

**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)

**COMMENTS OF THE NAVAJO NATION ON PROPOSED DECISION DETERMINING
TREATMENT OF SALE PROCEEDS OF SULFUR DIOXIDE ALLOWANCES FROM
MOHAVE GENERATING STATION**

MANATT, PHELPS & PHILLIPS LLP
LORI ANNE DOLQUEIST
TARA S. KAUSHIK
One Embarcadero Center, 30th Floor
San Francisco, CA 94111-3719
Telephone: (415) 291-7400
LDolqueist@manatt.com
TKaushik@manatt.com

Attorneys for The Navajo Nation

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The Navajo Nation requests the Commission to adopt the PD with the following limited clarifications. Specifically, the Navajo Nation requests that the Commission:

(1) clarify that a portion of the “revolving fund” may be used to directly seed early development costs for the Navajo Transmission Project; and,

(2) clarify that the “revolving fund” will not terminate until at least 2042.

The proposed modifications are attached hereto as **Appendix A**.

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I. INTRODUCTION

The Navajo Nation respectfully submits the following opening comments on the *Proposed Decision Determining Treatment Of Sale Proceeds Of Sulfur Dioxide Allowances From Mohave Generating Station*, issued by Administrative Law Judge (“ALJ”) Simon on January 14, 2013 (“PD”).¹

The Navajo Nation supports the PD, which is a well-reasoned opinion consistent with Commission precedent, prior rulings, and the extensive record in this case. The PD is a step in the right direction towards encouraging economic development of tribal renewable energy projects. The Navajo Nation applauds the Commission for crafting an equitable solution that would provide economic benefits to the tribes and mitigate the devastating effects of the closure of the Mohave Generating Station (“Mohave”). To that end, the Navajo Nation urges the Commission to adopt the PD with only two clarifications that will ensure the revolving fund will spur the development of current tribal renewable energy projects. The two proposed clarifications are attached hereto in Appendix A.

¹ See Rule 14.3 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure.

II. BACKGROUND

As the PD recognizes, this proceeding arises from “the suspension of operations at Mohave, followed by its closure.”² In Southern California Edison’s (“SCE”) 2004 general rate case, the Commission set aside Mohave-related allowances for special treatment, ordering SCE to record revenues from the sale of the allowances and hold them in an account until their allocation could be determined.³ Thereafter, SCE filed this application regarding the distribution of the SO₂ allowances related to the closure of Mohave on December 20, 2006.

Numerous parties filed protests, and after a prehearing conference was held, the Commission issued a ruling requesting proposals from the parties as to how the sale proceeds should be distributed.⁴ Over the next several years, parties submitted testimony and supplemental testimony, engaged in mediation and settlement discussions, and briefed the Commission on legal issues in this proceeding.⁵

On April 7, 2011, the Commission issued a Ruling on the proposals previously submitted by the parties. The Ruling concluded that the Commission may require SCE to use the allowance sale proceeds to procure renewable energy generated on tribal lands including that of the Navajo Nation.⁶ The Ruling also stated that the Commission will consider requiring some or all of the proceeds of the sale of the SO₂ allowances to be spent by SCE on projects that would produce energy resources that could be used to satisfy the California Renewables Portfolio Standard (“RPS”).⁷ The PD confirms the Ruling and uses the guidelines set forth in the Ruling to evaluate the proposals submitted by the parties.⁸

² PD, p. 12.

³ PD, p. 12.

⁴ *Administrative Law Judge’s Ruling on Treatment of Proceeds From Sulfur Dioxide Allowance Sales by Southern California Edison Company*, filed April 7, 2011 (“Ruling”), p. 2.

⁵ Ruling, pp. 3-4.

⁶ Ruling, p. 1.

⁷ Emphasis added. Ruling, pp. 28-29.

⁸ PD, p. 13.

SCE served an updated filing and supplemental testimony on August 12, 2011.⁹ Updated proposals were also filed by the Navajo Nation, Division of Ratepayer Advocates, Just Transition Coalition, The Hopi Tribe, and Californians for Renewable Energy.

Opening briefs were submitted on February 21, 2012 and reply briefs on March 9, 2012. Supplemental briefs were filed on September 10, 2012 by the parties in response to a ruling from the ALJ requesting for parties' views on the value of the SO₂ allowances in light of *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012). This matter was deemed submitted on December 18, 2012, pursuant to an ALJ ruling that admitted submitted testimony into evidence.

