

Decision **PROPOSED DECISION OF ALJ DEANGELIS**
(Mailed March 6, 2015)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison
Company (U338E) for Approval of 2014-
2018 Economic Development Rates.

Application 14-03-013
(Filed March 24, 2014)

**DECISION APPROVING OF SETTLEMENT AGREEMENT ON ECONOMIC
DEVELOPMENT RATES PREVIOUSLY APPROVED IN RESOLUTION E-4675****Summary**

This decision approves of the settlement between Southern California Edison Company (SCE) and the Office of Ratepayer Advocates on matters related to SCE's request for economic development rates, previously approved by the Commission in Resolution E-4675 (August 14, 2014). SCE shall file an Advice Letter to implement the approved economic development rates. This proceeding is closed.

1. Background

Pursuant to Article 12 of the California Public Utilities Commission's (Commission's) Rules of Practice and Procedure (Rules), Southern California Edison Company (SCE) and the Office of Ratepayer Advocates (ORA) (referred to hereinafter collectively as Settling Parties or individually as Party), jointly request that the Commission find reasonable and adopt the *Settlement Agreement Resolving Southern California Edison Company's Application for Approval of*

2014-2018 Economic Development Rates (Settlement Agreement), which was appended to a motion dated October 8, 2014, *Joint Motion of Southern California Edison Company (U 338-E) and The Office of Ratepayer Advocates for Approval of Settlement Agreement (Motion)*.

The other parties to the proceeding, The Greenlining Institute (Greenlining) and the Small Municipal Utilities Coalition (SMU), did not protest SCE's Application and, in addition, authorized the Settling Parties to represent to the Commission that while they are not signatories to the Settlement Agreement, they do not oppose it.

The Settlement Agreement purports to resolve all issues related to this proceeding, including the intersection between SCE's Commission-approved interim economic development rates (EDR) program and the longer-term program addressed in detail by the Settlement Agreement.

Section 3 of this decision describes the procedural background related to this proceeding and, in addition, to the Resolution in which the Commission approved SCE's Advice Letter seeking an interim EDR program, dated August 14, 2014.¹

Section 4 of this decision describes the positions advocated by the parties and summarizes the terms of the Settlement Agreement.

Sections 5, 6, 7 and 8 address whether the Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest pursuant to Rule 12.1(d), and whether it should be adopted without modification.

¹ CPUC Resolution E-4675, *Expedited Issuance of Southern California Edison Interim Economic Development Rates Pending Issuance of Decision in A.14-03-013 (August 14, 2014)*.

Section 9 addresses the procedural requests of the Settling Parties related to expeditious resolution of this motion.

2. Procedural History

The Settlement Agreement, attached hereto as Attachment A and at Paragraph 3 (Recitals), provides the procedural background of both this proceeding and of SCE's Advice Letter 3064-E (filed June 26, 2014) requesting approval of an interim EDR program.² This procedural background is summarized here.

The Commission first authorized EDR tariffs for SCE in Decision (D.) 96-08-025 as a way of offering incentives to SCE customers who would otherwise not retain, expand, or locate their load in California. Then, in D.05-09-018, as modified by D.07-09-016 and D.07-11-052, the Commission approved a second vintage of EDRs for SCE (and for Pacific Gas and Electric Company (PG&E)) with a sunset date of December 2009.

In D.10-06-015, as modified by D.11-05-029, the Commission approved a settlement agreement between SCE, PG&E and several other parties³ for a new 200 Megawatt (MW) EDR Program (for each of SCE and PG&E) that closed to new customers on December 31, 2012.

In March 2012, PG&E filed an Application (Application (A.) 12-03-001) for approval of new EDRs. SCE was an active party to that proceeding, which culminated in the issuance of D.13-10-019.

² CPUC Resolution E-4675, *Expedited Issuance of Southern California Edison Interim Economic Development Rates Pending Issuance of Decision in A.14-03-013* (August 14, 2014).

³ Those additional parties were the Division of Ratepayer Advocates (now, the Office of Ratepayer Advocates), The Utility Reform Network (TURN), and the Energy Users Forum.

In D.13-10-019, the Commission approved a 200 MW program for PG&E for a Standard (12%) and Enhanced (30%) EDR discount.

