Decision **PROPOSED DECISION OF ALJ BARNETT** (Mailed 4/7/2009)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's Own Motion into the Practices of Southern California Edison Company to Determine the Violations of the Laws, Rules, and Regulations Governing Performance Based Ratemaking, its Monitoring and Reporting to the Commission, Refunds to Customers and Other Relief, and Future Performance Based Ratemaking for this Utility.	Investigation 06-06-014 (Filed June 15, 2006)

DECISION ADOPTING THE PERFORMANCE-BASED RATEMAKING PHASE 2 SETTLEMENT AGREEMENT

1. Summary

Southern California Edison Company (SCE), on behalf of itself and the Settling Parties,[1] filed a motion which requests that the Commission adopt and find reasonable the Southern California Edison Company, Performance-Based Ratemaking (PBR) Phase 2 Settlement Agreement (PBR Phase 2 Settlement Agreement or Settlement Agreement) which is appended as Attachment A.

This investigation was divided into two phases. Phase 1 covered issues related to customer satisfaction, employee safety, and results sharing; was the

[1] SCE; the Consumer Protection and Safety Division (CPSD); the Division of Ratepayer Advocates; and the Coalition of California Utility Employees are collectively referred to as the Settling Parties.

subject of hearings in November 2006; and culminated in Decision 08-09-038 Phase 2 covered four other issues:

> (1) investigate system reliability and customer satisfaction for call centers, field delivery other than meter reading, and in-person services; (2) whether the Commission should permit SCE to continue PBR and, if so, under what conditions and modifications; (3) investigate the total costs that CPSD and its legal representatives have incurred because of CPSD's investigation and discuss whether the costs are recoverable from SCE; and (4) whether the Commission can reward a whistleblower.

The Settlement Agreement resolves all Phase 2 issues. The primary provisions of the Settlement Agreement are:

(1) SCE shall credit $4.0 million to the distribution subaccount of SCE's existing Base Revenue Requirement Balancing Account (BRRBA). Ratepayers will receive the credit as a reduction to SCE's distribution rates when the BRRBA is amortized in rates; (2) SCE shall forgo its claim for a net system reliability reward of $2 million, which is comprised of a reward of $5 million for Frequency in 2001 and a penalty of $3 million for average customer minutes of interruption in 2003; and (3) SCE agrees that it will not propose any PBR customer satisfaction or employee safety shareholder incentive mechanism before the completion of its 2015 General Rate Case cycle.

2. Background

In Decision (D.) 95-12-063, as modified by D.96-01-009, the Commission introduced PBR as an alternative to the prevailing model of cost-of-service regulation of the regulated investor owned utilities. We believed existing cost-of-service regulation had become too complex to allow us to regulate utilities effectively. Our goal was to have a regulatory process that encourages

utilities to focus on their performance, reduce operational costs, increase service quality, and improve productivity. At the same time, we had to ensure that safety, quality of service, and reliability were not compromised. We believed that PBR could accomplish those objectives by providing clear signals to utility managers with respect to their business decisions and by helping them make the transition from a tightly regulated structure to one that is more competitive. Under PBR, utility performance is measured against established benchmarks. Superior performance, above the benchmark, would receive financial rewards, and poor performance would result in financial penalties to the shareholders. By providing financial incentives to utilities, we expected they would be encouraged to operate more efficiently, reliably, and safely to maximize their profits. We wanted to seek new ways to reduce regulatory interference with management decisions and to allow utilities more flexibility in their day-to-day operations. (D.08-09-038, pp. 2-3.)

