

Decision \_\_\_\_\_

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

In the Matter of the Application of Southern California Edison Company (U338E) for Approval of an Amendment to a Power Purchase Agreement Between the Utility and Mammoth-Pacific, L.P. and for Authority to Recover the Costs of Any Purchases Under the Amendment in Rates.

Application 13-06-012  
(Filed June 13, 2013)

**DECISION ADDRESSING AMENDMENT TO SOUTHERN CALIFORNIA  
EDISON COMPANY POWER PURCHASE AGREEMENT  
WITH MAMMOTH-PACIFIC, LP**

**1. Summary**

This decision addresses the request for approval of a letter of agreement and proposed amendments to the Power Purchase Agreement between Southern California Edison Company and Mammoth-Pacific, LP and authorizes the costs of the amended agreement to be recovered in rates through the utility's Energy Resource Recovery Account.

This proceeding is closed.

**2. Procedural Background**

On June 13, 2013, Southern California Edison Company (SCE) filed an application requesting approval of an amendment of its Power Purchase Agreement (PPA) with Mammoth-Pacific, LP (Mammoth) and authority to

recover the costs of the amended agreement in rates (SCE Application). On July 17, 2013, the Office of Ratepayer Advocates (ORA)<sup>1</sup> timely filed a protest.

The assigned Administrative Law Judge (ALJ) held a prehearing conference on August 12, 2013 to determine parties, positions, scope, and schedule for this proceeding. During the prehearing conference, ORA stated that it had begun discovery with SCE and that hearings may not be necessary. In a September 5, 2013 Ruling and Scoping Memo, the schedule included a placeholder for hearings and a deadline of September 12, 2013 by which ORA would contact parties to inform them whether it waives its request for a hearing. On September 11, 2013, ORA e-mailed the ALJ waiving its request for hearings in Application (A.) 13-06-012.<sup>2</sup> In its e-mail, ORA stated that it “has completed discovery in this matter which has resolved the issues that gave rise to its protest of this application.” We therefore are treating this proceeding as an uncontested matter.

On behalf of SCE, ORA and Mammoth, on September 24, 2013, SCE e-mailed the ALJ requesting to vacate the remainder of the schedule in A.13-06-012. The ALJ found the request reasonable and issued a Ruling on October 18, 2013 vacating the hearing and briefing schedule. The Commission confirms that hearings are not necessary.

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<sup>1</sup> At the time of the filing of the protest, ORA was known as the Division of Ratepayer Advocates (DRA). All prior filings under the DRA name shall now be considered filed under ORA.

<sup>2</sup> ORA e-mailed a carbon copy to the service list.

On October 18, 2013, SCE filed a motion offering testimony into the evidence. The ALJ issued a Ruling on February 26, 2014 entering the testimony of SCE into the record of this proceeding.

### **3. Overview of Application<sup>3</sup>**

Mammoth entered into three PPAs with SCE to provide power to SCE through three Renewables Portfolio Standard (RPS) - eligible geothermal power generation facilities.<sup>4</sup> These three PPAs, also referred to as the Original Qualifying Facility (QF) PPAs, were renegotiated pursuant to a fixed price in June 2001 and again in November 2006 through May 1, 2012. Upon expiration of these contracts in May 2012, Mammoth and SCE executed a Legacy Amendment Option B establishing energy pricing in accordance with Decision (D.) 10-12-035.

In November 2011 and May 2012, Mammoth bid the output from two of the three facilities into Pacific Gas and Electric Company's (PG&E) Renewable Auction Mechanism (RAM) Request for Proposals and was awarded the bid. Upon the delivery of energy to PG&E, Mammoth was no longer able to meet its obligations under the existing PPAs with SCE. In light of this, SCE and Mammoth have entered into a Letter of Agreement, memorializing the following facts:

- a. The Original QF PPAs associated with the two Mammoth facilities that executed PPAs with PG&E are terminated (Terminated PPAs);<sup>5</sup>

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<sup>3</sup> SCE Application at 1-2.

<sup>4</sup> These three PPAs were entered into on December 7, 1990, December 28, 1990, and February 26, 1985.

<sup>5</sup> The two PPAs are referred to as QF PPA 3003 and QF PPA 3018.

- b. SCE collected 100 percent of the Capacity Recapture Amounts<sup>6</sup> attributable to the Terminated PPAs in cash;
- c. SCE collected 100 percent of the Termination payment from Facility 1 and 35 percent of the Termination from Facility 2, in cash;<sup>7</sup>
- d. SCE will collect the remaining 65 percent of the deliveries that would otherwise have been due from Facility 2 in the form of future deliveries from Facility 3 (the Carryover Obligation<sup>8</sup>);<sup>9</sup>
- e. SCE obtained a Letter of Credit from Mammoth in the amount of the remaining 65 percent of the Termination Payment as Performance Assurance against the Carryover Obligation, and a separate Letter of Credit to secure performance under the remaining Original QF PPA for Facility 3;<sup>10</sup> and
- f. SCE and Mammoth amended and restated the remaining Original QF PPA for Facility 3 to reflect the delivery of the Carryover Obligation, which will commence on December 7, 2020.

