Decision **PROPOSED DECISION OF ALJ DUDNEY** **(Mailed 9/12/2016)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's Energy Efficiency Risk/Reward Incentive Mechanism.	Rulemaking 09-01-019 (Filed January 29, 2009)

DECISION ADOPTING SETTLEMENT AGREEMENT

Summary

This decision approves and implements the Settlement entered into among Southern California Edison Company (SCE), the Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) (set forth in Attachment A hereto). The Settlement resolves all issues in the rehearing ordered in Decision (D.) 15-09-026 that relate specifically to SCE. All rehearing issues pursuant to D.15-09-026 relating to investor-owned utilities (IOUs) other than SCE are not addressed by the Settlement.

D.15-09-026 granted applications for rehearing regarding three decisions[1] that approved awards to eligible IOUs for success in achieving energy efficiency savings for the 2006-2008 cycle through the "Risk/Reward Incentive

[1] The applications for rehearing are identified as follows: For D.08-12-059, filed February 2, 2009, by TURN and the Division of Ratepayer Advocates (DRA) (in Rulemaking (R.) 06-04-010). For D.09-12-045, filed January 28, 2010 by TURN (in R.09-01-019.) For D.10-12-049, filed January 26, 2011 by TURN and DRA (in R.09-01-019.) Rehearing of these decisions was consolidated in R.09-01-019. DRA was renamed the Office of Ratepayer Advocates (ORA) effective September 26, 2013, pursuant to Senate Bill 96.

Mechanism" (RRIM). Interim awards were approved in D.08-12-059 and D.09-12-045, respectively, with a final award granted in D.10-12-049. Taken together, the three decisions awarded total incentive payments of $211,853,077 to the eligible IOUs covering the entire 2006-2008 cycle. SCE's share of these RRIM awards totaled $74.4 million.

As discussed below, ORA, TURN, and SCE entered into a Settlement to resolve all of the rehearing issues relating only to RRIM awards made to SCE. The rehearing issues are to determine a just and reasonable incentive level and how to implement any necessary refunds. Nothing in the Settlement or in this decision constitutes precedent with respect to disposition of any pending issues in this rehearing applicable to any IOU other than SCE or in any other proceeding.

Based upon our review, we find the Settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Accordingly, we approve it. By adopting the Settlement, we lay to rest the long protracted controversy involving the RRIM, specifically with respect to SCE, and the associated RRIM payments to SCE for the 2006-2008 program cycle. We defer to separate decisions disposition of the rehearing issues relating to the IOUs other than SCE.

Pursuant to the adopted Settlement, SCE shall return to ratepayers $13.5 million of the incentive awarded in D.10-12-049. This return of funds shall be implemented over a three-year period through credits to SCE's Base Revenue

Requirement Balancing Account (BRRBA) in three installments of $4.5 million.[2] The first credit will be made within thirty (30) calendar days of the approval of the Settlement or our approval of SCE's 2016 energy efficiency performance awards pursuant to the Efficiency Savings and Performance Incentive (ESPI) mechanism, whichever comes later.[3] Second and third refund credits shall be made not later than 30 days following approval of SCE's 2017 and 2018 ESPI (or subsequent incentive mechanism) earnings. SCE may accelerate the refund installments.

1. Background

California Public Utilities Commission (Commission) initiatives to encourage investments in Energy Efficiency (EE) through the Risk/Reward Incentive Mechanism (RRIM) have a long procedural history. Decision (D.) 07-09-043 created the RRIM in order to provide incentives for the Investor Owned Utilities[4] (IOUs) to "create a 'win-win' regulatory framework" for both investors and ratepayers and encourage the IOUs to "exceed our 2006-2008 energy savings goals."[5] D.08-12-059, D.09-12-045, and D.10-12-049 adopted RRIM payments to the IOUs for the 2006-2008 cycle.

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[2] Note that the Settlement (*see* Section III.A.1) incorrectly defines BRRBA as Base Rates Revenue Balancing Account. Base Revenue Requirement Balancing Account is the correct title, as used in SCE's tariff.

[3] The ESPI is the successor mechanism to the RRIM in offering monetary incentives to participating IOUs to promote energy efficiency goals. (*See* D.12-12-032.)

[4] Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Gas Company (SoCalGas), and Southern California Edison Company (SCE).