On March 24, 2014, SCE filed this Application and supporting testimony. SCE explains in these documents that it is seeking relief substantially similar to the outcome PG&E obtained in its proceeding.

SCE served errata testimony on May 14, 2014.

ORA protested SCE's Application, arguing that SCE failed to demonstrate that a new EDR program modeled on PG&E's is justified. ORA also argued that the marginal generation capacity cost (MGCC) used to determine "contribution to margin" under SCE's proposed EDRs should be set to at least 50%, not zero, given the impact of SCE's loss of the San Onofre Nuclear Generation Station (SONGS), and given the MGCC value adopted by the Commission in the context of another proceeding that SCE settled with ORA and the City of Long Beach.

Two parties filed responses to this Application, Greenlining and SMU. Greenlining noted that SCE's Application included proposed reporting requirements that incorporated suggestions that Greenlining had made in A.12-03-001, the proceeding on PG&E's EDR application. Greenlining indicated that it would "continue to monitor SCE's EDR application to ensure the job reporting is instituted."⁴ SMU sought to make "clear in this proceeding that SCE's program should apply only to businesses new to the State, expanding within SCE's service area, or considering closure."⁵

SCE filed a reply to the protest and responses on May 8, 2014.

⁴ Greenlining Response at 2-3.

⁵ SMU at 3.

On June 26, 2014, SCE filed a Tier 3 Advice Letter, Advice Letter 3064-E, in which SCE sought expedited Commission approval of interim EDR rates consistent with those proposed in this Application, subject to prospective adjustment to conform to any EDR tariff requirements set forth in a final Commission decision in this Application proceeding. SCE also proposed that should a customer sign a written affidavit declaring, under penalty of perjury, that the interim EDR was a substantial motivating factor in the customer's time-sensitive decision about whether to locate or retain their business in California, the customer may remain on the interim rate until the conclusion of their contract period.

ORA filed a protest to Advice Letter 3064-E but subsequently withdrew it. SMU filed comments about Advice Letter 3064-E in which it sought the same clarifications that it had included in its response to this Application proceeding.

The Administrative Law Judge (ALJ) assigned to SCE's Application proceeding held a Prehearing Conference (PHC) on July 9, 2014, during the pendency of Advice Letter 3064-E. At the PHC, the ALJ questioned whether any legal authority existed to support the filing of the pending Advice Letter. The ALJ also directed SCE to file: (a) confidential and public versions of the final two EDR annual reports prepared by SCE in compliance with D.05-09-018 and D.10-06-015; (b) a chart comparing attributes from the EDRs that were adopted in D.10-06-015 and those proposed in this Application; and (c) a list of ten scenarios illustrating the rate impacts of the proposed EDRs compared to the customers' non-EDR tariffs. SCE filed confidential and public versions of its response on July 16, 2014.

The assigned Commissioner issued her Ruling and Scoping Memo on July 24, 2014 setting the procedural schedule and defining the scope of the proceeding.

On August 19, 2014, the Commission issued Resolution E-4675 approving the Advice Letter 3064-E and ordering SCE to adopt interim EDRs subject to a 200 MW program, with interim EDR customer loads applying to the program cap adopted in connection with this Application. The Commission also directed SCE to include in its interim EDR tariffs language clarifying that EDRs are intended to retain, expand, or attract load in California relative to out-of-state options, and are not intended to attract either in-state or out-of-state customers from one service area to another within California.

On August 19, 2014, the same day the Commission issued Resolution E-4675, SCE filed a Tier 1 Advice Letter, Advice Letter 3095-E, with interim EDR tariff schedules and agreements consistent with the August 19, 2014 Resolution E-4675. The Director of the Energy Division signed a letter approving Advice Letter 3095-E on August 20, 2014, noting that the interim tariffs and agreements were effective retroactively on the date on which they were filed (August 14, 2014), several days before the Commission approved of the rate change in Resolution E-4675.

SCE began informal settlement negotiations with ORA on July 9, 2014, and thereafter properly noticed an all-party settlement conference pursuant to Article 12 for Monday, August 4, 2014 to discuss resolution of its Application.

SCE and ORA filed the motion seeking approval of the Settlement Agreement that we consider today on October 8, 2014.⁶

3. Summary of Positions and Settlement Agreement

As described above, the terms and conditions of PG&E's EDR program were fully litigated in A.12-03-001 in a record that the Commission has referred to as "robust,"⁷ and SCE's proposal in this Application did not differ substantially from the outcome PG&E obtained.

