Decision **DRAFT DECISION OF ALJ MATTSON** **(Mailed 12/21/2001)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of Poly-Tainer, Inc. for Modifications of Resolution E-3707. Southern California Edison Company (SCE) requests modification of its Economic Development Rate Agreements to reduce the minimum charge provision.	Application 01-08-004 (Filed August 1, 2001)

OPINION GRANTING APPLICATION OF POLY-TAINER, INC. PETITIONING FOR MODIFICATION OF RESOLUTION E-3707 REGARDING SOUTHERN CALIFORNIA EDISON COMPANY ECONOMIC DEVELOPMENT RATES

1. Summary

Certain customers of Southern California Edison Company (SCE) subscribe to an economic development rate (EDR). These customers have agreed to locate, retain or expand load within SCE's service area in return for a discount from charges under the customers' otherwise applicable tariff (OAT). EDR customer bills are subject to a minimum charge. The minimum charge has resulted in charges under the EDR exceeding charges under the OAT several times since mid-2000.

Resolution E-3707 modified the minimum charge effective December 7, 2000, but declined to limit the minimum charge to the amount that would result under the OAT. Based on events after December 7, 2000, Poly-Tainer, Inc. (applicant) seeks modification of Resolution E-3707. Applicant proposes that EDR customers be allowed to opt-out of EDR agreements effective December 7,

2000, with all liquidated damages under the minimum charge provision waived. The application is granted, and implementation details are adopted.

2. Background

Decision (D.) 96-08-025 authorized new pricing options for SCE, including EDR tariffs. These tariffs were offered to encourage certain businesses to locate, remain, or expand within SCE's service area. The goal was to increase the number of customers and load supporting SCE's distribution revenue requirement.

EDRs are provided through three SCE tariffs:

- Schedule AEDR (Attraction Economic Development Rate)
- Schedule REDR (Retention Economic Development Rate)
- Schedule EEDR (Expansion Economic Development Rate)

EDRs provide eligible customers the following discounts from charges under their OAT:

YEAR	DISCOUNT
1	25%
2	20%
3	15%
4	10%
5	5%
6	0%
7	0%

EDR customers are required to maintain a minimum level of load for seven years. The combined eligible load under Schedules AEDR, EEDR and REDR is limited to 100 MW for all participants.

The original EDRs were subject to a minimum charge provision based on the Power Exchange (PX) energy price. On July 3, 2000, SCE filed Advice

Letter 1461-E. SCE requested authority to modify the EDR minimum charge provision, so that EDR customers would not be charged more than they would otherwise be assessed under their OAT. SCE made this filing when it discovered that the unforeseen combination of high PX energy prices, the minimum charge provision, and frozen retail rates could result in charges to EDR customers in excess of those under their OAT. According to SCE, this was inconsistent with the intent of EDRs, which were specifically designed to provide business customers a discount from charges under their OAT as an incentive to locate, remain or expand within SCE's service territory.

On December 7, 2000, the Commission modified the minimum charge provision. (Resolution E-3707.) As modified, minimum charges are computed using the lower of the short run avoided cost or the PX price. Further, EDR schedules were closed to new customers effective December 7, 2000, due to the energy crisis and the need to reduce, rather than retain or stimulate, new load. The Commission did not, however, limit the minimum charge to no more than charges under the OAT.

On August 1, 2001, applicant filed a petition for modification of Resolution E-3707. Applicant asks that EDR customers be permitted to opt-out of EDR tariffs without penalty back to December 7, 2000 (the date of Resolution E-3707), citing events that occurred after December 7, 2000 as justification. SCE filed a response in support. Responses and comments in support were also filed by, or received from, several EDR customers, including InterMetro Industries Corporation; Einstein/Noah Bagel Corp., Cardinal TG; Argon Industries; Paper Coating Company; Parter Medical Products, Inc.; Langer Juice Company, Inc.; Durabag Company, Inc.; Pacific Plastics, Inc.; U.S. Plastic Lumber LTD.; Del

Mesa Farms; and Kallen Industries, Inc. (doing business as Wambold Furniture). No responses or comments in opposition were filed or received.

3. Discussion

We agree with applicant that our treatment of SCE's EDRs must be re-examined given events after December 7, 2000. For example, on January 17, 2001, Governor Gray Davis proclaimed a State of Emergency. The proclamation was based on the electricity market experiencing shortages, blackouts, and dramatic price increases, thereby creating a condition of extreme peril to the safety of persons and property within the state. The State of Emergency continues.