III. COMMENTS

A. The PD Proposes A Solution That Would Benefit All Parties And Promote Development Of Tribal Renewable Energy Projects.

The PD crafts a process that would confer economic benefits on the Navajo Nation, Hopi Tribe, and SCE ratepayers, consistent with previous Commission decisions and the record in this case. That is a step in the right direction to remediate the economic devastation resulting from the closure of Mohave.

1. Commission Precedent On Mohave And The Extensive Record Support The PD.

The PD refers to the Commission's previous decision addressing the possibility of Mohave's closure (D.04-12-016), where the Commission stated that the closure of Mohave "will have devastating effects on the Hopi and Navajo people and tribes as a whole, as well as on workers at the Mohave facility, at the mines, and on the pipeline."¹⁰ In that decision, the Commission also found that the continuing operation of Mohave as a coal fired plant "is a matter

⁹ RT 120-121 (ALJ Simon).

¹⁰ PD, p. 12, quoting D.04-12-016, *Application of Southern California Edison Company Regarding the Future Disposition of the Mohave Generating Station*, 2004 Cal. PUC LEXIS 560 ("D.04-12-016, 2004 Cal. PUC LEXIS 560"), *24.

of economic life or death” for the Navajo Nation and other affected persons.¹¹ Accordingly, the Commission directed SCE to “explore alternatives to Mohave continuing operation as a coal-fired plant. . . . The alternatives investigated should *include options that provide economic stability* to the Hopi Tribe and Navajo Nation, and where appropriate, *utilize renewable resources for generation.*”¹²

The PD does precisely that. It proposes to use the proceeds “so that it is at least possible that both the Navajo Nation and the Hopi Tribe could derive economic benefit from the use of the allowance proceeds.”¹³ The PD establishes a “revolving” fund that uses renewable resources for generation from which the tribes and SCE ratepayers would economically benefit.¹⁴ As the PD states:

The goal is to *make the best use* of the SO₂ allowance proceeds *for the Hopi Tribe and the Navajo Nation, while providing current value to SCE customers* through the RPS program and preserving value for future distribution to customers.¹⁵

That is consistent with the Commission’s previous decisions and stated policy regarding Mohave.

Similarly, the voluminous record spanning over six years in this proceeding supports the PD’s conclusions. The PD notes that Mohave obtained all of its coal supply from the Black Mesa Mine, which provided jobs to the Navajo and Hopi people.¹⁶ The PD further notes that the leases for coal and water necessary for mine operations provided revenue to the Navajo Nation and Hopi Tribe.¹⁷ Indeed, the record indicates that the closure of Mohave cut short a significant

¹¹ D.04-12-016, 2004 Cal. PUC LEXIS 560, **6, 91, 104, Finding of Fact ¶ 25.

¹² Emphasis added. D.04-12-016, 2004 Cal. PUC LEXIS 560, **107-108, Ordering ¶ 3.

¹³ PD, p. 25.

¹⁴ PD, p. 2.

¹⁵ Emphasis added. PD, p. 27.

¹⁶ PD, pp. 9-10.

¹⁷ PD, pp. 9-10.

revenue stream for the Navajo Nation, which resulted in devastating financial impacts to the Navajo Nation and Navajo community.¹⁸ Since the shutdown, the Navajo community has experienced numerous job losses, further income losses, and widespread poverty.¹⁹ These conditions have only worsened since 2006, as demonstrated in undisputed testimony, to a staggering \$446,785,917 in economic losses.²⁰ Consistent with such evidence, the PD establishes a process that equitably addresses that harm.

