

D R A F T

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
ENERGY DIVISION

ITEM# 13 I.D.# 6407
RESOLUTION E-4066
March 15, 2007

R E S O L U T I O N

Resolution E-4066. Southern California Edison Company (SCE) requests authority to establish a Department of Energy Litigation Memorandum Account (DOELMA) to track incremental legal costs and proceeds associated with litigation concerning the United States Department of Energy's failure to take delivery of spent nuclear fuel from San Onofre Nuclear Generating Station (SONGS). Approved.

By Advice Letter 2085-E, filed on January 4, 2007.

SUMMARY

This Resolution approves SCE's request to establish the Department of Energy Litigation Memorandum Account (DOELMA).

The purpose of the DOELMA is to record litigation costs and proceeds stemming from SCE's litigation with the United States Department of Energy (DOE) for DOE's failure to accept delivery of and take title to spent nuclear fuel from San Onofre Nuclear Generating Station (SONGS) nuclear power units. Major elements of this resolution are summarized below.

- SCE is authorized to deduct "incremental litigation costs" from the proceeds recovered.
- "Incremental litigation costs" as described here relate to external litigation fees and costs incurred for this litigation. Costs internal to SCE such as in-house counsel and litigation support are not included.
- SCE shall file an application for the Commission to determine the disposition of the DOELMA balance.

BACKGROUND

SCE filed a complaint against DOE in the Federal Court of Claims for breach of contract relating to spent nuclear fuel at SONGS.

SCE filed a complaint against DOE in the Federal Court of Claims on January 9, 2004, alleging that DOE breached its contract with SCE under which DOE agreed to accept delivery of and take title to, the spent nuclear fuel from SONGS beginning on January 31, 1998. SCE was required to enter into these contracts with DOE as a condition of its Nuclear Regulatory Commission licenses. The federal framework applicable to all nuclear power plants provides that the federal government shall establish a national repository (now planned to be located at Yucca Mountain in Nevada) for long-term storage of spent nuclear fuel.

The Federal Court of Claims has determined the DOE breached the spent fuel contracts with other nuclear utilities.

The Federal Court of Claims has already determined that DOE breached the spent fuel contracts in cases involving other nuclear utilities. Given these developments in other cases, it appears that the issue of DOE's liability to SCE for breach of contract has been effectively resolved. The issue left to be litigated in the SCE lawsuit is the amount of damages that SCE is entitled to recover as a result of the DOE breach. SCE has retained outside legal counsel to pursue these damages.

SCE proposes a memorandum account to record incremental litigation costs associated with its claims against DOE.

On January 4, 2007 SCE filed Advice Letter 2085-E proposing to establish the DOELMA to record the difference between incremental DOE litigation costs incurred by SCE and damages and other proceeds from the federal government received by SCE. The incremental litigation costs will include costs for outside counsel, expert witnesses, and other litigation-related costs associated with the DOE litigation, excluding any in-house counsel and other in-house DOE related litigation costs.

NOTICE

Notice of Advice Letter (AL) 2085-E was made by publication in the Commission's Daily Calendar. SCE states that a copy of the advice letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

Advice Letter AL 2085-E was not protested.

DISCUSSION

Energy Division has reviewed SCE's AL 2085-E and believes it contains appropriate mechanisms for SCE to dispose of recovered costs and damages resulting from failure of DOE to accept delivery of and take title to spent nuclear fuel. The litigation has sufficient potential for ratepayer benefits and we encourage SCE to pursue it. In a similar vein, the Commission previously approved a Pacific Gas and Electric Company proposal for a DOE litigation balancing account. (See Resolution E-3941 adopted October 27, 2005.)

SCE and other SONGS owners' ratepayers have paid DOE \$390 million through the end of 2006 for accepting spent nuclear fuel.

Through energy rates, ratepayers have been paying the DOE \$0.001/kWh for a waste repository for SONGS' spent nuclear fuel. As of December 31, 2006, payments to DOE have been \$390,371,024 for SONGS' spent fuel. This amounts to \$73,931,056 for SONGS 1 and \$316,439,968 for SONGS 2 & 3 (100% share, nominal dollars).

The current SONGS ownership and percentage share of spent nuclear fuel liability is: SCE - 75.05%, San Diego Gas & Electric Company (SDG&E) - 20%, City of Riverside - 1.79%, City of Anaheim - 3.16%. Although SCE recently acquired Anaheim's ownership share (*see* Decision 06-11-025), Anaheim has retained its interest in all liabilities regarding spent nuclear fuel and its storage. SCE informs the Commission that all SONGS owners have agreed to pursue the DOE Spent Fuel Litigation.