SCE's PBR mechanism applied to the period from 1997 through 2003 with respect to three performance incentive mechanisms: (1) customer satisfaction, which measures customer satisfaction with transactions with SCE via a survey; (2) system reliability, measured as average customer minutes of interruption (ACMI) and frequency of interruptions (Frequency); and (3) employee health and safety, measured as the number of first aid incidents and Occupational Safety and Health Administration (OSHA) recordable lost time incidents per 200,000 employee hours worked. In addition to these three performance mechanisms, among other things, SCE's PBR mechanism included a cost of

capital adjustment mechanism and a net revenue sharing mechanism.[2] In D.04-07-022, the Commission adopted successor incentive mechanisms for employee safety, measured by OSHA-recordable lost time incidents per 200,000 employee hours worked, and system reliability, measured by System Average Interruption Duration Index, System Average Interruption Frequency Index, and Momentary Average Interruption Frequency Index. These incentives applied to SCE's results in 2004 and 2005 when SCE no longer operated under a comprehensive PBR ratemaking mechanism.

SCE received information from an anonymous informant or informants two times in 2003 regarding wrongdoing related to the customer satisfaction surveys that applied to the Planning organization, which was one of four components that were factored into the PBR overall customer satisfaction results. After conducting an investigation of the Planning organization, SCE conducted investigations of all four components of PBR customer satisfaction results. SCE later extended its investigation to include the PBR employee health and safety and system reliability mechanisms. SCE provided its internal investigative reports to the Commission for customer satisfaction (dated June 24, 2004), employee health and safety (dated December 3, 2004), and system reliability (dated February 28, 2005).

The CPSD initiated an investigation on behalf of the Commission. On June 15, 2006, the Commission issued Order Instituting Investigation 06-06-014 (PBR OII), ordering an inquiry into the three PBR metrics that were the subject of SCE's internal investigative reports. The OII was split into two phases.

---

[2] The revenue sharing mechanism applied through May 20, 2003, when rates established by D.04-07-022, for SCE's 2003 General Rate Case, were made effective.

Phase 1 covered issues related to customer satisfaction, employee safety, and results sharing; was the subject of hearings in November 2006; and was submitted when reply briefs were filed on February 14, 2007.

Pending the outcome of Phase 1, a procedural schedule for Phase 2 was established. During 2007, CPSD conducted discovery related to SCE's system reliability incentive mechanism. In accordance with the Phase 2 schedule, on September 21, 2007, SCE served its Phase 2 prepared testimony. In its testimony, SCE asserted that its system reliability reported results for ACMI and Frequency were reliable.[3]

On October 1, 2007, the Commission issued the Presiding Officer's Decision (POD) on Phase 1 issues. Appeals of the POD were filed by SCE, CPSD, and the Greenlining Institute. The procedural schedule for Phase 2 was suspended pending the outcome of the appeals of the POD. On September 23, 2008, the Commission issued D.08-09-038 (the Phase 1 Decision), which addressed the appeals of the POD and resolved issues related to the PBR customer satisfaction, PBR employee health and safety, and results sharing. The Phase 1 Decision ordered SCE to:

- Refund with interest to ratepayers all $28 million PBR customer satisfaction rewards SCE had collected for the period 1997 through 2000 and to forgo recovery of $20 million in rewards that SCE had calculated or requested for the period 2001 through 2003.
- Refund with interest to ratepayers all $20 million in PBR employee health and safety rewards SCE had collected for the period 1997 through 2000 and to forgo $15 million in rewards

[3] SCE's February 28, 2005 "PBR System Reliability Investigation Report" has previously been included in the record for Phase 1 as Exhibit 14.

that SCE had requested or calculated for the period 2001 through 2003.

