

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

August 4, 2004

Agenda ID # 3802  
Alternate to Agenda ID # 3631  
Ratesetting  
August 19, 2004

TO: PARTIES OF RECORD IN APPLICATION 03-01-019

Enclosed is the Alternate Draft Decision of Commissioner Lynch to the Draft Decision of Administrative Law Judge (ALJ) Barnett, mailed to the parties on June 7, 2004.

When the Commission acts on the draft or alternate decision, it may adopt all or part of it as written, amend or modify it, or set aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Public Utilities Code Section 311(e) requires that an alternate to a draft decision be served on all parties, and be subject to public review and comment prior to a vote of the Commission. Rule 77.6(d) provides that comments on the alternate draft decision be filed at least seven days before the Commission meeting.

Comments on the alternate decision must be filed and served August 12, 2004. Reply comments are due August 16, 2004.

Pursuant to Rule 77.3 comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service. Please also provide an electronic copy of the comments and reply comments to Michael S. Campbell at [msc@cpuc.ca.gov](mailto:msc@cpuc.ca.gov).

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Angela K. Minkin, Chief  
Administrative Law Judge

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Enclosure

COM/LYN/msc/mel

**ALTERNATE DRAFT**

Agenda ID #3802

Alternate to Agenda ID # 3631

Ratesetting

Item #-- 8/19/2004

Decision ALTERNATE DRAFT DECISION OF COMMISSIONER LYNCH

(Mailed 8/4/2004)

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

Application of Southern California Edison Company (U 338 E) for Authority to Lower and Adjust Retail Electric Rates for All Customer Classes Upon Completion of Full Recovery of Procurement Related Obligations Account.

Application 03-01-019  
(Filed January 17, 2003;  
Petition Filed  
October 31, 2003)

**DECISION APPROVING THE  
PETITION OF VISALIA SENIOR HOUSING  
FOR MODIFICATION OF DECISION 03-07-029**

Petitioner, Visalia Senior Housing dba Town Meadows,<sup>1</sup> requests modification of Decision (D.) 03-07-029 to correct what it believes to be an unintended consequence of that decision. Petitioner asserts that the decision intended to eliminate the energy procurement surcharge and reduce rates for all customers, but that as a result of the decision a small group of Southern California Edison (SCE) customers – namely, low-income group living facilities on the California Alternate Rates for Energy Program (CARE) - actually are paying about 14 - 86% more under the new rates than they paid under

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<sup>1</sup> Petitioner is a California non-profit corporation that owns a low-income senior housing facility located in Visalia, California.

pre-surcharge rates.<sup>2</sup> Petitioner says this outcome is contrary to the Commission's goal of protecting low-income ratepayers from the consequences of the California energy crisis of 2000-2001 and the mandates of AB1X. Therefore, Petitioner requests the decision be modified to eliminate the rate increase that resulted for low-income group living facilities that are on CARE.

In early 2001, the Commission authorized rate surcharges to address the financial upheaval resulting from the energy crisis of 2000-2001. (D.01-03-082 and D.01-05-064) On October 5, 2001 the United States District Court approved a settlement between SCE and the Commission that, among other things, established settlement rates and new ratemaking mechanisms effective as of September 1, 2001 (the federal settlement).

On November 14, 2001, SCE filed Advice 1586-E to establish the Procurement Related Obligations Account (PROACT) and an associated ratemaking structure consistent with the federal settlement. SCE's federal settlement called for the rate surcharges to be removed once the balance in SCE's PROACT had been fully recovered. In Application (A.) 03-01-019, SCE sought authority to lower its retail electric rates by approximately \$1.25 billion after full recovery of its PROACT balance. The parties to the proceeding began settlement discussions that culminated in a duly noticed settlement conference on April 17, 2003, where the parties entered into a settlement agreement allocating the \$1.25 billion rate reduction among the various classes of customers.

