

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Application of Southern California Edison Company (U338E) for a Commission Finding that its Procurement-Related and Other Operations for the Record Period January 1 Through December 31, 2010 Complied with its Adopted Procurement Plan; for Verification of its Entries in the Energy Resource Recovery Account and Other Regulatory Accounts; and for Recovery of \$25.613 Million Recorded in Three Memorandum Accounts.

A.11-04-001  
(Filed April 1, 2011)

**AMENDED PROTEST  
OF THE DIVISION OF RATEPAYER ADVOCATES**

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BEFORE THE PUBLIC UTILITIES COMMISSION  
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Application of Southern California Edison Company (U338E) for a Commission Finding that its Procurement-Related and Other Operations for the Record Period January 1 Through December 31, 2010 Complied with its Adopted Procurement Plan; for Verification of its Entries in the Energy Resource Recovery Account and Other Regulatory Accounts; and for Recovery of \$25.613 Million Recorded in Three Memorandum Accounts.

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**I. INTRODUCTION**

Pursuant to Rule 2.6 of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) timely submits this Protest to Southern California Edison Company's (SCE) Application and its supporting testimony, Application (A.)11-04-001 which appeared on the daily calendar on April 6, 2011. SCE's Application requests a Commission finding that: (1) its entries to its Energy Resource Recovery Account (ERRA) for calendar year 2010 (the Record Period) complied with its procurement plan and were accurately recorded; (2) its contract administration, management of Utility Retained Generation ("URG"), dispatch of generation resources, and related spot market transactions complied with Standard of Conduct 4 (SOC 4) in its procurement plan; and (3) all other SCE activities subject to Commission review in this ERRA Compliance proceeding complied with applicable Commission decisions and resolutions. SCE's application also seeks recovery of \$25.613 million (including franchise fees and uncollectibles) for expenses associated with under-collection in the following additional accounts:

- Litigation Cost Tracking Account (LCTA) and Energy Settlements Memorandum Account (ESMA) [\$4.053 million];
- Project Development Division Memorandum Account (PDDMA) [\$4.121 million]; and
- Market Redesign and Technology Upgrade Memorandum Account (MRTUMA) [\$17.146 million];

In addition, SCE’s Application makes an unclear reference to “other regulatory accounts” besides the above accounts for which it is seeking expense recovery. Specifically, SCE’s Application states that “D.02-10-062 also requires SCE to set forth the entries recorded in the ERRA Balancing Account and other regulatory accounts for review” and that “[t]hese accounts are discussed in Chapter XII of Exhibit SCE-2 [SCE Testimony].”<sup>1</sup> The introduction to SCE’s Testimony regarding regulatory accounts states that “SCE is not seeking to recover the amounts recorded in these [other regulatory] accounts since the review is being performed on an after-the-fact basis (i.e., SCE has already been authorized to recover these expenses).”<sup>2</sup> SCE’s Testimony regarding these “other regulatory accounts” generally requests the Commission to find that entries into these accounts were “appropriate, correctly stated, and in compliance with Commission decisions.”<sup>3</sup> Notably, SCE’s Application mentions but makes no specific request of the Commission regarding these “other regulatory accounts” except, perhaps, its vague request for a finding that “all other SCE activities subject to Commission review in this ERRA review proceedings complied with applicable Commission decisions and resolutions.” Accordingly, SCE’s Application is unclear as to the relief sought, if any, regarding these “other regulatory accounts.”

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<sup>1</sup> Application, A.11-04-001, p. 2, emphasis added. These “other regulatory accounts” are not specifically identified in SCE’s Application.

<sup>2</sup> Exhibit SCE-02 [SCE Testimony], ch. XII, p. 83.

<sup>3</sup> See e.g. Exhibit SCE-02 [SCE Testimony], ch. XII, p. 99 regarding SCE’s CARE Balancing Account (CBA).

## II. DISCUSSION

### A. Background

The Energy Resource Recovery Account (ERRA) is a balancing account to record and track energy procurement costs (fuel and purchased power) against recorded revenues (ERRA revenue requirement). In other words, it tracks the difference between the authorized revenue recovered in rates and the cost of power. It is modeled after the Energy Cost Adjustment Clause (ECAC) balancing account and based on Assembly Bill (AB) 57. The first two major ERRA Commission decisions were referred to by the Commission as the ‘October Decision’ [D.02-10-062] and as the ‘December Decision’ [D.02-12-074] and those names are used in this pleading as well.

The purpose of ERRA is to “[e]nsure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan.”<sup>4</sup> To accomplish this the “Commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan.”<sup>5</sup>

The purpose of AB 57 and ERRA is to re-establish a procurement mechanism after the energy crisis. A primary component of ERRA is reliance on compliance with a Commission-approved procurement plan.<sup>6</sup> Investor Owned Utilities (IOUs) recover 100% of their fuel, purchased power, and other related costs through the ERRA account. It is a pass-through account and thus the costs are not rate based.

The October Decision ordered that the utilities comply with minimum standards of conduct, including Standard of Conduct 4 (SOC 4), which states:

The utilities shall prudently administer all contracts and generation resources and dispatch the energy in a least-cost manner.<sup>7</sup>

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<sup>4</sup> Public Utilities Code (PU Code) §454.5(d)(3).

<sup>5</sup> PU Code §454.5(d)(3).

<sup>6</sup> D.03-06-067, 12; D.05-01-054, p. 8.

<sup>7</sup> October Decision, p. 52 and Conclusion of Law 11, p 74.