As indicated on pages 14-15 of SCE's prepared testimony in support of its Application, in D.13-10-019,⁸ the Commission required PG&E to present cost-effective demand-side management (DSM) options to Enhanced EDR customers (i.e., customers receiving the 30% EDR) and to achieve a 5% energy usage reduction over the life of the Enhanced EDR tariff across all participating customers. PG&E was also encouraged to pursue DSM at facilities on the Standard EDR tariff (12% discount) and to try to achieve a 5% energy usage reduction across all of the participating Standard EDR customers over the life of the Standard EDR tariff.

These requirements were based on the Commission's concern that all 200 MW could be consumed by Enhanced EDR customers, a contingency that is not possible under SCE's Settlement Agreement with ORA. Thus, the Settling Parties have agreed here to have SCE commit to exploring DSM options with its

⁶ *Joint Motion of Southern California Edison Company (U 338-E) and the Office of Ratepayer Advocates for Approval of Settlement Agreement* (October 8, 2014).

⁷ CPUC Resolution E-4675 at 2.

⁸ D.13-10-019, *Decision Authorizing Pacific Gas And Electric Company To Offer Economic Development Rate Tariff Options* (October 3, 2013). This was the final decision resolving PG&E's EDR proceeding, A.12-03-001.

Standard and Enhanced EDR customers and to set aspirational goals to the extent they are reasonable on a customer-by-customer basis.

ORA protested the Application principally on the grounds that SCE's proposed EDRs would not provide a positive contribution to margin if the 200 MW cap were comprised principally of customers taking service on the Enhanced (30%) discount.⁹ In ORA's view, that level of discount in areas of SCE's service territory where ORA believed marginal generation capacity costs are high (constrained areas) risked creating a situation in which the discounted rates were insufficient to collect the marginal costs of serving SCE's customers plus nonbypassable charges.

To address ORA's concern, while at the same time leveraging PG&E's "flat" discount structure that is unburdened by a price floor computation, the Settling Parties suggest instituting three types of "caps" to SCE's EDR Program, while leaving most other features of PG&E's Commission-approved program intact. First, the overall program will be capped at 200 MW regardless of the type of discount (Standard or Enhanced). Second, of the 200 MW total, there will be a 40 MW cap on customers taking service on the Enhanced EDR. Third, of the 40 MW cap on the Enhanced EDR, no more than 10 MW will be reserved for customers whose businesses are located (or are planned to be located) in constrained areas.

4. Request for Adoption of the Settlement Agreement

The Settling Parties state that Settlement Agreement is consistent with Commission decisions on settlements, which express the strong public policy

⁹ ORA did not specifically protest the 12% Standard EDR discount proposal.

favoring settlement of disputes if they are fair and reasonable in light of the whole record.¹⁰

This policy supports many worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce Settlement Agreement unacceptable results to parties.¹¹ As long as a settlement taken as a whole is reasonable in light of the record, consistent with the law, and in the public interest, it should be adopted without change.

The general criteria for Commission approval of settlements are stated in Rule 12.1(d) as follows:

The Commission will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest.¹²

The Settlement Agreement meets the criteria for a settlement pursuant to Rule 12.1(d), as discussed below.

5. The Settlement Agreement is Reasonable In Light of the Record

The record of this proceeding includes SCE's Application and the protests, the two responses, and this motion (together with the attached Settlement Agreement). The Settling Parties requested the admission of direct testimony

¹⁰ See, e.g., D.88-12-083, 30 CPUC 2d 189, 221-223 and D.91-05-029, 40 CPUC 2d, 301, 326.

¹¹ D.92-12-019, 46 CPUC 2d 538, 553.

¹² See also, *Re San Diego Gas & Electric Company*, D.90-08-068, 37 CPUC 2d 360: "[S]ettlements brought to this Commission for review are not simply the resolution of private disputes, such as those that may be taken to a civil court. The public interest and the interest of ratepayers must also be taken into account and the Commission's duty is to protect those interests."

SCE served on March 24, 2014, and the errata to the direct testimony served on May 14, 2014.

This request is granted.