In D.03-07-029, the Commission approved the settlement agreement and the new rates. In adopting the settlement agreement, the decision states that

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<sup>2</sup> This percentage increase refers only to the energy charge under the new rates. Demand and customer charges have not changed.

“[t]he Settlement Agreement avoids the cost and delay of further litigation and brings rate relief to customers in all rate groups.” (Decision at 12.) Petitioner claims that low-income non-profit group living facilities taking service under Schedule GS-2T that receive CARE rates have not been given rate relief, but instead have been subjected to energy charges that are approximately 14 – 86% more than the pre-settlement rates.

Under the pre-settlement rates, Petitioner took service under SCE’s Schedule GS-2T, a general service schedule applicable to customers with maximum demands of less than 500 kilowatts (kW). Because Petitioner qualified as a “nonprofit group living facility”<sup>3</sup> under SCE’s Tariff Preliminary Statement, Section 0.3.f., it received two significant rate discounts under the CARE program.

First, in accordance with D.01-05-064 and D.01-01-018, Petitioner was exempted from the surcharges that the Commission adopted in D.01-01-018 and D.01-03-082. Second, in accordance with D.01-06-010<sup>4</sup>, Petitioner received a 20% reduction off its otherwise applicable rates. This meant that the Petitioner’s 20% discount was applied to the rates that were being charged prior to adoption of the surcharges.

As a result of these CARE-related rate discounts, Petitioner paid an effective energy charge of less than \$.064/kWh for all of its electricity usage. This

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<sup>3</sup> Pub. Util. Code § 739.1(e) directs the Commission to include these “nonprofit group living facilities” in the Commission’s program of assistance to low-income customers if “the residents in these facilities substantially meet the commission’s low-income eligibility requirements and there is a feasible process for certifying that the assistance shall be used for the direct benefit . . . of the low-income residents in the facilities.”

<sup>4</sup> D.01-06-010 increased the CARE discount from 15% to 20%, and set the income eligibility levels for the CARE and Low-Income Energy Efficiency (LIEE) program at 175% of the federal poverty guideline.

effective energy charge is determined as follows: After surcharges the GS-2T energy charges were \$.10592 to \$.17880/kWh,<sup>5</sup> but a significant portion of those energy charges consisted of the surcharges from which Petitioner was exempt, leaving Petitioner responsible for \$.07952/kWh for all time-of-use periods. A further discount of 20% was applied to this amount to arrive at Petitioner's effective energy charge of \$.064/kWh for all time-of-use periods.

Petitioner claims that the post-settlement rates that are applicable to Petitioner, and which were adopted in D.03-07-029, are 14 – 86% higher than pre-settlement rates.<sup>6</sup> Under these new rates, the new energy charges for GS-2T customers range from \$.09101/kWh (winter off-peak) to \$.14863/kWh (summer on-peak). Unlike the case under the pre-settlement rates, there is no reduction in Petitioner's post-settlement rates on the basis of Petitioner's exemption from the surcharges because the post-settlement rates already reflect the Commission's elimination of the surcharges. However, since Petitioner qualifies for CARE, 20% is deducted from the energy charges (just as it was under the pre-settlement rates), which reduces the effective rate to between \$.073/kWh (off-peak winter) and \$.119/kWh (summer on-peak).

Petitioner contends that it (and other CARE-qualifying low-income group living facilities) is paying higher rates under the post-settlement regime than it

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<sup>5</sup> The actual charge would depend on the time of day and year that the energy was used.