It is important to emphasize that this standard also applies to administration of contracts and generation resources in addition to Least Cost Dispatch. SOC 4 is an element of each Investor Owned Utility's (IOU) procurement plan.<sup>8</sup> The Commission has specifically included in the procurement plans the requirement that the "utility bears the burden of proving compliance with the standard set forth in its plan."<sup>9</sup> This language was added to each IOU's procurement plan to avoid "the dangers of this Commission agreeing to an interpretation of AB 57/SB 1976 that would remove our continuing oversight of utility operational performance and, thereby, remove the Commission's ability to meet its statutory requirement to assure 'just and reasonable' rates."<sup>10</sup>

## **B. Issues Anticipated**

### **1. Consideration and Comparison of All Three Utilities' MRTU Expenses in the Same Proceeding Will Be Efficient and In the Ratepayers' Interest**

DRA recommends that the Commission bifurcate those portions of the three IOUs ERRA Compliance applications that seek rate recovery of costs associated with the implementation of the California Independent System Operator's (CAISO) Market Redesign and Technology Update (MRTU) initiative, and to consolidate those portions into a single proceeding with a new application number ("MRTU bifurcation and consolidation"). DRA will be filing a motion in this proceeding and in the other IOUs annual ERRA Compliance proceedings requesting bifurcation and consolidation of the MRTU recovery requests. DRA anticipates that this motion will be filed before the Pre-Hearing Conference in this proceeding.

### **2. Issues in Scoping Memo**

DRA has already begun its discovery effort and intends to conduct further discovery and review of SCE's Application and supporting testimony.

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<sup>8</sup> D.05-01-054, p. 2.

<sup>9</sup> December Decision, p. 54 and Order 24; and see, D. 05-01-054, p. 5 and D.05-04-036, p. 15-6.

<sup>10</sup> December Decision, p. 53-4. The 'just and reasonable rate' requirement is from PU Sections 454.5(d)(1) and 454.5(d)(5).

DRA anticipates issues will arise regarding the following:

- whether SCE administers and manages its own generation facilities prudently (SOC 4);
- whether SCE administered and managed its QF and non-QF contracts in accordance with the contract provisions and otherwise followed Commission guidelines relating to those contracts (SOC 4);
- whether SCE achieved Least Cost Dispatch of its energy resources (SOC 4);
- whether the entries in the ERRA are reasonable;
- whether the entries in the Litigation Cost Tracking Account (LCTA) and Energy Settlements Memorandum Account (ESMA) are reasonable and whether SCE has met its burden of proof regarding its claim for cost recovery/refund associated with this account;
- whether the entries in the Project Development Division Memorandum Account (PDDMA) are reasonable and whether SCE has met its burden of proof regarding its claim for cost recovery associated with these accounts;
- whether the Market Redesign and Technology Upgrade Memorandum Account (MRTUMA) claim for relief should be bifurcated out of the instant case and consolidated with similar applications by SDG&E and PG&E to be considered together;
- if DRA's request for MRTU bifurcation and consolidation is not granted, whether the entries in the MRTUMA are reasonable and whether SCE has met its burden of proof regarding its claim for cost recovery associated with this account; and,
- whether the entries in the "other regulatory accounts" were appropriate, correctly stated, and in compliance with relevant Commission decisions and resolutions.

As discovery continues, DRA expects other issues may arise during the course of this proceeding and reserves the right to amend this protest and/or seek other relief as appropriate.

### **III. SCHEDULE**

DRA agrees with the preliminary determination that this is a ratesetting proceeding and that hearings be scheduled in this proceeding. DRA also believes that

hearings may be avoided through more informal procedures, but reserves comment on that pending additional discovery and analysis. DRA reviewed SCE's proposed schedule, and proposes slight modifications, as follows:

Application Calendared	April 6, 2011
Protest Filed	May 6, 2011
Prehearing Conference	end of May, 2011
DRA/Intervenor Testimony	end of September, 2011
SCE Reply Testimony	end of October, 2011
Hearings (if necessary)	mid-November, 2011
Opening Briefs	early December, 2011
Reply Briefs	end of December, 2011

DRA, however, reserves the right to request an extension of this proposed schedule should future events warrant it. SCE has, for example, objected to all of DRAs Data Requests as follows:

SCE generally objects to these data requests on the grounds that the data requests are vague, ambiguous, overbroad, and/or unduly burdensome and objects to the extent to which they seek information subject to attorney-client privilege or to the attorney work product doctrine. In addition, SCE objects to the extent that the request is not relevant and material to the subject of this proceeding and to the extent that the answers sought are not likely to lead to the production of admissible evidence. Notwithstanding these objections, SCE has provided a response to each of the data requests to the extent possible. Such responses are not intended and should not be construed to be a waiver by SCE of all or any part of SCE's objections to this request. Moreover, the attached responses to data requests are given without prejudice to the production of subsequently discovered facts or evidence, or the presentation of facts or theories resulting from subsequently discovered evidence.

DRA is attempting to work with SCE to obtain responses to its Data Requests without these blanket objections. In addition, on February 8, 2011, SCE requested (from the Executive Director of the Commission) permission to file its application late. On

February 14, 2011 both DRA and SCE agreed that SCE would serve testimony addressing the plant's operations on SONGS one month later, on May 2, 2011. Therefore DRA's modifications to SCE's proposed schedule are reasonable and would not prejudice SCE. As is typical with each ERRA compliance review application, the Testimony and supporting documents are voluminous and the scope of review requires a significant amount of time for DRA to make a thorough evaluation. DRA, however, believes the schedule can be further accelerated if and when parties make a determination that hearings are not necessary and/or may be limited to specific issues.

#### **IV. CONCLUSION**

For the reasons stated herein, DRA urges the adoption of the issues it suggested and the schedule it proposed.

Respectfully submitted,

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