The incremental litigation costs requested under SCE AL 2085-E are for external, non-SCE legal costs.

Incremental litigation costs include attorney's fees, deposition fees, document production services, and outside experts related to SCE's damages suit with the DOE regarding SONGS. In response to an Energy Division data request, SCE advises that its incremental litigation costs exclude costs internal to SCE, such as in-house counsel and litigation support. SCE represents that it expects to incur \$1.4 million in external litigation expenses, excluding trial costs. SCE has not yet prepared a budget for the litigation trial costs.

The DOELMA will record incremental litigation costs and proceeds.

The DOELMA will track and record incremental litigation costs and proceeds recovered through this litigation. The DOELMA will expire when the Commission has authorized the crediting or debiting of the balance to the proper mechanism to ensure the appropriate net benefits are returned to ratepayers through base rates associated with SONGS. This shall be done in a formal proceeding such as SCE's next general rate case, or another application as described below.

SCE should file an application for the disposition of the DOELMA balance.

SCE has proposed to file a formal application with the Commission to dispose of the net amount of the DOELMA. SCE states that it will also justify the reasonableness of incremental litigation costs recorded in the DOELMA. In this way, interested parties will have an opportunity to conduct a thorough review of the amounts recorded in the DOELMA. In a settlement agreement adopted by D.07-01-003 concerning the nuclear decommissioning trust funds, SCE and SDG&E have agreed to the following:

"SCE and SDG&E agree that if SCE and SDG&E, respectively, receive money from the DOE in settlement of their DOE spent fuel litigation within three years of the effective date of this Agreement, SCE and SDG&E will seek a favorable ruling from the IRS to deposit certain monies received from the DOE into their respective decommissioning trust accounts. After receiving a favorable ruling from the IRS, SCE and SDG&E will deposit the money received from the DOE (less external litigation costs) that is associated with funds required for work included in the decommissioning cost estimates (but not

money associated with current SONGS 2&3 operations or off-site storage of SONGS 1 used fuel at Morris, Illinois) into their respective appropriate decommissioning trust accounts. SCE and SDG&E will each file an Advice Letter within 120 days of the date of deposit of the funds into the decommissioning trusts to update their respective annual contributions accordingly.”

The Commission supports SCE’s initiative to recover funds from DOE on behalf of ratepayers. Therefore we allow SCE the opportunity to recover incremental litigation costs that it records in the DOLEMA after their review in a formal proceeding initiated by a SCE application. We expect the proceeds of the litigation to considerably exceed the incremental litigation costs such that there will be a benefit to ratepayers.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived for an uncontested matter in which the decision grants the relief requested.

The 30-day comment period for the draft of this resolution was reduced pursuant to Rule 14.6(c)(2) as the draft resolution grants SCE’s uncontested request filed in AL 2085-E. No comments were filed.

FINDINGS

1. SCE filed a complaint against the United States Department of Energy (DOE) in the Federal Court of Claims on January 29, 2004, alleging that DOE breached its contract with SCE under which DOE agreed to accept delivery of and take title to, the spent nuclear fuel from SONGS beginning on January 31, 1998.

2. SCE was required to enter into DOE contracts as a condition of its Nuclear Regulatory Commission licenses.
3. The federal framework applicable to all nuclear plants provides that the federal government shall establish a national repository (now planned to be located at Yucca Mountain in Nevada) for long-term storage of spent nuclear fuel.
4. The Federal Court of Claims has determined the DOE breached the spent fuel contracts with other utilities.
5. SCE and other SONGS' ratepayers have paid DOE \$390 million to take delivery of spent nuclear fuel through the end of 2006.
6. On January 4, 2007 SCE filed AL 2085-E proposing to establish the DOELMA to record incremental litigation costs associated with its claims against DOE.
7. Incremental litigation costs as described here are for external, non-SCE legal costs.
8. The DOE Litigation Memorandum Account should record incremental litigation costs and proceeds recovered through SCE's DOE litigation.
9. External litigation fees incurred for this litigation shall be deducted from the proceeds recovered.
10. SCE should be allowed to establish the DOELMA as proposed in AL 2085-E. SCE should file an application to review the disposition of the DOELMA balance.

THEREFORE IT IS ORDERED THAT:

1. The request of Southern California Edison to establish a DOE Litigation Memorandum Account as requested in Advice Letter 2085-E is approved.

2. SCE shall file a formal application to address the disposition of the DOELMA.
3. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on March 15, 2007.

STEVE LARSON
Executive Director