<sup>6</sup> The amount of the comparative increase depends on the customer's particular time-of-use profile.

was under the pre-settlement regime.<sup>7</sup> Pre-settlement rates were \$.064/kWh for all usage, while post-settlement rates range from \$.073/kWh (off-peak winter) to \$.119/kWh (summer on-peak). This rate increase brought about by D.03-07-029 affects a small group of customers, *i.e.*, those customers who, like Petitioner, are CARE-qualifying non-profit group living facilities that are served on a GS rate schedule. All other customers' rates have been reduced by the post-settlement rates. The settlement agreement adopted by D.03-07-029 sets forth a comparison of pre- and post-settlement rates, and shows that the GS-2 post-settlement rates were 14 – 16% lower than the GS-2 pre-settlement rates.<sup>8</sup> However, in comparing pre- and post-settlement rates, the settlement agreement failed to consider the situation where the GS-2 customer is also a CARE recipient, as in Petitioner's case. In such a case, the pre-settlement rates are not \$.10592/kWh to \$.17880/kWh as depicted in the settlement agreement. Instead, the exemption from the surcharges and the 20% discount result in a pre-settlement rate of \$.064/kWh for these customers. Consequently, while the post-settlement rates were reduced for GS customers who did not qualify for CARE, they produced a significant increase for customers who did qualify for CARE.

Petitioner observes that D.03-07-029 did not increase the rates of domestic customers. Those rates had been exempt from the surcharges and had also received the benefit of the 20% CARE discount, where appropriate. As a result,

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<sup>7</sup> Petitioner alleges that as a result of D.03-07-029 its electricity rates have increased approximately 23% or about \$14,500 per year. SCE does not dispute this. There is no evidence regarding the total increased costs to customers similarly situated.

<sup>8</sup> GS-2 average pre-settlement rate 15.268¢/kWh; GS-2 average post-settlement rate 13.314¢/kWh; a difference of 12.8%. These rates are total rates. (D.03-07-029, p. 13.)

residential CARE customers' post-settlement rates were the same as pre-settlement. CARE eligible ratepayers on the GS-2 schedule were not so fortunate.

SCE argues that the Commission should deny the petition because Petitioner's current post-PROACT electric rate fully complies with the CARE discount adopted in D.01-06-010 and applied in D.03-07-029. Granting the petition and restoring those customers to their rates in effect prior to D.03-07-029, will afford those customers an effective discount of some 35-40% off the otherwise applicable tariff. SCE claims that granting the petition will merely postpone for another day the resolution of the appropriate rate level to which the CARE discount applies.

CARE customers, including Petitioner, were exempted from the imposition of the 1 and 3 cent per kWh surcharges when they were imposed in D.01-03-082 and D.01-05-064. Commercial facilities eligible for the CARE discount taking service under the GS-2 schedule continued to be charged a rate that was discounted 20% off the non-surcharged (or pre-surcharged) rate. Because of the effect of this exemption, these CARE customers received an effective discount of 40-50% compared to non-CARE customers on the same tariff.

D.03-07-029 approved SCE's \$1.25 billion rate decrease and returned to bottoms-up rate design. It did not return all customers to pre-surcharge rate levels, given the need to provide for recovery of Department of Water Resources (DWR) costs. Surcharges as such were eliminated, and SCE's post-PROACT rate design includes charges for recovery of both SCE and DWR generation costs. In D.03-07-029, the effective residential CARE rate was not changed. Commercial customers, including those taking service on GS-1 and GS-2 tariffs, saw their

rates decline by 18.3 and 12.8 percent, respectively, from their surcharged levels. Discounting the GS-2 rate by the 20% required by Pub. Util. Code § 739.1 yields a CARE-discounted rate that is higher than the discounted rate Petitioner previously paid, which was a discount off a rate which excluded adopted surcharges.

SCE argues that granting the petition so as to return Petitioner to its prior discounted rate through operation of the “no increase” language requested, would produce a rate discounted some 35 – 40% off the otherwise applicable GS-2 rate, as much as double the discount the Commission requires in a CARE rate. Moreover, SCE adds, granting the petition will give the Commission this same problem to address once again in Phase 2 of SCE’s General Rate Case (GRC). For there the Commission will decide the proper allocation of SCE’s revenue requirement across all rate groups, something SCE proposes should occur on a cost-causation basis, with each rate group (prior to the CARE discount) bearing its share of the costs of SCE’s service.<sup>9</sup> D.01-06-010 requires the Commission to provide for a CARE rate discounted 20% off the rate calculated in this cost-based manner. SCE claims that if the Commission grants this petition, it will be required to reverse its action when it decides Phase 2 of SCE’s GRC.