- Refund with interest to ratepayers results sharing revenues of $32.714 million that SCE had collected subject-to-refund pursuant to D.04-07-022.
- Pay a fine of $30 million to the General Fund of California.[4]

Following the issuance of the Phase 1 decision,[5] Administrative Law Judge (ALJ) Barnett issued an October 8, 2008 ruling that listed remaining issues for consideration in Phase 2 of the OII. The ruling listed four issues: (1) system reliability and customer satisfaction for call centers, field delivery other than meter reading, and in-person services, (2) whether the Commission should permit SCE to continue PBR and, if so, under what conditions and modifications, (3) investigate the total costs that CPSD and its legal representatives have incurred because of CPSD's investigation and discuss whether the costs are recoverable from SCE, and (4) whether the Commission can reward a whistleblower.[6]

On December 11, 2008, SCE provided notice to all parties of a telephonic settlement conference to be held on December 18, 2008. The following parties participated in the settlement conference: SCE, CPSD, the Division of Ratepayer Advocates (DRA), Pacific Gas and Electric Company, San Diego Gas & Electric Company, and the Coalition of California Utility Employees. SCE and the Settling Parties executed this Settlement Agreement on or after January 12, 2009.

---

[4] D.08-09-038, Ordering Paragraphs 1 – 3, at 141.

[5] No party filed an application for rehearing of the Phase 1 Decision.

[6] Administrative Law Judge's Ruling Settling Phase 2 Prehearing Conference for October 31, 2008, pp. 1 - 2, October 8, 2008.

3. Summary of the Settlement Agreement

The Settlement Agreement resolves all PBR OII Phase 2 issues. The primary provisions of the Settlement Agreement are summarized below.

3.1. Ratepayer Credit

Within 30 days after Commission approval of this Agreement, SCE shall credit $4.0 million to the distribution subaccount of SCE's existing BRRBA. Ratepayers will receive the credit as a reduction to SCE's distribution rates when the BRRBA is amortized in rates.

3.2. System Reliability

The status of PBR system reliability incentives based on SCE's requests is that SCE has recovered $8.0 million for the period 1997 through 2000 and has requested or calculated a net reward of $2.0 million for the period 2001 through 2003 as follows:

PBR System Reliability Results (Maximum incentive $18M/year for ACMI and Frequency)							
	1997	1998	1999	2000	2001	2002	2003
ACMI							(3.0)
Frequency		2.0	2.0	4.0	5.0		
	$8 million rewards recovered from ratepayers				Net $2 million reward pending		

The PBR system reliability rewards SCE received for the period 1997 through 2000 shall not be affected by the Settlement Agreement. For the period 2001 through 2003, SCE shall forgo its claim for a net reward of $2 million, which

is comprised of a reward of $5 million for Frequency in 2001 and a penalty of $3 million for ACMI in 2003.[7]

3.3. Conditions on Future SCE PBR Mechanisms

SCE agrees that it will not propose any PBR customer satisfaction or employee safety shareholder incentive mechanism before the completion of its 2015 General Rate Case (GRC) cycle. This moratorium is limited to SCE proposals for a mechanism whereby ratepayers would be obligated to make payments to SCE if a specified performance metric was achieved or a mechanism whereby SCE would be obligated to make payments to ratepayers if a specified performance metric was not achieved.

3.4. Investigation Costs of CPSD

The OII raised the question of whether CPSD's investigation costs are recoverable from SCE. The Settlement Agreement does not address this question directly but, rather, subsumes it in Paragraph 5 which states:

---

7 SCE had filed annual advice letters for PBR results for 2001 and 2002 in Advice Letters (AL) 1608-E-B and AL 1697-E-A. However, SCE had not filed an advice letter regarding PBR results for 2003 pending the outcome of this OII. As reported in AL 2276-E, D.08-09-038 required SCE to refund with interest all the incentive amounts SCE had collected for customer satisfaction and employee health and safety for the period 1997 through 2000. With respect to 2001 and 2002, D.08-09-038 ordered SCE to forgo all rewards, and therefore the amounts SCE had previously requested for customer satisfaction and employee health and safety rewards for 2001 and 2002 have been forgone. SCE has advised the Energy Division of these impacts on SCE's pending AL 1608-E-B and AL 1697-E-A. The PBR Phase 2 Settlement Agreement will also affect SCE's pending PBR system reliability results reported for 2001 and 2002, and the calculated result for 2003 as described in this paragraph. Upon Commission approval of this Settlement Agreement, SCE will advise the Energy Division that it should resolve all remaining requests in SCE's pending PBR advice letters unaffected by the PBR OII and SCE will file an advice letter for 2003.