On January 26, 2001, we issued an emergency order to address potential jeopardy to public health, safety and welfare that might be caused by our interruptible programs. (D.01-01-056.) We found that customers on interruptible rate schedules faced the increasingly irreconcilable dilemma of either curtailing their electricity service or paying large penalties, either choice unacceptably causing harm to themselves and the California economy. As a result, we temporarily waived the tolling of hours and numbers of curtailment events against program maximums. We also waived penalties that customers would otherwise incur for failing to curtail when requested.

On April 3, 2001, we made important improvements to interruptible tariffs and rotating outage programs. (D.01-04-006.) Among other things, we found that the electricity market was operating outside reasonable bounds, and that it was unlikely customers could have realistically foreseen the dramatic events that led the Governor to declare a State of Emergency. As a result, we permitted SCE interruptible rate customers, including those on Schedule I-6, to opt-out of those rate schedules back to November 1, 2000 without penalty.

As applicant points out, these same dramatic events affected EDR customers. In fact, EDR customers with Schedule I-6 as their OAT were hit twice. First, they were subjected to frequent interruptions, and large penalties for failure to interrupt.

Second, they were forced by Resolution E-3707 to continue to pay minimum charges. The minimum charges resulted in their paying rates greater than those under their OAT. SCE reports that all EDR customers have paid monthly bills exceeding what they would have paid under their OAT. This situation began, according to SCE, when wholesale energy prices skyrocketed while the OAT remained frozen. Wholesale prices began to dramatically increase in the middle of 2000.[1]

EDR customers were recruited by the State of California's Red Team, or otherwise encouraged, to locate, continue or expand load within California that might otherwise be located, moved or expanded outside the state. These customers acted upon a reasonable belief that EDRs would normally result in a discount from the OAT for the first five years. Minimum charge provisions were not reasonably expected to be used often, if at all, just as the number of calls to interrupt and penalty provisions were not reasonably expected to dominate the interruptible program. No reasonable person could have foreseen these effects.[2] The profound dysfunction of the electricity market in 2000 and 2001 produced different outcomes. These outcomes resulted in our taking extraordinary actions

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[1] SCE originally requested that Advice Letter 1461-E become effective August 2, 2000.

[2] "It is unlikely that any customer could have realistically foreseen such dramatic events as those that led the Governor to declare a State of Emergency." (D.00-04-006, mimeo., page 14.)

in D.01-01-056 and D.01-04-006 for interruptible programs, and require similar actions here.

We specifically retained the ability to re-examine and modify EDR rates and ratemaking treatment as necessary given uncertainties in the electricity industry:

> "Given the uncertainties over how unbundling, performance-based ratemaking, and other aspects of the restructured electric industry will develop in the future, we will retain the ability to re-examine special rate discounts (and associated ratemaking treatment) as restructuring unfolds…We retain the authority to modify contracts signed in the interim pursuant to GO [General Order] 96-A. We note that Edison did not seek a waiver of this authority, nor do we adopt one. [Footnote 34 in original]…Similarly, we retain authority to change the ratemaking treatment adopted today if it becomes incompatible with other ratemaking adopted." (D.96-08-025, 67 CPUC2d 297, 328.)
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> "[Footnote 34 in original]: Under GO 96-A, all contracts are required to contain substantially the following provision: 'This contract shall at all times be subject to such changes or modifications by the Public Utilities Commission of the State of California as said Commission may, from time to time, direct in the exercise of its jurisdiction.' " (D.96-08-025, 67 CPUC2d 297, 354.)

We grant the application based on developments after December 7, 2000, the continuing State of Emergency, similar treatment for interruptible rate customers, and our commitment to re-examine special rate discounts and ratemaking when needed as restructuring unfolds. As a result, customers on SCE's EDR rates are permitted to opt-out of those agreements effective December 7, 2000, the date of Resolution E-3707, with all liquidated damages waived. That is, EDR customers may elect to change service to that as if they had

been served under the OAT, with an effective date of December 7, 2000, with liquidated damages waived.

We waive liquidated damages in order to make the opt-out option viable. That is, EDR agreements require a customer to pay liquidated damages equal to the total accrued discounts if the customer elects to terminate before the full term of the agreement. EDR customers may always opt-out by paying liquidated damages. The requested relief would be meaningless if the liquidated damages provision is not waived.