[5] D.07-09-043 at 2-3. Footnote omitted.

RRIM methodologies for assessing incentive earnings, however, proved more complex and contentious than originally contemplated. Controversies ultimately led to applications for rehearing by the Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN). D.15-09-026 granted applications for rehearing of D.08-12-059, D.09-12-045, and D.10-12-049 and described the procedural background of those decisions and associated applications for rehearing.

On January 21, 2016, the assigned Commissioner and Administrative Law Judge (ALJ) issued an Amended Scoping Memo and Ruling in the rehearing granted by D.15-09-026. To address the rehearing, two prehearing conferences have been held and parties have filed and served various pleadings. On March 18, 2016, the following parties submitted proposals to resolve the issues in scope: Natural Resources Defense Council (NRDC), ORA jointly with TURN, PG&E, SDG&E jointly with SoCalGas as the "Joint Utilities," and SCE.[6] On April 8, 2016, the same parties submitted comments in reply to the proposals.

The primary dispute in this rehearing proceeding is the appropriate level of RRIM incentive payments to each of the IOUs for the 2006-2008 cycle, including whether or not the RRIM payments authorized in D.08-12-059, D.09-12-045, and D.10-12-049 should be changed. The relative merits of the underlying principles, assumptions and data used to attribute the EE savings achieved, and therefore the RRIM payments awarded, are contested issues.

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[6] On April 5, 2016, PG&E filed a motion to correct certain errors in its original proposal. PG&E's motion was granted by ALJ ruling dated July 12, 2016. PG&E's Proposal inadvertently attached a draft of Attachment 5 *CPUC & PG&E Analysis of Reported Versus Evaluated Savings Results for PG&E's 2006 to 2008 Energy Efficiency Portfolio*. PG&E filed an Amended Proposal on July 20, 2016, which included the final version of Attachment 5.

Specifically, parties disputed whether the previously authorized award amounts, set based on *ex ante* (pre-installation) assumptions, should be sustained, or whether final awards should have been trued up based on *ex post* (post-installation) data.[7] Assuming a true-up based on *ex post* data, parties disagree as to whether to rely on the Commission's Energy Division Evaluation Measurement and Verification (EM&V) data or other *ex post* sources.

The IOUs and NRDC submitted a Motion for Evidentiary Hearing on April 15, 2016. The moving parties asserted that evidentiary hearings are not required if the previous RRIM awards are sustained. However, moving parties asserted, the Commission cannot rely on *ex post* data as reported by the Energy Division to change the previously authorized RRIM payments without evidentiary hearings. Although the ALJ ruled on July 12, 2016, that evidentiary hearings relating to the IOUs that have not reached settlements may be appropriate, hearings have not yet been scheduled and testimony has not yet been submitted. In view of our adoption of the pending Settlement, however, no evidentiary hearings are required to resolve rehearing issues that relate to SCE.

In D.16-09-016, we approved an earlier settlement resolving rehearing issues related to PG&E.

2. Settlement Agreement

On August 10, 2016 SCE, ORA, and TURN submitted a Motion for Approval of Settlement Agreement. SCE, ORA, and TURN (Settling Parties) assert that the Settlement resolves all issues in this rehearing related to the

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[7] *Ex ante* refers to EE parameter values predicted at the outset of the 2006-2008 program cycle. *Ex post* refers to those same parameters measured and verified after completion of the program cycle.

appropriate incentive payments to SCE for the 2006-2008 cycle. The Settlement does not address any other issues or impact parties' positions regarding the 2006-20008 Rate Impact Measure incentive payments applicable to the other IOUs. No party contests the Settlement.

The primary outcome proposed by the Settlement is that SCE will refund to ratepayers $13.5 million of the RRIM awards authorized in D.10-12-049. This refund will be an offset against its future EE incentive requests under the Efficiency Savings and Performance Incentive (ESPI) or a successor mechanism. The first of three $4.5 million credits will be made within thirty (30) calendar days of the approval of the Settlement or our approval of SCE's 2016 energy efficiency performance awards pursuant to the ESPI mechanism, whichever comes later. Second and third refund credits shall be made not later than 30 days following approval of SCE's 2017 and 2018 ESPI (or subsequent incentive mechanism) earnings. If any individual year's ESPI award is less than the offset amount, the entire award shall be offset, and the balance applied to the following year's offset. The entire $13.5 million shall be refunded to customers by 2018. SCE may accelerate the refund installments based on the discounted present value.[8] Refunds will be made by credit to SCE's Base Revenue Requirement Balancing Account.

