

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, 2011 Complied with its Adopted Procurement Plan; for Verification of its Entries in the Energy Resource Recovery Account and Other Regulatory Accounts; and for Refund of \$26.810 Million Recorded in Six Memorandum Accounts.

Application 12-04-001  
(Filed April 2, 2012)

**PROTEST  
OF THE DIVISION OF RATEPAYER ADVOCATES**

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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, 2011 Complied with its Adopted Procurement Plan; for Verification of its Entries in the Energy Resource Recovery Account and Other Regulatory Accounts; and for Refund of \$26.810 Million Recorded in Six 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.)12-04-001, that was filed on April 2, 2012 and appeared on the daily calendar on April 5, 2012. SCE’s Application requests a Commission finding that: (1) its entries to its Energy Resource Recovery Account (ERRA) for calendar year 2011 (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.

In this application, SCE requests Commission's approval of the amounts collected in the ERRA account as of December 31, 2011. The \$392 million over collection amount is the sum of the \$344,685 million over collection on December 31, 2010, \$3.321 billion ERRA expenses in 2011, \$3.354 billion ERRA revenues in 2011, and \$14.75 million for other miscellaneous adjustments, such as interest and revenue and expense transfers.

SCE's application also seeks approval to refund \$26.810 million (including franchise fees and uncollectibles) for expenses associated with net over-collection in the following six additional Commission-authorized regulatory Memorandum Accounts:

- i) Department of Energy Litigation MA (DOELMA) [\$110.405 million over-collection of which \$92.804 million would be returned to ratepayers];
- ii) Fire Hazard Prevention MA (FHPMA) [24.329 million under-collection];
- iii) Hydrogen Energy California MA (HECAMA) [\$13.019 million under-collection];
- iv) Litigation Cost Tracking Account (LCTA) [\$5.483 million under-collection];
- v) Project Development Division Memorandum Account (PDDMA) [\$3.124 million under-collection]; and
- vi) Market Redesign and Technology Upgrade Memorandum Account (MRTUMA) [\$20.346 million under-collection];

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]

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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.

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> However, 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> 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.”

## **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

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<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).

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

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 that occurred in California at the beginning of this century. 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>

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>

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<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.

<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).

## **B. Issues Anticipated**

### **1. 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.

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 Department of Energy Litigation MA (DOELMA) are reasonable and whether SCE has met its burden of proof regarding its claim for cost recovery associated with this account;
- whether the entries in the Fire Hazard Prevention MA (FHPMA) are reasonable and whether SCE has met its burden of proof regarding its claim for cost recovery associated with this account;
- whether the entries in the Hydrogen Energy California MA (HECAMA) are reasonable and whether SCE has met its burden of proof regarding its claim for cost recovery associated with this account;
- whether the entries in the Litigation Cost Tracking Account (LCTA) 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 this account;
- 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 5, 2012
Protest Filed	May 7, 2012
Prehearing Conference	end of May, 2012
DRA/Intervenor Testimony	early October, 2012
SCE Reply Testimony	early November, 2012
Hearings (if necessary)	mid-November, 2012
Opening Briefs	mid-December, 2012
Reply Briefs	early January, 2013

DRA, however, reserves the right to request an extension of this proposed schedule should future events warrant it. SCE has, for example, objected to some of DRA's 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 timely and complete responses to its Data Requests without these blanket objections. In addition, SCE did not respond to any of the MDR questions on the due date of April 16, 2012. SCE did respond to some questions on April 19, 2012, and some others on April 30, 2012 and May 4, 2012. However, we are still awaiting responses to about 40 questions that were provided by DRA to SCE before SCE filed its application. Because of the delay in obtaining relevant information from SCE, 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 may 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.

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Respectfully submitted,

/s/ ROBERT HAGA

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