The Settlement Agreement represents a reasonable compromise of the Settling Parties' positions. Specifically, with respect to the two "sub-caps" within the overall 200 MW program cap, the result is reasonable because the 40 MW sub-cap is roughly consistent with the proportion of eligible EDR customers whose businesses are or could be located in cities or counties with unemployment rates that are at least 125% of last year's statewide average. The 10 MW sub-cap is roughly consistent with the proportion of customers eligible for the Enhanced EDR who reside in an area designated as "constrained" by SCE in the context of the Local Capacity Resource Request for Offers that was launched in September 2013. These reasonable limits on the Enhanced EDR discount are designed to achieve a positive contribution to margin on a program-wide basis. The program otherwise mirrors PG&E's Commission-adopted EDRs, which are streamlined relative to SCE's and PG&E's last EDR program cycle in which discount computations had relied on a marginal cost price floor that unintentionally left too minimal of room for the discounts to be meaningful for eligible customers.

The Settlement Agreement also reasonably addresses the relationship between SCE's long-term EDR program and the interim EDR program approved in Resolution E-4675, in that it does not differ from the interim program except in three limited respects.

First, the interim program does not contain a sub-cap for the Enhanced EDR or constrained areas. Any incongruity between the interim EDRs' 200 MW program cap and the sub-caps proposed in the attached Settlement Agreement

will be eliminated or mitigated by timely issuance of a Commission decision approving the Settlement Agreement (which will have the effect of supplanting the interim EDR program entirely).¹³

Second, the Commission ordered SCE to refrain from proactively marketing the interim EDR program in order to reduce any ratepayer risks associated with the interim EDRs. This requirement will no longer apply upon Commission approval of the Settlement Agreement.

Third, the Commission required all applicants for SCE's interim EDR program to sign affidavits stating that "but-for" the EDR discount, either alone or in combination with other incentives, the customer would not have retained or located its load in California. Consistent with PG&E's program, this Settlement Agreement applies the but-for requirement to only retention customers (not to expansion or attraction customers).

The balance of the rate discount features is consistent across the interim EDR program and the one proposed to be adopted without modification in the attached Settlement Agreement. These include important safeguards against free-ridership, such as a continued requirement for applicants to obtain a recommendation from a third-party government agency, the Office of California Business Investment Services, before being deemed eligible to take service on the EDR; liquidated damages provisions to make nonparticipating ratepayers whole in cases of fraud or early termination; the but-for affidavit requirement for

¹³ The interim EDR Agreements each contain a provision stating explicitly that they would be automatically superseded by the EDR Agreements (*see* Appendix B to the Settlement Agreement) approved in connection with this proceeding.

retention customers; and detailed annual reporting requirements listing a number of program attributes proposed by stakeholders in PG&E's proceeding.

Together, the above documents provide the information necessary for the Commission to find the Settlement Agreement reasonable.

6. The Settlement Agreement is Consistent with the Law

The Settling Parties state that the terms of the Settlement Agreement comply with all applicable statutes and prior Commission decisions, and reasonable interpretations thereof. In agreeing to the terms of the Settlement Agreement, the Settling Parties have explicitly considered the relevant statutes and Commission decisions and believe that the Commission can approve the Settlement Agreement without violating applicable statutes or prior Commission decisions. We agree with the Settling Parties that the Settlement Agreement is consistent with the law.

7. The Settlement Agreement is in the Public Interest

The two-party Settlement Agreement is "supported by parties that fairly represent the affected interests" at stake in this proceeding.¹⁴ As the Commission has found, "[w]hile it is true that we employ a 'heightened' focus on the individual elements of a settlement when all interest groups are not accommodated, the focus itself is on whether the parties seeking settlement brought to the table representatives of all groups affected by the settlement. This is not necessarily the same as accommodating the litigation positions of all

¹⁴ See D.07-11-018, *Order Denying Rehearing of Decision 07-03-044*.

parties.”¹⁵ SCE believes the Settlement Agreement is in the public interest because it provides relief to businesses struggling in the current economic climate, and ORA supports the Settlement Agreement and believes it is in the public interest because it places limits on the Enhanced EDR contracts and, in so doing, limits the discounts paid by non-participating ratepayers.