In addition, SCE and Mammoth amended and restated the Original QF PPA for Facility 3 (Amendment) to extend the term of that agreement to reflect the Carryover Obligation. SCE and Mammoth utilized SCE's RAM 3 *pro forma*<sup>11</sup>

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<sup>6</sup> The Capacity Recapture Amount is determined by SCE and designed to recapture overpayments by SCE over the delivery history due to the levelization of the firm capacity price over the term of the contracts. See SCE Application at 2 and Footnote 5.

<sup>7</sup> SCE Application at 3 and Footnotes 7-8.

<sup>8</sup> The Carryover Obligation is calculated as 65 percent of the megawatt hours not delivered due to termination of QF PPA 3018 based on its remaining term and assuming equivalent delivery performance.

<sup>9</sup> SCE Application at Footnote 9.

<sup>10</sup> The Original QF PPA for Facility 3 is referred to as QF PPS 3027.

<sup>11</sup> In D.10-12-035 the Commission approved the *Pro Forma* Legacy QF PPS Amendments for each utility stating that the Commission "has previously approved the use of *Pro Forma* PPAs for QFs." D.10-12-035 at 44.

PPA as the base agreement for the Amendment. The Amendment takes effect following the original expiration date of December 6, 2020. Until that time, the operational and payment terms of the Original QF PPA for Facility 3 remain in effect.<sup>12</sup>

The SCE Application requests approval of the Letter of Agreement and the Amendment and authority to recover in rates the costs of any purchases pursuant to the delivery of the Carryover Obligation during the Extension Term as outlined in the Amendment.

#### **4. Issues Before the Commission**

The following issues are to be considered in this proceeding:

- a. Whether the Letter of Agreement and Amendment proposed in the SCE Application are reasonable and in the best interest of SCE's customers and should be approved by the Commission;
- b. Whether the Letter of Agreement and Amendment to the PPA are prudent for recovery in rates of payment made pursuant to the Amendment; and
- c. Whether the SCE Application is consistent with Commission decisions regarding QFs, their contracts, and subsequent amendments.

#### **5. Discussion and Analysis**

##### **5.1. Reasonableness of the Letter of Agreement and Amendment**

SCE requests approval of the Letter of Agreement and an amendment to its Original QF PPAs with Mammoth. The Letter and Amendment address the disposition of the Original QF PPAs and, according to SCE, outline a "mutually

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<sup>12</sup> Exhibit 1 at 11.

beneficial outcome” for both parties and ratepayers.<sup>13</sup> The Commissions finds that the Letter of Agreement and Amendment are reasonable, as discussed below, and concludes that both should be adopted.

In its testimony, SCE asserts that the Letter of Agreement and Amendment provide substantial benefits to SCE’s customers in the form of cash termination payments, avoided payments due to termination, benefits from the carryover obligation, collateral benefits, and benefits from the RAM 3 *Pro Forma* PPAs. These benefits can be categorized as either value-added benefits or financial benefits.

SCE provides several examples of value-added benefits to customers. In addition to the cash termination payments covering 100 percent of the termination payment for facility 1 and 35 percent of the termination payment for facility 2, SCE has also secured Letters of Credit from Mammoth equaling the remaining 65 percent of the termination payment for facility 2 and the Carryover Obligation during the extension period.<sup>14</sup> SCE contends that the Letters of Credit offer significant protections for SCE customers in that the Letters are security against all of Mammoth’s obligations to SCE.<sup>15</sup> Another value-added benefit, the new provisions in the RAM 3 *pro forma*, aligns the PPA with the California Independent System Operator’s Energy Markets and include improved forecasting and scheduling requirements. SCE claims that the new requirements act as liability insurance against losses to SCE and its customers.<sup>16</sup>

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<sup>13</sup> Application at 2.

<sup>14</sup> Exhibit 1 at 10 and 15.

<sup>15</sup> Exhibit 1 at 16.

<sup>16</sup> Exhibit 1 at 17.