The Settling Parties agree that the Settlement resolves all rehearing issues in Rulemaking 09-01-019, including disputes related to D.07-09-043, D.08-01-042, D.08-12-059, D.09-12-045, D.10-12-049[9] and D.15-09-026 in regards to SCE.

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[8] As prescribed in Section III.A.3 of the Settlement Agreement, for this purpose, the present value shall be discounted using the authorized weighted cost of capital for SCE of 7.9 percent.

[9] Including all issues in the Petitions for Modification.

3. Issues before the Commission

The Commission must decide whether the Settlement should be approved, and implemented. Although we generally favor the settlement of disputes, we have established appropriate rules regarding the conduct and evaluation of settlements. In evaluating the Settlement here, we consider specifically whether it meets the requirements of Article 12 of the Commission's Rules of Practice and Procedure regarding settlements.

2.1. Effects on the Safety of Utility Operations

No party has raised any safety issues in the rehearing of this proceeding. We find no provisions in the Settlement that would be inconsistent with SCE's continuing obligations to provide utility service to its customers in a safe manner.

2.2. Requirements of Article 12

Article 12 of the Commission's Rules of Practice and Procedure specifies certain requirements for settlements in Commission proceedings. Rule 12.1(d) states the standard for approving settlements: "The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest." Rule 12.1 also specifies procedural requirements on, for example, the timing of settlements and settlement conferences.

4. Discussion and Analysis

In order to evaluate the Settlement against the requirements of Rule 12.1, we consider four subjects: procedural requirements, reasonableness in light of the record, consistency with law, and the public interest. We find that the Settlement meets each of these requirements, and therefore, as discussed in further detail below, we approve the Settlement.

4.1. Procedural Requirements

We find that the Settling Parties have met the procedural requirements of Rule 12.1.

- Rule 12.1 (a) requires that settlements be proposed by written motion after the first prehearing conference and within 30 days after the last day of hearings. The Settlement meets this requirement.
- Rule 12.1 (a) requires that "the motion shall contain a statement of the factual and legal considerations adequate to advise the Commission of the scope of the settlement and of the grounds on which adoption is urged." The Motion for Approval of Settlement Agreement meets this requirement.
- Rule 12.1 (b) requires a settlement conference, with seven days advance notice and opportunity to participate for all parties, before a settlement is signed. The Settling Parties noticed a settlement conference on July 29, 2016, and held the conference on August 8, 2016, before executing the Settlement on August 10, 2016. The Settlement meets this requirement.

4.2. Reasonable in Light of the Whole Record

We find that the Settlement is reasonable in light of the whole record. In assessing reasonableness, we consider individual settlement provisions but in light of the strong public policy favoring settlements, we do not base our conclusion on whether any single provision is necessarily the optimal result. Rather, we determine whether the settlement as a whole produces a just and reasonable outcome. When viewed in total, we conclude that the Settlement before us produces a reasonable outcome.

Although the Settlement is not sponsored by all active parties, no party contests the Settlement insofar as it relates only to SCE. In considering uncontested settlements generally, we have previously stated:

> In judging the reasonableness of a proposed settlement, we have sometimes inclined to find reasonable a settlement that has the unanimous support of all active parties in the proceeding. In contrast, a contested settlement is not entitled to any greater weight or deference merely by virtue of its label as a settlement; it is merely the joint position of the sponsoring parties, and its reasonableness must be thoroughly demonstrated by the record.[10]

In particular, we note that the Settlement is a compromise between the very different litigation positions of the Settling Parties.[11]

SCE's pre-settlement proposal argued that it should be allowed to retain its entire award for each year of the 2006-2008 period. In support, SCE argued, among other things, that the Commission was justified in relying on *ex ante* data rather than *ex post* data in finalizing 2006-2008 awards. SCE also sought to demonstrate that SCE's total award was just and reasonable.