5. Final Resolution of Phase 2 Issues

> SCE's payment of the Ratepayer Credit resolves all outstanding monetary claims of or against SCE related in any way to the subject matter of the OII. It is the intent and agreement of the Settling Parties that the provisions of Paragraph 4 also resolve all issues raised in ALJ Barnett's October 8, 2008 ruling and that the OII be closed upon Commission approval of this Agreement.

Our review of the record shows that CPSD's involvement was extensive, exhaustive, and expensive. The record does not place a dollar figure on the cost of CPSD's participation, but there is no doubt of its magnitude. Nevertheless, we will not second guess CPSD's decision to forgo recovery of its costs. It is sufficient that the ratepayers benefit substantially from this Settlement.

3.5. Whistleblower Compensation

No whistleblower compensation shall be awarded in connection with this PBR OII. We may wish to consider the provision of whistleblower compensation as a condition of a future PBR authorization.

4. Request for Adoption of the Settlement Agreement

This Settlement Agreement is submitted pursuant to Rule 12.1 et seq. of the Commission's Rules of Practice and Procedure (Rules). The Settling Parties assert that the Settlement Agreement is consistent with Commission decisions on settlements which express the strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record.[8] This policy supports many worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk

[8] *See, e.g.,* D.88-12-083 (30 CPUC2d 189, 221-223) and D.91-05-029 (40 CPUC2d 301, 326).

that litigation will produce unacceptable results.[9] As long as a settlement taken as a whole is reasonable in light of the record, consistent with law, and in the public interest it should be adopted.

The general criteria for approval of settlements are stated in Rule 12.1(d) as follows:

> The Commission will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest.[10]

The Settlement Agreement meets the criteria for a settlement pursuant to Rule 12.1(d), as discussed below.

4.1. The Settlement Is Reasonable In Light of the Record

The prepared testimony, the Settlement Agreement itself, and the Settling Parties' motion contain the information necessary for the Commission to find the Settlement Agreement reasonable in light of the record. Prior to the settlement parties conducted discovery, and SCE served testimony on the issues related to system reliability. The prepared testimony and related exhibits will be made part of the Commission's record of this proceeding. While only SCE has served its testimony, the other parties have had the opportunity to review and assess SCE's litigation positions and their potential responses to SCE.

---

[9] D.92-12-019, 46 CPUC2d 538, 553.

[10] See also, Re San Diego Gas & Electric Company, (D.90-08-068), 37 CPUC2d 346, 360: "[S]ettlements brought to this Commission for review are not simply the resolution of private disputes, such as those that may be taken to a civil court. The public interest and the interest of ratepayers must also be taken into account and the Commission's duty is to protect those interests."

The prepared testimony of the parties, comprising the record for this proceeding, contains sufficient information for the Commission to judge the reasonableness of the Settlement Agreement. The Settlement Agreement represents a reasonable compromise of the parties' positions and is reasonable in light of the entire record of this proceeding.

4.2. The Settlement Agreement Is Consistent With Law

Upon review of the Settlement we conclude that the terms of the Settlement Agreement comply with all applicable statutes and prior Commission decisions, and reasonable interpretations thereof. In agreeing to the terms of the Settlement Agreement, the Settling Parties have explicitly considered the relevant statutes and Commission decisions and believe that the Commission can approve the Settlement Agreement without violating applicable statutes or prior Commission decisions. The December 18, 2008 settlement conference was properly noticed consistent with Rule 12.1.

