cpuc.ca.gov

David Console Energy Division AREA 4-A
505 Van Ness Avenue
San Francisco, CA 94102 3298
(415) 703-5586
dkc@cpuc.ca.gov

MRW & Associates, Inc.
1814 Franklin Street, Suite 720
Oakland, CA 94612
(510) 834-1999
mrw@mrwassoc.com

Kristin Carden
Grand Canyon Trust
2601 N. Fort Valley Road
Flagstaff, AZ 86001
(928) 774-7488
kcarden@grandcanyontrust.org
For: Just Transition Coalition

James I. Ham
555 West Fifth Street, 31st Floor
Los Angeles, CA 90013-1018
(213) 996-8401
james.ham@jameshamlegal.com
For: The Hopi Tribe

Jody S. London
Jody London Consulting
P.O. Box 3629
Oakland, CA 94609
(510) 459-0667
jody_london_consulting@earthlink.net

Sara Steck Myers, Attorney At Law
Law Offices of Sara Steck Myers
122 - 28th Avenue
San Francisco, CA 94121
(415) 387-1904
ssmyers@att.net
For: Just Transition Coalition

Sumner J. Koch
Southern California Edison Company
PO Box 800
Rosemead, CA 91770
(626) 302-3253
case.admin@sce.com
For: Southern California Edison Company

Scott Canty
The Hopi Tribe
PO Box 123
Kykotsmovi, AZ 86039
(928) 734-3148
scanty@hopi.nsn.us

Matthew Freedman, Attorney At Law
The Utility Reform Network
711 Van Ness Avenue, Suite 350
San Francisco, CA 94102
(415) 929-8876
freedman@turn.org

Alan Ramo
Attorney at Law
Environmental Law and Justice Clinic
Golden Gate University School of Law
536 Mission Street
San Francisco, CA 94105-2968
(415) 442-6654 (Telephone)
(415)896-2450 (Fax)
aramo@ggu.edu
Attorney for Just Transition Coalition

Louis Denetsosie
Attorney General
Navajo Nation Department of Justice
P.O. Drawer 2010
Window Rock, AZ 86515
(928) 871-6345
louisdnetosie@yahoo.com