ORA and TURN's joint pre-settlement proposal argued, among other things, that the Commission erred by failing to follow RRIM rules adopted in D.07-09-043 and modified in D.08-01-042, including by using *ex ante* rather than *ex post* data to true up final incentive awards. ORA/TURN argued that 2006-2008 RRIM awards should be based on the *ex post* findings of the Energy Division EM&V Report. Based on Energy Division *ex post* data, ORA and TURN argued that SCE should be required to refund $39,874,716 of its 2006-2008 RRIM payments.

In support of their disparate pre-settlement positions, the parties have raised a variety of factual and policy arguments. At this time, the Commission

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[10] D.02-01-041 at 13.

[11] Parties' litigation positions were set forth in proposals filed March 18, 2016, and in reply comments filed April 8, 2016, as noted above.

has not fully litigated the merits of these arguments and factual disputes. We recognize, however, that the Settlement reflects material concessions by opposing interests to resolve complex and strongly contested issues in dispute. The Settlement benefits ratepayers by deducting the $13.5 million refund amount against future shareholder incentive earnings. SCE, however, is allowed to retain the remainder of RRIM payments. The Settlement effectively resolves all rehearing disputes relating to SCE through a release by TURN and ORA of all claims arising from SCE's 2006-2008 RRIM awards.

The fact that parties with very different interests can reach such a compromise that is acceptable from opposing viewpoints indicates to us that the overall outcome is reasonable. We make this judgment, in particular, in view of the extensive history of controversy over these issues, the record underlying the 2006-2008 RRIM awards, and pleadings filed to date in the rehearing. Based on these considerations, we conclude that the compromise represented in the Settlement is reasonable in light of the whole record.

4.3. Consistent with Law

We find that the Settlement is consistent with law and with rules the Commission adopted for the RRIM in D.07-09-043 and D.08-01-042. We do not detect, and it has not been alleged, that any element of the Settlement is inconsistent with any part of the Public Utilities Code or Commission decisions.

4.4. Public Interest

We conclude that the Settlement is in the public interest. As previously determined, a settlement that "commands broad support among participants fairly reflective of the affected interests" and "does not contain terms which

contravene statutory provisions or prior Commission decisions" meets the "public interest" criterion.[12]

A critical factor in our decision to adopt this settlement is confidence that it is fairly reflective of the affected interests. Here, the settlement is sponsored by the affected public utility and two well-recognized consumer interest groups. These parties represent the range of interests that have been at issue throughout the dispute regarding SCE's 2006-2008 RRIM awards. The fact that these parties all recommend adoption of the settlement convinces us that the settlement is "fairly reflective of the affected interests."

5. Conclusion

For the reasons discussed above, we conclude that the Settlement before us warrants adoption. The Commission has long favored resolution of disputes through settlements. This policy supports worthwhile goals, including reducing litigation costs, conserving scarce resources, and allowing parties to reduce the risk that litigation will produce unacceptable results. As a result of entering into the Settlement here, the settling parties as well as Commission staff avoid the expenditure of time and resources otherwise required to fully litigate the longstanding controversies underlying these rehearing issues. Particularly in view of the passage of time, changes in energy efficiency programs since the underlying decisions were issued, and the age of the data involved, the Settlement offers an appropriate resolution of the rehearing issues relating to SCE's RRIM awards.

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[12] *See* D.10-06-015 at 11-12, citing D.92-12-019 at 7.

6. 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. Comments were filed on October 3, 2016 by ORA and TURN (jointly) and by SCE. Each of these parties supported the proposed decision. No other comments or reply comments were filed. No changes have been made to this decision other than acknowledging comments and noting that D.16-09-019 has resolved issues related to PG&E.

7. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Kevin Dudney is the assigned ALJ in this proceeding.

Findings of Fact

1. On August 10, 2016, a Joint Motion was filed in this proceeding for Approval of Settlement Agreement between and among ORA, TURN, and SCE.
2. All disputes among the parties relating to SCE are resolved in the Settlement as attached to the August 10, 2016, Joint Motion.
3. The Settlement is uncontested.
4. The Settlement was proposed by written motion after the first prehearing conference and within 30 days after the last day of hearings, in this proceeding on rehearing.
5. The Motion for Approval of Settlement Agreement contains a statement of the factual and legal considerations adequate to advise the Commission of the scope of the Settlement and of the grounds on which adoption is urged.
6. The Settling Parties noticed a settlement conference on July 29, 2016, and held the conference on August 8, 2016 before signing the Settlement.
7. The parties to the Settlement are fairly reflective of the affected interests.

