



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Application of Southern California Edison Company ( U 338-E) for a Commission Finding that its Procurement-Related and Other Operations for the Record Period January 1 through December 31, 2008 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 \$35.796 million recorded in Four Memorandum Accounts.

A. 09-04-002  
(Filed on April 1, 2009)

## **PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES**

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May 6, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company ( U 338-E) for a Commission Finding that its Procurement-Related and Other Operations for the Record Period January 1 through December 31, 2008 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 \$35.796 million recorded in Four Memorandum Accounts.

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**PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES**

**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 of Southern California Edison (“SCE”) application and its supporting testimony, (A.)09-04-02, calendared on April 6, 2009. SCE’s Application requests a Commission finding that SCE made appropriate entries to its Energy Resource Recovery Account (“ERRA”) balancing account regarding its contract administration, economic dispatch of electric resources and Utility Retained Generation (“URG”) fuel procurement activities, among other things, for the record period January 1 through December 31, 2008 and that it complied with SCE’s Commission approved Long Term Procurement Plan (“LTPP”) and the requirements set forth in the Commission’s procurement related decisions. SCE also seeks recovery for 12 other, non-ERRA accounts.

**II. ISSUES ANTICIPATED**

DRA has already begun a massive discovery effort and intends to conduct further discovery and review of SCE’s application and supporting testimony.

Once complete, DRA may opt to file testimony contesting all or portions of the application or may issue a report outlining its discovery and review without submitting testimony via either a letter to the Administrative Law Judge or by way of an opening brief. While it is still too early to identify specific issues, DRA anticipates issues will arise regarding the following:

- whether outages and the fuel procurement activities for SCE’s URG and allocated California Department of Water Resources contracts were reasonable;
- whether SCE administers and manages the Qualified Facility (“QF”) and non-QF contracts in accordance with the contract provisions, uses prudent auditing practices and follows Commission guidelines;
- whether SCE achieved least cost dispatch of its energy resources, including day-ahead and hour-ahead transactions;
- whether the entries in the ERRRA balancing account and other balancing and memorandum accounts are reasonable;
- whether the inclusion in this ERRRA application of additional, non-ERRRA annual balancing accounts is reasonable; and,
- whether the instant application was properly served pursuant to Commission Rules of Practice and Procedure, Rule 3.2.

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.

SCE is also seeking rate recovery for a variety of other, non-ERRRA annual accounts totaling \$35.796 million. These include (1) the Department of Energy Litigation Memorandum Account (DOELMA), (2) the Market Redesign and Technology Upgrade Memorandum Account (MRTUMA), (3) the New System Generation Memorandum Account (NSGMA), and (4) the Project Development Division Memorandum Account (PDDMA). SCE has included some of these non-

ERRA annual accounts in past ERRA Applications and is adding some additional non-ERRA annual accounts to this Application for the first time. In addition, SCE is seeking Commission approval on the operation of eight (8) other various annual regulatory accounts (i.e., balancing and memorandum accounts) which require audit and review to ensure that the entries recorded in the accounts are accurate and consistent with Commission decisions.

All 12 annual non-ERRA accounts are listed in the following table (SCE ERRA Confidential Testimony, Chapter XII, mimeo page 62):

*Table XII-22*

LINE NO.	ACCOUNT	REVIEW	RECOVERY/ REFUND	REQUESTED RECOVERY AMT 1/	ELIMINATION OF ACCOUNT
1.	ERRA	YES			
2.	BRRBA	YES			
3.	NDAM	YES			
4.	PPPAM	YES			
5.	CARE BA	YES			
	Energy Settlement MA and Litigation Costs				
6.	Tracking Account	YES			
7.	AMIMA and AMIBA/SmartConnect™ (See Chapter XIV)	YES			
8.	Demand Response Program BA	YES			
9.	Department of Energy Litigation MA	YES	YES	\$0.265 million	NA
10.	Market Redesign and Technology Upgrade MA	YES	YES	\$5.160 million	NA
11.	New System Generation MA	YES	YES	\$26.051 million	NA 2/
12.	Project Development Division MA	YES	YES	\$3.910 million	NA
13.	Results Sharing MA	YES			
14.	Mohave BA	NO			

1/ Does not include FF&U.  
2/ Elimination of the NSGMA was requested in Advice Letter 2284-E, which was approved by the Commission on January 22, 2009, with an effective date of January 16, 2009.

The other two major Investor Owned Utilities (IOUs) address similar non-ERRA annual accounts in a variety of different ways. Some of these annual accounts have been included in the ERRA compliance filings by the other IOUs, while others have not been included at all. One IOU has indicated that it will include a portion of these non-ERRA annual account reviews in its ERRA Forecast filing (as opposed to its ERRA Compliance filing).

DRA seeks clarification regarding the appropriateness of including these non-ERRA annual accounts in the ERRA proceeding and urges that a consistent mechanism or approach be adopted. Under the direction of Public Utilities Code

Section 454.5, subdivision (d)(3), in D.02-10-062 the Commission established ERRA as the balancing account to track actual recorded energy procurement costs against the authorized energy procurement costs in the revenue requirement. (D.05-04-036, p. 7; D.02-10-062, p. 61.) Section 454.5(d)(3) states, in relevant part,

Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or a combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan. The commission shall review the power procurement balancing accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to promptly amortize a balancing account, according to a schedule determined by the commission. (P.U. Code § 454.5, subd. (d)(3).)