### **Discussion**

Petitioner has couched its petition in terms of reductions in the energy charge of the GS-2 rate while SCE has responded in terms of the total rate, conceding the basic factual thrust of the petition. Both have addressed the

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<sup>9</sup> Indeed, in the rate design phase of its GRC, SCE has proposed tariff changes that would reduce the rates for large consumers, while increasing rates for smaller customers.

central issue of whether Petitioner is entitled to its pre-settlement rate less 20%, or must pay the post-settlement rate less 20%.

The rates in D.03-07-029 were the result of a duly noticed settlement pursuant to Rule 51 of the Commission's Rules of Procedure. As entities familiar with utility ratemaking know, setting rates is highly complex and settlements involving highly complex ratemaking may have unintended consequences to certain classes of ratepayers. In this instance, it is clear that the increase in Visalia's rates (and rates of similarly situated CARE-eligible non-profit group living facilities) were an unintended consequence of the PROACT settlement. We should not uphold this settlement in the face of the facts.

It was never the intent of the settling parties to establish rates that would increase tariffs for qualified CARE customers, including CARE-eligible non-profit group living facilities.

We approve the petitioners request to modify SCE's rates to a level that is no higher than the pre-PROACT settlement tariffed rates. We order SCE to provide tariff revisions to the Commission within 15 days of this order. Any undercollections that would result to this change in tariffs are to be tracked in a balancing account to be considered in establishing SCE's rates in the ongoing Phase II of its General Rate Case (GRC).

The GRC is the primary vehicle for setting SCE's rates, and should examine this issue of CARE-eligible non-profit group living facilities to ensure that CARE customers, and the entities that serve them, are not unintentionally harmed in our ratemaking processes.

### **Comments on Alternate Draft Decision**

The alternate draft decision of Commissioner Lynch in this matter was mailed to the parties in accordance with Section 311(e)(1) of the Public Utilities

Code and Rule 77.6(d) of the Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_.

### **Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. D.03-07-029 approved SCE's \$1.25 billion rate decrease and returned to bottoms-up rate design. It did not return all customers to pre-surcharge rate levels, given the need to provide for recovery of DWR costs.

2. Surcharges were eliminated, and SCE's post-PROACT rate design includes charges for recovery of both SCE and DWR generation costs.

3. In D.03-07-029, the effective domestic CARE rate was not changed.

4. Customers taking service on GS-1 and GS-2 tariffs saw their rates decline by 18.3 and 12.8 percent, respectively, from their surcharged levels.

5. Discounting the GS-2 rate by the 20% required by Pub. Util. Code § 739.1 yields a CARE-discounted rate that is higher than the discounted rate Petitioner previously paid, which was a discount off a rate which excluded adopted surcharges.

6. It was not the intent of the settling parties to cause the rates of CARE-eligible non-profit group living facilities to increase.

### **Conclusions of Law**

1. The petition should be adopted.

**O R D E R**

**IT IS ORDERED** that:

1. The petition of Visalia Senior Housing dba Town Meadows to modify Decision 03-07-029 is adopted.
2. SCE shall file revised tariff sheets with the Energy Division within 15 days of this order, to set the rates of the CARE-eligible non-profit group living facilities to levels no higher than they were paying prior to the PROACT settlement.
3. SCE shall establish a balancing account to track any revenue shortfalls that may occur because of the tariff change to the CARE-eligible non-profit group living facilities. The funds in the balancing account shall be considered for recovery Phase II of SCE's GRC

4.

.This proceeding is closed.

This order is effective today.

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

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties of which an electronic mail address has been provided; this day served a true copy of the original attached Alternate Draft Decision of Commissioner Lynch on all parties of record for proceeding A.03-01-019 or their attorneys of record.

Dated August 4, 2004, at San Francisco, California.

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Ernesto Melendez

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.