8. No term of the Settlement contravenes statutory provisions or prior Commission decisions.

9. The Settlement is reasonable in light of the record, is consistent with law, and is in the public interest.

Conclusions of Law

1. The Settlement in Attachment A to this decision meets the Commission's criteria for approval, as prescribed in Rule 12. It is (a) reasonable in light of the whole record, (b) consistent with law, and (c) in the public interest. Accordingly, the Settlement should be approved in its entirety and without modification.

2. Adoption of the Settlement in Attachment A is not binding on any utility other than SCE and does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.

3. Except as expressly provided for in the Settlement, each of the Settling Parties may advocate, in current and future proceedings, positions, principles, assumptions, arguments and methodologies which may be different than those underlying the Settlement.

4. In order to give effect to the Settlement expeditiously, this decision approving the Settlement should be effective today.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement between and among the Office of Ratepayer Advocates, The Utility Reform Network, and Southern California Edison Company (the Settling Parties) is adopted, as attached to the August 10, 2016, Joint Motion of the Settling Parties (Joint Motion). Accordingly, the Joint Motion for adoption of the Settlement Agreement (set forth in Attachment A of this decision) is granted.

2. Pursuant to the Settlement, as resolution of all outstanding disputes relating to it in this rehearing, Southern California Edison Company (SCE) shall comply with all terms of the adopted Settlement, set forth in Attachment A, including the requirement to return to ratepayers the amount of $13.5 million. The return of these funds shall be implemented as follows:

a. SCE shall make the first $4.5 million credit to the Base Revenue Requirement Balancing Account (BRRBA) within 30 calendar days of the Commission's approval of the Settlement or the Commission's approval of SCE's 2016 Efficiency Savings and Performance Incentive (ESPI), whichever comes later.

b. SCE shall make the second and third $4.5 million credits to BRRBA not later than 30 days after the Commission approves SCE's 2017 and 2018 ESPI earnings (or subsequent mechanism).

c. In the event that SCE's ESPI award in 2016 or 2017 is less than the intended refund amount for that year, the full shareholder incentive award for that year shall be refunded and the difference between that year's intended refund and the actual shareholder incentive award may be added to the subsequent year's refund amount, but the entire amount will be refunded to SCE's customers by 2018.

d. SCE is authorized to accelerate the refund installments by refunding the present value of the three-year stream of refund installments via a one-time credit to BRRBA, provided SCE exercises this option within 30 days of the Commission's approval of the Settlement. For purposes of present value, the discount rate shall equal 7.9 percent, SCE's authorized weighted average cost of capital.

3. This rehearing proceeding remains open for purposes of further proceedings as necessary to resolve remaining issues pursuant to Decision 15-09-026 other than those that relate specifically to Southern California Edison Company and Pacific Gas and Electric Company.

This order is effective today.

Dated _____, at Long Beach, California.

ATTACHMENT A

SETTLEMENT AMONG SOUTHERN CALIFORNIA EDISON COMPANY, OFFICE OF RATEPAYER ADVOCATES AND THE UTILITY REFORM NETWORK

PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's Energy Efficiency Risk/Reward Incentive Mechanism.	Rulemaking 09-01-019 (Filed January 29, 2009)

SETTLEMENT AGREEMENT BETWEEN AND AMONG THE OFFICE OF RATEPAYER ADVOCATES, THE UTILITY REFORM NETWORK AND SOUTHERN CALIFORNIA EDISON COMPANY

I. INTRODUCTION

In accordance with Rule 12.1 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, Southern California Electric Company, ("SCE") the Office of Ratepayer Advocates, ("ORA") and the Utility Reform Network ("TURN") (collectively referred to as "the Parties" or individually as a "Party"), hereby enter into this Settlement Agreement to resolve issues raised in the *Order Instituting Rulemaking to Examine the Commission's Energy Efficiency Risk/Reward Incentive Mechanism*, Rulemaking (R.) 09-01-019, which are currently pending before the Commission.