4.3. The Settlement Agreement Is In the Public Interest

The Settlement Agreement is in the public interest and in the interest of SCE's customers. For example, as a result of the Settlement Agreement, SCE ratepayers will receive a $4 million credit applied to their rates as well as the benefit of avoiding another $2 million rate increase for which SCE may have been eligible. Additionally, SCE ratepayers are assured that they will not have to pay incentive amounts in rates for any future PBR incentive mechanism before the completion of SCE's 2015 GRC cycle. The Settlement Agreement avoids the cost of further litigation, and frees up Commission resources, as well as the resources of other parties. The prepared testimony and evidentiary record

contain sufficient information for the Commission to judge the reasonableness of the Settlement Agreement and to discharge any future regulatory obligations with respect to it. We also remind the parties that, pursuant to Rule 12.5, this Settlement is not precedential. Rule 12.5 states:

> **(Rule 12.5) Adoption Binding, not Precedential**
>
> Commission adoption of a settlement is binding on all parties to the proceeding in which the settlement is proposed. Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.

5. Categorization and Need for Hearing

This proceeding is categorized as an enforcement proceeding. Because of the Settlement, a public hearing is not necessary.

6. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code for comment. No comments were received.

7. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. SCE's PBR mechanism applied to the period from 1997 through 2003 with respect to three performance incentive mechanisms. The three performance incentive mechanisms were: (1) customer satisfaction, which measures customer satisfaction with transactions with SCE via a survey; (2) system reliability, measured as ACMI and frequency of interruptions (Frequency); and

(3) employee health and safety, measured as the number of first aid incidents and OSHA-recordable lost time incidents per 200,000 employee hours worked.

2. On March 11, 2003, an SCE senior vice president received an anonymous letter alleging that planners were manipulating the customer satisfaction survey process by providing erroneous customer contact numbers to the survey company.

3. On November 4, 2003, the senior vice president received a second anonymous letter alleging manipulation of customer contact data provided to the survey company.

4. After conducting investigations, SCE provided its internal investigative reports to the Commission for customer satisfaction (dated June 24, 2004), employee health and safety (dated December 3, 2004), and system reliability (dated February 28, 2005) incentive mechanisms.

5. On June 15, 2006, the Commission issued Order Instituting Investigation 06-06-014 (PBR OII), ordering an inquiry into the three PBR metrics that were the subject of SCE's internal investigative reports.

6. The OII was divided into two phases. Phase 1 covered issues related to customer satisfaction, employee safety, and results sharing, and was the subject of hearings in November 2006. Phase 2 covered other issues.

7. Pending the outcome of Phase 1, a procedural schedule for Phase 2 was established. In accordance with that Phase 2 schedule, on September 21, 2007, SCE served its Phase 2 initial prepared testimony. That testimony consisted of the following:

- "Testimony on the PBR Incentive Mechanisms for System Reliability and Customer Satisfaction (Call Centers, Field Delivery, and In-Person Services)"

- "Phase 2 Direct Testimony of Dr. Andrew Morrison"
- "Assessment of PBR Reliability Metrics and Related Systems and Processes"

8. On September 23, 2008, the Commission issued D.08-09-038 (Phase 1 Decision), which resolved all appeals and issues that were considered in Phase 1 of this proceeding. The Phase 1 Decision ordered SCE to:

- Refund with interest to ratepayers all $28 million in Performance-Based Ratemaking (PBR) customer satisfaction rewards SCE had collected for the period 1997 through 2000 and to forgo recovery of $20 million in rewards that SCE had calculated or requested for the period 2001 through 2003.
- Refund with interest to ratepayers all $20 million in PBR employee health and safety rewards SCE had collected for the period 1997 through 2000 and to forgo $15 million in rewards that SCE had requested or calculated for the period 2001 through 2003.
- Refund with interest to ratepayers $32.714 million results sharing revenues.
- Pay a fine of $30 million to the General Fund of California.