The Settlement Agreement is a reasonable compromise of the Settling Parties’ respective positions. The Settlement Agreement is in the public interest in that it balances the concerns of SCE’s business customers and SCE’s other ratepayers. The Settlement Agreement, if adopted by the Commission, avoids the cost of further litigation, and frees up Commission resources for other proceedings, including other rate design proceedings, especially in light of resources already recently committed to reviewing PG&E’s EDR program. The Settling Parties state that each portion of the Settlement Agreement is dependent upon the other portions of the Settlement Agreement. Changes to one portion of the Settlement Agreement would alter the balance of interests and the mutually agreed upon compromises and outcomes which are contained in the Settlement Agreement. As such, the Settling Parties request that the Settlement Agreement be adopted as a whole by the Commission, as it is reasonable in light of the whole record, consistent with law

Based on our discussion above, we find the Settlement Agreement to be reasonable, consistent with the law, and in the public interest.

¹⁵ *Id.*, citing to *Re Southern California Edison Company*, 1996, 64 Cal.P.U.C.2d 241, 267.

8. Request to Waive Comment Period - Denied

Settling Parties state that the nature of the relief sought in the Settlement Agreement is time-sensitive. In recognition of the time-sensitive nature of the relief sought in the Settlement Agreement and the fact that the Settlement Agreement is opposed by no party to the proceeding, the Settling Parties requested pursuant to Rule 1.2 that the assigned ALJ waive as unnecessary the normal thirty-day comment period on settlement agreements found in Rule 12.2 and proceed instead to the drafting of a Proposed Decision. This request is denied because not all parties to the proceeding were signatories of the Settlement Agreement. The public interest is otherwise served by issuing this decision for comment.

9. Comments on Proposed Decision

The proposed decision of the ALJ 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. No comments were filed.

10. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Regina M. DeAngelis is the assigned ALJ in this proceeding.

Findings of Fact

1. The Settlement Agreement supports a reasonable compromise of the Settling Parties' positions.
2. The Settlement Agreement supports SCE's long-term EDR program and the interim EDR program approved by the Commission in Resolution E-4675 in that it does not differ from the interim program except in three limited respects.
3. The Settlement Agreement includes important safeguards against free-ridership.

4. Settlement Agreement complies with all applicable statutes and prior Commission decisions, and reasonable interpretations thereof.

5. The Settlement Agreement is a reasonable compromise of the Settling Parties' respective positions.

6. The Settlement Agreement avoids the cost of further litigation, and frees up Commission resources for other proceedings, including other rate design proceedings, especially in light of resources already recently committed to reviewing PG&E's EDR program.

Conclusions of Law

1. The request by the Settling Parties for the admission of the Direct Testimony SCE served on March 24, 2014 and the Errata to the Direct Testimony served on May 14, 2014 is granted.

2. The Settlement Agreement, *Settlement Agreement Resolving Southern California Edison Company's Application for Approval of 2014-2018 Economic Development Rates*, appended to the October 8, 2014 Motion (Attachment A hereto) is granted and adopted in full.

3. The Settlement Agreement appended to the October 8, 2014 Motion (Attachment A) is reasonable in light of the record, consistent with law, and in the public interest.

4. The request by the Settling Parties to waive the comment period is denied.

ORDER

IT IS ORDERED that:

1. Within seven days of the effective date of this decision, Southern California Edison shall implement changes via a Tier 1 Advice Letter Filing in accordance

with the terms of the Settlement Agreement appended to the October 8, 2014 Motion (Attachment A hereto).

2. The October 8, 2014 Motion, *Joint Motion of Southern California Edison Company (U 338-E) and The Office of Ratepayer Advocates for Approval of Settlement Agreement*, is granted.

3. The Settlement Agreement, *Settlement Agreement Resolving Southern California Edison Company's Application for Approval of 2014-2018 Economic Development Rates*, appended to the October 8, 2014 Motion, is adopted.

4. Southern California Edison Company's Testimony and Errata are admitted into evidence and marked as SCE Exhibit 1 and SCE Exhibit 2.

5. Application 14-03-013 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A

Joint Motion of Southern California Edison Company (U 338-E) and The Office of Ratepayer Advocates for Approval of Settlement Agreement (Motion) and, appended thereto, the Settlement Agreement Resolving Southern California Edison Company's Application for Approval of 2014-2018 Economic Development Rates