II. RECITALS

A. Pursuant to Decision (D.)15-09-026, the Commission re-opened this proceeding in September 2015 to re-examine three decisions involving the energy efficiency shareholder incentives awarded to SCE, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCal Gas) for the 2006-2008 energy efficiency portfolios.[1]

1/ This Settlement Agreement refers collectively to SCE, PG&E, SDG&E, and SoCal Gas as "IOUs."

B. The Commission approved the IOUs' 2006-2008 energy efficiency portfolios in D. 05-09-043.

C. In September 2007, the Commission issued D. 07-09-043, approving the Risk Reward Incentive Mechanism ("RRIM"), under which the IOUs would be awarded shareholder incentives for their energy efficiency savings achieved in 2006-2008 provided that they reached specified savings metrics.

D. In January 2008, the Commission revised the RRIM in D. 08-01-042. The Commission clarified in D. 08-01-042 that as long as a utility continues to exceed savings goals by 65% for each individual metric on an *ex-post* (post-installation) basis, it would not be required to refund interim incentive awards.[2/]

E. In December 2008, the Commission issued D. 08-12-059, awarding the IOUs their first interim incentive awards for the 2006-2007 program years. SCE was awarded an incentive of $ 24.7 million. ORA and TURN applied for rehearing of this decision in February 2009, which the IOUs opposed.

F. In December 2009, the Commission issued D. 09-12-045, awarding the IOUs their second interim incentive awards for the 2006-2008 program years. SCE was awarded an incentive of $ 25,652,348. TURN applied for rehearing of D. 09-12-045 in January 2010, which the IOUs opposed.

G. In December 2010, the Commission issued D. 10-12-049, awarding the IOUs their third and final incentive awards for the 2006-2008 program years, including an award to SCE of $24,091,646. The Commission calculated the incentives based upon the *ex-ante* (pre-installation) assumptions from the 2005 Database for Energy Efficient Resources ("DEER"), as the basis for the true-up of energy efficiency incentives for the 2006-2008 program cycle[3/] with

2/ D.08-01-042, p. 28, OP 2 j.

3/ D.10-12-049, p. 23.

certain modifications.[4] TURN and ORA applied for rehearing of this Decision in January 2011, which the IOUs opposed.

H. The Commission replaced the RRIM following the incentive awards for the IOUs' 2009 Energy Efficiency Portfolios due to disputes over the functioning of the mechanism.

I. The Commission approved an energy efficiency shareholder incentive mechanism in D. 13-09-023, entitled the Efficiency Savings and Performance Incentive ("ESPI"), to reward the IOUs' for energy efficiency savings achieved in 2013 and beyond. Under the ESPI mechanism, as revised by the Commission in D. 15-10-028, the IOUs request energy efficiency shareholder incentives by filing an annual advice letter on September 1 of each year.

J. On November 19, 2014, TURN and ORA filed petitions for modification of D. 10-12-049, which requested that the Commission rescind the decision. ORA's petition for modification requested, in the alternative, that the Commission grant TURN and ORA's application for rehearing of D. 10-12-049.

K. In D. 15-09-026, the Commission granted TURN's and ORA's applications for rehearing of Decisions 08-12-059, 09-12-045,[5] and 10-12-049. The Commission identified four issues to consider on rehearing: (1) whether the amount of the IOUs' incentive awards is "just and reasonable"; (2) whether the incentive awards were based on calculations verified by Energy Division pursuant to the processes adopted and modified in the underlying proceedings; (3) whether refunds are due; and (4) how any refund would be accomplished.[6]

A. On March 18, 2016, pursuant to the Amended Scoping Memo, the IOUs, the Natural Resources Defense Council ("NRDC"), ORA, and TURN filed proposals to resolve the issues in dispute. SCE's March 18, 2016 proposal sought to retain its full incentive awards for the 2006-2008 period on the grounds that it was reasonable for the Commission to use *ex-ante*

4/ *Id.*, p. 24 and Attachment A.

5/ ORA did not join TURN's application for rehearing of D.09-12-045.

6/ D.10-12-049, p. 78, OP 6.

savings values instead of *ex-post* savings values, as originally required in D. 07-09-043. SCE's proposal also sought to demonstrate that SCE's total award was just and reasonable.