The Commission has narrowly defined the scope of the ERRA review. Since its inception, review of ERRA remains limited in scope to the tracking of energy procurement-related costs, including contract administration,<sup>1</sup> Utility Retained Generation (URG) fuel costs, and least cost dispatch.<sup>2</sup> Other expenses, such as those addressing operation and maintenance expenses and capital costs are addressed in the utilities' general rate case proceedings, and were largely considered outside the scope of ERRA. The Commission clarified this in D.05-11-007, in Finding of Fact #10: "review of URG operations, maintenance and capital costs is specifically excluded from and outside the scope of ERRA

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<sup>1</sup> Under the purview of Standard of Conduct 4 (SOC 4), "Prudent contract administration includes administration of all contracts within the terms and conditions of those contracts, to include dispatching dispatchable contracts when it is most economical to do so. In administering contracts, the utilities have the responsibility to dispose of economic long power and to purchase economic short power in a manner that minimizes ratepayer costs." (D.02-12-074, p. 54.)

<sup>2</sup> "Least cost dispatch refers to a situation in which the most cost-effective mix of total resources is used, thereby minimizing the cost of delivering electric services. The utility bears the burden of proving compliance with the standard set forth in its plan." (D.05-04-036, p. 14; D.03-06-076, pp. 46-47; D.02-12-074, p. 54.)

proceedings pursuant to D.02-10-062.”<sup>3</sup> In fact, in A.07-04-001, the Commission refused to include review of the reasonableness of SCE’s entries in the Mohave Balancing Account and related capital expenditures.<sup>4</sup>

In addition to its limited scope, the ERRA “reasonableness review” is a misnomer. The Commission is prohibited by statute from conducting an after-the-fact reasonableness review of an electrical corporation’s actions in compliance with an approved procurement plan.<sup>5</sup> Thus, the Commission has characterized ERRA review as mainly that of compliance, and not a traditional reasonableness review.<sup>6</sup> The utilities often reference their ERRA review applications as “compliance filings.”<sup>7</sup> Revenue requirements that require a reasonableness review should, thus, not be in the ERRA proceeding.

The instant Application, however, includes annual non-ERRA accounts that are not simple ‘pass through’ accounts, but require reasonableness review. Some of these accounts are included in other IOUs ERRA Applications, while others are not. This, in turn, leads to inconsistencies regarding how and who addresses the review of the annual non-ERRA accounts.

One possible method for addressing these inconsistencies would be to bifurcate the annual non-ERRA accounts from the pure ERRA issues and develop a separate track or phase of the instant proceeding. DRA’s preferred approach would be to require that all annual non-ERRA accounts be submitted together as one filing separate from the ERRA filing, to be filed by all three IOUs at the same time, and then consolidated by the Commission. The value of such an application that addresses all annual non-ERRA accounts, such as the Market Redesign and Technology Upgrade Memorandum Account (MRTUMA), would be that the

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<sup>3</sup> D.05-11-007, Finding of Fact 10.

<sup>4</sup> See A.07-04-001 Scoping Memo, June 4, 2007, p. 2.

<sup>5</sup> P.U. Code § 454.5(d)(2).

<sup>6</sup> D.02-12-074; see also D.05-11-054, p. 13.

<sup>7</sup> See e.g., captions of A.06-02-016 and A.07-02-014.

analysis of the expenditures could be performed across all IOUs. In other words, a comparison of how all of the IOUs are addressing a particular account would be easier and more useful if the analysis of those accounts were done contemporaneously.

### **III. SCHEDULE**

DRA agrees with the preliminary determination that hearings be scheduled in this proceeding.

DRA reviewed SCE's proposed schedule, and proposes slight modifications, as follows:

Application Calendared	April 6, 2009
Protest Filed	May 6, 2009
Prehearing Conference	Late May, 2009
DRA/Intervenor Testimony	August 18, 2009
Utility Reply Testimony	September 8, 2009
Hearings (if necessary)	September 23-24, 2009
Opening Briefs	To be determined
Reply Briefs	To be determined
Proposed Decision (PD)	November 13, 2009
Comments on PD	To be determined
Reply Comments on PD	To be determined
Final Decision	December 2009

DRA's modifications to SCE's proposed schedule are reasonable and would not prejudice SCE's request for a final Commission decision by the end of the year. As is typical with each ERRA 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. However, given that SCE's recent ERRA compliance review applications have not required hearings, DRA is hopeful that the schedule can be further accelerated if and when the parties make a determination that hearings may not be necessary or the scope of hearing may be limited.

Respectfully submitted,

/s/ MITCHELL SHAPSON

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May 6, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the “**PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES**” on the service list for **A.09-04-002** by serving a copy to each party by electronic mail, or by mailing a properly addressed copy by first-class mail with postage prepaid to each party unable to accept service by electronic mail.

Executed on May 6th, 2009, at San Francisco, California.

/s/ HALINA MARCINKOWSKI

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Halina Marcinkowski

**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 and/or e-mail 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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