2. The PD Is Consistent With The Renewables Portfolio Standard And Commission Procurement Policies

The revolving fund established by the PD follows Commission guidelines set forth for SCE's RPS solicitation, Renewable Auction Mechanism ("RAM"), and Feed-In Tariff ("FiT") programs.²¹ The PD also requires SCE to provide a complete list of its current project development security requirements in all RPS procurement processes, including but not limited to solicitations, RAM contracts, FiT contracts, and bilateral contracts not fitting under other processes.²² Under this process, "all participants will have access to the same rules and the same processes for availing themselves of the benefit of the allowance proceeds."²³ The money would be returned to the fund when no longer required for a particular project.²⁴

Significantly, the revolving fund would lower the cost barriers for tribal projects to secure a power purchase agreement with SCE. The PD establishes separate criteria for eligible projects

¹⁸ See e.g., NN Exh. 1, *Direct Testimony of Charles J. Cicchetti, Ph.D. on Behalf of the Navajo Nation*, dated August 1, 2008 ("Cicchetti Direct"); NN Exh. 2, *Direct Testimony of Arbin Mitchell On Behalf Of The Navajo Nation*, served August 1, 2008 ("Mitchell Direct"); NN Exh. 3, *Direct Testimony of Arvin Trujillo On Behalf Of The Navajo Nation*, served August 1, 2008 ("Trujillo Direct").

¹⁹ See e.g., NN Exh. 1, Cicchetti Direct, pp. 12-13; NN Exh. 2, Mitchell Direct, pp. 4-5.

²⁰ NN Exh. 8, *Additional Supplemental Rebuttal Testimony of Charles J. Cicchetti, Ph.D.*, October 4, 2011 ("Cicchetti Additional Supplemental Rebuttal"), pp. 10-11.

²¹ PD, p. 27.

²² PD, p. 33.

²³ PD, p. 27.

²⁴ *Id.*

that will benefit the tribes by using the revolving fund to pay the required security deposits under SCE’s procurement process. Under the PD, a project would qualify for using the revolving fund if it is RPS-eligible, and either located on tribal land and tribally owned by at least 50%, or located on tribal land and the project pays a lease, rent, royalty or similar payment to the Nation and/or Hopi Tribe; or, if the project is not located on tribal lands, the Nation and/or Hopi Tribe must own at least 33% of the project.²⁵ The revolving fund would also allow multiple projects to make use of the sale proceeds, which would maximize use of the proceeds despite their current low value.²⁶ With slight clarifications, the PD would ensure the revolving fund benefits current tribal projects and ratepayers alike.

B. The PD Should Clarify That The Revolving Fund May Be Used To Seed Early Development Costs For The Navajo Transmission Project

The PD provides examples of SCE’s current RPS procurement processes for which the revolving fund may be used, and notes that the examples are not exhaustive.²⁷ Among the examples listed are bilateral contracts, for which the revolving fund may be used for deposits as determined between the contracting parties. As the PD recognizes, the Navajo Nation proposed specific projects currently under development, such as the Navajo Transmission Project (“NTP”). While the NTP is not itself RPS-eligible, the largest segment of it would function as a renewable transmission corridor to deliver renewable energy to California, from the western part of the Navajo reservation. The Navajo Nation requests that the PD clarify that a portion of the revolving fund may be used to seed early development costs for the NTP.

The PD correctly notes that “money early in the development process is most useful.”²⁸ As the NTP is in its early development stages, it is essential that the NTP directly receive

²⁵ PD, pp. 30-31.

²⁶ PD, p. 28.

²⁷ PD, p. 29, footnote 31.

²⁸ PD, p. 28.

development funds to provide RPS-eligible generation from solar and wind projects such as the Gray Mountain and McKinley Solar projects.

Transmission projects are costly and time-consuming, particularly those that are designed to move electric power from renewable energy sources.²⁹ The Navajo Nation has undertaken this project to provide a revenue source and employment opportunities for its impoverished community. While the Navajo Nation has secured financing for this large project, the project will require the Navajo Nation to overcome significant capital spending and financing hurdles to ensure its success. Even a portion of the revolving fund loaned to the NTP will help the Navajo Nation to finance certain project development costs such as fees to pay landowners for rights of way for the project. That would truly spur development of current tribal projects and ensure the projects' success for the benefit of all parties.³⁰

C. The PD Should Extend the Sunset Date Of The Revolving Fund To At Least 2042 To Ensure Multiple Projects May Use The Revolving Fund

The PD proposes that the revolving fund terminate as of December 31, 2026, at which time the funds would be provided to SCE customers through rates.³¹ However, there is no legal authority that supports that date. Neither the federal EPA regulations nor Commission precedent would require that termination date, and it has no relationship to the year when the Mohave allowances expire.