B. ORA and TURN's March 18, 2016 proposal requested that the Commission recalculate the IOUs' incentive awards using the results of the *ex post* evaluations for 2006-2008 and require SCE to refund $39,874,716 of the $74,443,994 awarded by D.08-12-059, D.09-12-045, and D.10-12-049, consistent with the RRIM adopted in D.07-09-043 and modified by D.-8-01-042.

III. AGREEMENT

As a compromise among their respective litigation positions, and subject to the recitals and reservations set forth in this Settlement Agreement, the Parties agree to fully resolve this dispute, subject to Commission approval, as set forth below.

A. Specific Terms and Conditions

1. SCE shareholders shall refund $13.5 million of the incentives awarded in D. 10-12-049 through credits to SCE's Base Rates Revenue Balancing Account (BRRBA) as follows.

2. SCE shareholders shall refund $13.5 million over three (3) years in equal amounts of $4.5 million per year. The first credit to the BRRBA will be made within thirty (30) calendar days of the CPUC's approval of the Settlement Agreement or the CPUC's approval of SCE's 2016 ESPI incentives, whichever comes later. SCE shall refund the second and third refund installments not later than 30 days after the CPUC approves SCE's 2017 and 2018 ESPI earnings (or any subsequent energy efficiency shareholder incentive mechanism), respectively.

3. At its option, SCE may accelerate the refund installments by refunding the Present Value[7] of the three-year stream of refund installments, provided it does so within (thirty) 30 days of the CPUC's approval of this Settlement Agreement, via a one-time credit to BRRBA.

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[7] The Present Value is based on the CPUC authorized weighted average cost of capital (currently 7.9% for SCE.) The Present Value calculation applies the CPUC authorized weighted average cost of

4. SCE shall provide customers an explanation of the refunds via a bill insert or printed on the bill and on its website. Prior to posting the explanation, SCE will send a copy to ORA and TURN for review and approval, which shall not be unreasonably withheld. The explanation shall be posted not more than 30 days after the Settlement Agreement is approved, and shall remain posted for at least ninety (90) days.

5. SCE shall include in its ESPI Advice Letter due September 1, 2016, an explanation of the method for providing the proposed refund, including the fact that it is subject to CPUC approval of the Settlement Agreement. SCE shall include in its ESPI Advice letters due in 2017 and 2018 explanation of the method subsequent refunds pursuant to this Settlement Agreement (unless SCE chooses to refund the entire amount at one time, pursuant to paragraph A 3.)

6. In the event SCE's ESPI award in 2016 or 2017 is less than the intended refund amount for that year, the full shareholder incentive award for that year shall be refunded, and the difference, including interest[8], between that year's intended refund and the actual shareholder incentive award shall be added to the subsequent year's refund amount, but the entire amount shall be refunded to customers by 2018.

7. In each year that SCE refunds $4.5 million to the BRRBA to comply with this Settlement Agreement, SCE shall send to parties on the service list for R. 09-01-019 a copy of its ESPI Advice Letter or such other document in which SCE explains the refunds to the BRRBA made pursuant to this Settlement Agreement.

8. The Parties will not recalculate 2006-2008 energy efficiency savings or net benefits as a result of this Settlement Agreement.

9. ORA and TURN may notify the public about the Settlement Agreement in any manner they choose, consistent with Rule 12 of the Commission's Rules of Practice and Procedure.

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capital to determine the Present Value of the $13.5 million refund, assuming a three-year payback period with three separate $4.5 million payments.

[8] Interest on the difference will be calculated using the CPUC authorized weighted average cost of capital (currently 7.9% for SCE.)

10. SCE's assent to this Settlement Agreement is contingent on SCE's ability to cease further litigation expenses relating to re-litigation of the 2006-2008 shareholder incentive awards other than the expenses necessary to negotiate and obtain approval of this Settlement Agreement.

B. Commission Approval

1. The Parties agree to submit this Settlement Agreement to the Commission for approval by filing a joint motion pursuant to the Commission's Rules of Practice and Procedure, Rule 12.1. The Parties agree to support the Settlement Agreement and perform diligently, and in good faith, all actions, including without limitation, the preparation of written pleadings, to obtain Commission approval of the Agreement.

2. This Settlement Agreement shall become effective on the mailing date of a final Commission Decision approving the terms of this Settlement Agreement without modifications unacceptable to any Party ("Settlement Effective Date").