9. Following the issuance of the Phase 1 decision, an ALJ Ruling listed the remaining issues for consideration in Phase 2 of the OII. The ruling listed four issues: (1) system reliability and customer satisfaction for call centers, field delivery other than meter reading, and in-person services, (2) whether the Commission should permit SCE to continue PBR and, if so, under what conditions and modifications, (3) investigate the total costs that CPSD and its legal representatives have incurred because of CPSD's investigation and discuss whether the costs are recoverable from SCE, and (4) whether the Commission can reward a whistleblower.

10. The status of PBR system reliability incentives based on SCE's requests is that SCE has recovered $8.0 million for the period 1997 through 2000 and has

requested or calculated a net reward of $2.0 million for the period 2001 through 2003.

11. After discussions among SCE, CPSD, and DRA pertaining to the resolution of Phase 2 issues had occurred, on December 11, 2008, SCE provided notice to all parties of a settlement conference related to Phase 2 issues. A settlement conference was held on December 18, 2008.

12. The Settlement Agreement provides:

a. Ratepayer Credit

Within 30 days after Commission approval of this Agreement, SCE shall credit $4.0 million to the distribution subaccount of SCE's existing Base Revenue Requirement Balancing Account (BRRBA). Ratepayers will receive the benefit of the Ratepayer Credit as a reduction to SCE's distribution rates when the BRRBA is amortized in rates.

b. System Reliability

The PBR system reliability rewards SCE received for the period 1997 through 2000 shall not be affected by this Agreement. For the period 2001 through 2003, SCE shall forgo its claim for a net reward of $2 million, which is comprised of a reward of $5 million for Frequency in 2001 and a penalty of $3 million for ACMI in 2003.

c. Conditions on Future SCE PBR Mechanisms

SCE agrees that it will not propose any PBR customer satisfaction or employee safety shareholder incentive mechanism before the completion of its 2015 GRC cycle. This moratorium is limited to SCE proposals for a mechanism whereby ratepayers would be obligated to make payments to SCE if a specified performance metric was achieved or a mechanism whereby SCE would be obligated to make payments to ratepayers if a specified performance metric was not achieved. The moratorium does not apply to current programs or future proposals for incentive compensation such as results sharing, system reliability, or incentives provided under current incentives such as energy efficiency or SCE's nontariffed products and services gross revenue sharing mechanism.

d. Whistleblower Compensation

No whistleblower compensation shall be awarded in connection with the PBR OII.

e. Other Penalties

SCE shall not be liable for any statutory penalties, PBR penalties, or CPSD costs related to Phase 2 of the OII.

Conclusions of Law

1. The Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest.

2. The Settlement Agreement is not precedential in any other proceeding before this Commission.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement appended as Attachment A is approved

2. Within 30 days after the date of this decision, Southern California Edison Company shall credit $4.0 million to the distribution subaccount of Southern California Edison Company's existing Base Revenue Requirement Balancing Account. Ratepayers will receive the benefit of the Ratepayer Credit as a reduction to Southern California Edison Company's distribution rates when the Base Revenue Requirement Balancing Account is amortized in rates.

3. The Performance-Based Ratemaking system reliability rewards that Southern California Edison Company received for the period 1997 through 2000 shall not be affected by the Settlement Agreement. For the period 2001 through 2003, Southern California Edison Company shall forgo its claim for a net reward of $2 million, which is comprised of a reward of $5 million for Frequency in 2001 and a penalty of $3 million for Average Customer Minutes of Interruption in 2003.

4. Pursuant to the Settlement Agreement, Southern California Edison Company shall not propose any Performance-Based Ratemaking customer satisfaction or employee safety shareholder incentive mechanism before the completion of its 2015 General Rate Case cycle. Therefore, the first time Southern California Edison Company can propose any such mechanism will be in its 2018 general rate case cycle.

5. Southern California Edison Company shall not be liable for any statutory penalties, Performance-Based Ratemaking penalties, or CPSD costs related to Phase 2 of this Order Instituting Investigation.

6. Investigation 06-06-014 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Attachment A - Settlement Agreement