The RAM 3 *pro forma* also requires a deposit for performance assurance, which compensates SCE and its customers for purchase of replacement Product and damages caused by performance failure.<sup>17</sup>

In regards to financial benefits, SCE claims that when it compared the expected payments under the existing Original QF PPAs to the cost of replacement power, there is direct Net Present Value savings.<sup>18</sup> As a result of the six-year Extension Term,<sup>19</sup> SCE states that direct savings are provided to customers through the rescheduling of deliveries from a period where SCE lacks a short-term RPS to a period whether SCE has an RPS need.<sup>20</sup> Here, SCE presented calculations to indicate that the renewable premium of the Carryover Obligation compares favorably with short-listed projects in SCE's recent RAM 3 solicitation.<sup>21</sup> SCE compared the negotiated Product price to the forecasted market price of energy and capacity during the Extension Term and determined that the negotiated product price provides a discount on forecasted prices for energy and capacity during the Extension Term.<sup>22</sup>

Upon review, the Commission finds that SCE has shown that the Letter of Agreement and the Amendment provide substantial benefits, in the way of financial benefits and added value to ratepayers. We conclude that the Letter of Agreement and the Amendment are reasonable and should be approved.

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<sup>17</sup> *Ibid.*

<sup>18</sup> Exhibit 1 at 15.

<sup>19</sup> SCE explains that the negotiated extension term of six years will allow for the additional deliveries required by the Carryover Obligation. See Exhibit 1 at 10.

<sup>20</sup> Exhibit 1 at 14.

<sup>21</sup> Exhibit 1 at 16.

<sup>22</sup> Exhibit 1 at 15.

**5.2. Cost Recovery Mechanism**

SCE requests Commission authorization to recover costs incurred pursuant to the Letter of Agreement and Amendment through rates, subject only to further review with respect to the reasonableness of SCE's administration of the Original QF PPA 3027, as amended by the Amendment. In D.10-12-035, the Commission adopted a Settlement Agreement whereby SCE shall recover the costs of all payments made pursuant to the Legacy PPAs through the SCE Energy Resource Recovery Account (ERRA).<sup>23</sup> We find no reason to deny the same request for the amendment. We find the request by SCE to recover the costs of the amendment through rates is reasonable.

**5.3. Compliance with Related Law and Prior Commission Decisions**

The Commission must ensure that SCE has complied with laws and prior decisions relative to this Application. Our review of the Application, Letter of Agreement and Amendment indicates that SCE has complied with the appropriate law and Commission Decisions, as discussed below.

In its Application, SCE supports its request by stating that amendments to QF contracts are permitted by the Commission. SCE refers to the Commission's decision addressing the Future Policy and Pricing for Qualifying Facilities, which states that "nothing in this decision bars QFs desiring more flexible contract options from participating in utility resource solicitations or bilateral negotiations."<sup>24</sup> SCE continues by stating that such amendments are allowable

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<sup>23</sup> D.10-07-045 at 44, Findings of Fact 15 and 16, Conclusion of Law 10, and Ordering Paragraph 7.

<sup>24</sup> Application at 4 referencing D.07-09-040 at 122.

only when commensurate concessions are made to the benefit of ratepayers.<sup>25</sup> Consistent with the discussion above, we find the amendment reasonable and beneficial to ratepayers.

When contracting for RPS-eligible resources, the Commission has established certain “non-modifiable” standard terms and conditions (STCs).<sup>26</sup> In its Application, SCE provides a table of these non-modifiable STCs.<sup>27</sup> In two of the STCs, SCE replaced the words, “Delivery Term” with the words “Extension Term.” SCE explains that these have been modified in the Amendment “to reflect the Extension Term described in the Amendment.”<sup>28</sup> We find these two modifications reasonable.

As SCE describes in its Application, the Commission requires SCE to file an annual RPS Procurement Plan detailing SCE’s RPS need as well as any plans for solicitations. This Plan must comply with RPS procurement quantity requirements consistent with Senate Bill (SB) 2 and implemented in D.11-12-020.<sup>29</sup> SCE contends that the Letter Agreement and Amendment are consistent with its most recently approved Plan<sup>30</sup> and, therefore, consistent with SB 2 and D.11-12-020. The 2012 Plan indicates that SCE does not anticipate an RPS need until the third compliance period. Furthermore, SCE contends that the

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<sup>25</sup> Application at 4 referencing D.88-10-032 at Conclusion of Law 3.

<sup>26</sup> Exhibit 1 at 19 referencing D.04-06-014 and D.07-11-025.

<sup>27</sup> *Id.* at 20.

<sup>28</sup> *Ibid.*

<sup>29</sup> Exhibit 1 at 18 and Footnote 34.

<sup>30</sup> SCE’s 2012 RPS Procurement Plan was approved by the Commission on November 14, 2012 in D.12-11-016, concluding it was consistent with SB 2 and D.11-12-020.