3. Any Party may withdraw from this Settlement Agreement prior to the Settlement Effective Date if the Commission through a Proposed Decision or Alternate Proposed Decision proposes to modify, delete from, or add to the disposition of the matters stipulated herein. The Parties agree, however, to negotiate in good faith with regard to any Commission-proposed changes in order to restore the balance of benefits and burdens, and to exercise the right to withdraw only if such negotiations are unsuccessful. The Settling Parties shall promptly discuss any Commission proposed modifications and negotiate in good faith to achieve a resolution acceptable to the Settling Parties, and shall promptly seek Commission approval of the resolution so achieved.

4. Upon the Settlement Effective Date, TURN and ORA agree that this Settlement Agreement resolves all issues in the Petitions for Modification of Decision 10-12-049 with regard to SCE.

C. General Terms and Conditions

1. The Settlement Agreement is intended to be a resolution among the Parties of all issues raised in R. 09-01-019, including all disputes regarding the following Commission decisions with regard to SCE: 07-09-043, 08-01-042, 08-12-059, 09-12-045, 10-12-049 and 15-09-026, and all issues regarding the amount of SCE's 2006-2008 shareholder incentive award. None of the Parties admit or concede error in any of the Commission decisions as part of this Settlement Agreement.

2. This Settlement Agreement is a negotiated compromise of issues. Nothing contained herein shall be deemed to constitute an admission or an acceptance by any Party of any fact, principle, or position contained herein. Notwithstanding the foregoing, the Parties, by signing this Settlement Agreement and by joining the motion requesting Commission approval of this Settlement Agreement, acknowledge that they pledge support for Commission approval and subsequent implementation of these provisions.

3. The Parties agree by executing and submitting this Settlement Agreement that the relief requested herein is just, fair, and reasonable, and in the public interest.

4. The Parties understand that time is of the essence in obtaining the Commission's approval of this Settlement Agreement and that each will extend its best efforts to enable the Commission to issue a final Decision approving the Settlement Agreement as early as possible in 2016.

5. The Settlement Agreement is not intended by the Parties to be precedential regarding any principle or issue. The Parties have assented to the terms of this Settlement Agreement only for the purpose of arriving at the compromise embodied in this Settlement Agreement. Each Party expressly reserves its right to advocate, in current and future proceedings, positions, principles, assumptions, and arguments which may be different than those underlying this Settlement Agreement and each Party declares that this Settlement Agreement should not be considered as precedential for or against any of the Parties. This Settlement Agreement embodies compromises of the Parties' positions. No Party agrees to any

individual term of this Settlement Agreement, except in consideration of the other Parties' agreement to all other terms of the Settlement Agreement. Thus the Settlement Agreement is indivisible and each part is interdependent on each and all other parts.

6. The terms and conditions of the Settlement Agreement may only be modified in writing if agreed upon by all Parties. Should the Commission reject or modify this Settlement Agreement, the Parties reserve their rights under Rule 12.4 of the Commission's Rules of Practice and Procedure.

7. This Settlement Agreement may be executed in counterpart and has the same force and effect as if all the signatures were obtained in one document.

IV. EXECUTION

The Parties have caused this Settlement Agreement to be executed by their authorized representatives. By signing this Settlement Agreement, the representatives of the Parties warrant that they have the requisite authority to bind their respective principals.

OFFICE OF RATEPAYER ADVOCATES

Dated: 8-10, 2016

ELIZABETH ECHOLS, DIRECTOR

THE UTILITY REFORM NETWORK

ELISE M. TORRES, STAFF ATTORNEY

Dated: __, 2016

SOUTHERN CALIFORNIA EDISON COMPANY

MARC ULRICH
VP, CUSTOMER PROGRAMS & SERVICES

Dated: __, 2016

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OFFICE OF RATEPAYER ADVOCATES

Dated: __, 2016

ELIZABETH ECHOLS, DIRECTOR

THE UTILITY REFORM NETWORK

Elise Torres

Dated: 8/10 2016

ELISE M. TORRES, STAFF ATTORNEY

SOUTHERN CALIFORNIA EDISON COMPANY

Marc Ulrich

Dated: 8/10, 2016

MARC ULRICH
VP, CUSTOMER PROGRAMS & SERVICES

(END OF ATTACHMENT A)