Significantly, the proposed date provides little time for multiple projects to use the revolving fund. Renewable energy projects frequently require a longer time for development, due to issues outside a developer's control that delay commercial operation dates, such as interconnection facility upgrades, environmental impact studies, and required regulatory

²⁹ See, e.g., <http://www.greentechmedia.com/articles/read/phase-one-completed-in-tehachapi-renewable-transmission-project/> (Tehachapi Renewable Transmission Project final price tag expected to approach \$2 billion).

³⁰ See NN Exh. 7, *Supplemental Direct Testimony of Harrison Tsosie*, pp. 9-10.

³¹ PD, pp. 31-32.

approvals. If multiple projects use the revolving fund at once, and there is a waiting period for additional projects to use the funds, that may also delay eligible projects.

Accordingly, the Navajo Nation proposes a termination date of December 31, 2042. As the PD indicates, in 2013, Mohave will have allowances from the federal acid rain program through 2042. Using the 2042 date would also maximize the value of the fund for multiple tribal projects. The tribes would benefit from the projects' revenues, and ratepayers would receive cost-effective, clean energy for the longer term.

IV. CONCLUSION

The PD provides a win-win solution for the use of the SO₂ allowance sale proceeds that is in the public interest and beneficial to all. The revolving fund promotes investment in renewable resources to benefit ratepayers and to provide economic stability for tribal communities. That is consistent with the Commission's vision to promote justice and good policy for ratepayers and the tribes. The Navajo Nation respectfully urges the Commission to carry out that vision and adopt the PD, with the limited modifications proposed in Appendix A. Specifically, the Navajo Nation requests the Commission to:

- (1) clarify that a portion of the "revolving fund" may be used to directly seed early development costs for the Navajo Transmission Project; and,
- (2) clarify that the "revolving fund" will not terminate until at least 2042.

February 4, 2013

Respectfully submitted,

MANATT, PHELPS & PHILLIPS, LLP

By: /s/ Tara S. Kaushik

Lori Anne Dolqueist
Tara S. Kaushik

Attorneys for The Navajo Nation

APPENDIX A

Pursuant to Rule 14.3(b) of the Commission’s Rules of Practice and Procedure, the Navajo Nation makes the following proposed changes to the Conclusions of Law and Ordering Paragraphs in the PD:

Conclusions Of Law

The Navajo Nation proposes the following changes to Conclusion of Law No. 1:

“1. In order to maximize the benefit of the SO2 allowance proceeds for the Hopi Tribe and the Navajo Nation, SCE should make the proceeds available as a revolving fund to be used to meet project development security requirements for RPS-eligible projects that benefit the Hopi Tribe and/or the Navajo Nation,and to seed certain early development costs for the Navajo Transmission Project, to the extent it is utilized to deliver RPS-eligible generation.”

The Navajo Nation proposes the following changes to Conclusion of Law No. 9:

“9. In order to bring the process set forth in this decision to an orderly conclusion, no funds should be provided from the revolving fund after December 31, ~~2026~~ 2042.”

The Navajo Nation proposes the following changes to Conclusion of Law No. 10:

“10. The revolving fund should terminate the later of December 31, ~~2026~~ 2042 or six months after the return of the last funds provided under it, unless terminated or altered earlier by the Commission.”

Ordering Paragraphs

The Navajo Nation proposes the following additions to Ordering Paragraph No. 2:

“2. The funds realized by Southern California Edison Company (SCE) from the sale of sulfur dioxide emission allowances rendered surplus by the closure of the Mohave Generating Station must be made available as a revolving fund to be used to allow projects that provide or deliver generation that is eligible to meet the procurement obligations of SCE under the California renewables portfolio standard (RPS) and provide benefit to the Hopi Tribe and/or the Navajo Nation to post project development security in the SCE RPS procurement process.”

The Navajo Nation proposes the following changes to Ordering Paragraph No. 8:

“No funds may be provided from the revolving fund established by this decision after December 31, ~~2026~~ 2042 .”

The Navajo Nation proposes the following changes to Ordering Paragraph No. 9:

“9. The revolving fund established by this decision will terminate the later of December 31, ~~2026~~ 2042 or six months after the return to the revolving fund of the last funds provided under it, unless the fund is terminated or altered earlier by the Commission.”

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