Letter of Agreement and the Amendment brings “SCE’s procurement closer to its RPS target for the first compliance period by reducing excess renewable generation in its portfolio” and meets the needs of additional renewable generation in the third compliance period.<sup>31</sup> The Commission finds that the Amendment is consistent with SCE’s 2012 RPS Plan and, thus, consistent with SB 2 and D.11-12-020.

The Commission finds that SCE has provided adequate support in its Application and Testimony to substantiate the claim that it has complied with the appropriate law and Commission Decisions.

## **6. Conclusion**

SCE has complied with the required laws and decisions. The Commission concludes that the requested amendment is reasonable and should be approved. We also conclude that the request to recover the costs of the amendment through rates is reasonable and should be approved.

We approve the request by SCE to approve the Letter of Agreement and the Amendment to its PPA with Mammoth. We grant the request to recover the costs of the amendment through rates.

## **7. Waiver of Comment Period**

As discussed above, the Commission considers this to be an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Pub. Util. Code and Rule 14.6(c)(2) of the Commission’s Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

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<sup>31</sup> Exhibit 1 at 18-19.

## 8. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Kelly A. Hymes is the assigned ALJ in this proceeding.

### Findings of Fact

1. The ORA resolved the issues that gave rise to its protest of this application and waived its request for a hearing.
2. SCE provides several examples of value-added benefits to customers.
3. SCE received cash termination payments covering 100 percent of the termination payment for facility 1 and 35 percent of the termination payment for facility 2.
4. SCE secured Letters of Credit from Mammoth equaling the remaining 65 percent of the termination payment for facility 2 and the Carryover Obligation during the extension period.
5. The Letters of Credit offer significant protections for SCE customers in that the Letters are security against all of Mammoth's obligations to SCE.
6. The new provisions in the RAM 3 *pro forma* align the PPA with the California Independent System Operator's Energy Markets and include improved forecasting and scheduling requirements.
7. The new requirements in the RAM 3 *pro forma* act as liability insurance against losses to SCE and its customers.
8. The RAM 3 *pro forma* requires a deposit for performance assurance, which compensates SCE and its customers for purchase of replacement Product and damages caused by performance failure.
9. The expected payments under the existing Original QF PPAs compared to the cost of replacement power provide direct Net Present Value savings.
10. The six-year Extension Term provides direct savings to customers.

11. SCE calculations indicate that the renewable premium of the Carryover Obligation compares favorably with short-listed projects in SCE's recent RAM 3 solicitation.

12. SCE determined that the negotiated product price provides a discount on forecasted prices for energy and capacity during the Extension Term.

13. SCE has shown that the Letter of Agreement and the Amendment provide substantial benefits, in the way of financial benefits and added value to ratepayers.

14. In D.10-12-035, the Commission adopted a Settlement Agreement whereby SCE shall recover the costs of all payments made pursuant to the Legacy PPAs through the SCE ERRRA.

15. There is nothing in the record of this proceeding that would lead us to deny the same recovery methodology for costs incurred pursuant to the Letter of Agreement and Amendment, as was approved for the Legacy PPA.

16. The Commission Decision addressing the Future Policy and Pricing for QFs states that "nothing in this decision bars QFs desiring more flexible contract options from participating in utility resource solicitations or bilateral negotiations."

17. D.88-10-032 states that such amendments are allowable only when commensurate concessions are made to the benefit of ratepayers.

18. The Commission has established certain "non-modifiable" STCs.

19. SCE modified two of the STCs in its Amendment to reflect the Extension Term described in the Amendment.

20. The approved 2012 RPS Plan indicates that SCE does not anticipate an RPS need until the third compliance period.

21. The requested Amendment in this proceeding is consistent with SCE's approved 2012 RPS Plan, SB 2, and D.11-12-020.

22. SCE has provided adequate support in its Application and Testimony to substantiate the claim that it has complied with the appropriate law and Commission Decisions.

**Conclusions of Law**

1. SCE and Mammoth's Letter of Agreement and the related Amendment are reasonable and beneficial to ratepayers.

2. The request by SCE to recover the costs of the amendment through rates is reasonable and should be adopted.

3. SCE's modification of two non-modifiable STCs is reasonable and should be allowed.

4. SCE and Mammoth's Letter of Agreement and the related Amendment should be approved.

5. A.13-06-012 should be closed.

**O R D E R**

**IT IS ORDERED** that:

1. The request by Southern California Edison Company to approve its Letter of Agreement and the Amendment to its Power Purchase Agreement with Mammoth-Pacific, LP is approved, in its entirety.

2. Southern California Edison Company is authorized to recover the costs of the approved amendments to its Power Purchase Agreement with Mammoth-Pacific, LP through its Energy Resource Recovery Account.

3. Hearings are not necessary.

4. Application 13-06-012 is closed.

This order is effective today.

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