Further, we agree with SCE that enforcing the liquidated damages provision would frustrate the fundamental purpose of the EDR. That is, EDR customers who have substantially complied with their agreements to locate, retain or expand load should receive the benefit of their agreement consistent with their performance. An EDR customer who elects now to opt-out back to December 7, 2000 should retain the benefits otherwise received pursuant to the EDR agreement through December 7, 2000, in exchange for having located, retained or developed load in SCE's area and successfully performed under the agreement.

SCE also proposes that the same relief be afforded to one customer who prematurely terminated its EDR agreement, and paid liquidated damages prior to December 7, 2000. At least one EDR customer reports that it terminated its EDR agreement in 2001, and paid liquidated damages. Additional pleadings suggest that other EDR customers may have terminated their EDR agreements and paid liquidated damages.

We adopt SCE's recommended relief, but, in fairness to all similarly situated customers, we apply this relief to all EDR customers from July 1, 2000, or mid-2000, when wholesale prices began to increase unreasonably. Moreover, we

extend this relief to any customer who terminated its EDR agreement and paid, or incurred obligation for, liquidated damages, through the date the customer is notified of this order. That is, a customer may have terminated after December 7, 2000, obviously without knowledge of the relief provided in today's order. We are aware of no reason to limit the relief to only one customer who terminated before the date of Resolution E-3707, or to some other date before customers are notified of this order.

SCE proposes that the opt-out choice be limited to a one month period subsequent to the issuance of this decision. We agree that the opt-out choice should not be indefinite, and we adopt SCE's recommendation.

To implement this order, SCE should inform EDR customers of this opt-out option within 30 days of the date that revised tariffs become effective. EDR customers should have up to 30 days after the date of notification from SCE to make the election whether or not to opt-out effective December 7, 2000. The notification should clearly state the available relief, and that the option expires 30 days after the date of notification.

Finally, we address shareholder and ratepayer effects. We note that Resolution E-3707 provided SCE the option of capping EDR rates at OAT rates for services rendered before December 7, 2000 (the date of the resolution), as long as SCE's shareholders absorbed the difference between the billed amount and amount due. SCE declined to exercise this option. Applicant asserts that this option is not an appropriate remedy, and that shareholders should not be penalized. Applicant proposes that the revised Resolution delete the language regarding this option. In its response, SCE does not seek or propose any special or unique ratemaking treatment.

We decline to delete the language regarding the option given SCE, since it was a viable, even if unexercised, option. Consistent with the pleadings, however, we do not adopt or authorize any special or unique ratemaking treatment. That is, by not adopting special or unique ratemaking treatment, we do not authorize recovery from ratepayers of any revenue adjustments that result from this decision. The rate freeze itself has this effect during its duration.[3] Moreover, just as we did in D.96-08-025, we exclude revenue shortfalls from costs to be subtracted or netted out before sharing. (67 CPUC2d 297, 324.) Revenue shortfalls here include any revenue adjustments resulting from this decision.

4. Need for Hearing, and Scoping Memo

We preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearing was necessary. (Resolution ALJ-176-3069, August 23, 2001.) The matter is uncontested, however, and no material issues of fact are in dispute. We now find that no hearing is necessary.

Further, we waive Rule 6.3 (Scoping Memos). That is, we resolve the application directly in this decision. As a result, there is no need for the Assigned Commissioner to issue a Scoping Memo to determine the schedule and issues.

5. Comments on Draft Decision

On December 21, 2001, the draft decision of Presiding Officer and Assigned Commissioner Wood on this matter was served on parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the

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[3] We note that recent settlement of litigation between SCE and the Commission results in "frozen," or stabilized, rates for up to several years beyond March 31, 2002, the date that might otherwise control pursuant to Pub. Util. Code § 368.

Rules of Practice and Procedure. Comments were filed and served on _____. Reply comments were filed and served on _____.

Findings of Fact

1. Each EDR customer agreed to locate, retain or expand load within SCE's service area for a minimum of seven years in return for a discount from charges that would otherwise apply under the customer's OAT.

2. The EDR is subject to a minimum charge, and the minimum charge has resulted in all EDR customers paying monthly bills in excess of what they would have paid under their OAT since about the middle of 2000.

3. Resolution E-3707 modified the minimum charge effective December 7, 2000, but declined to limit the minimum charge to charges that would apply under the OAT.

4. Applicant's petition that the Commission modify Resolution E-3707 is unopposed, and is affirmatively supported by SCE and several customers.

5. On January 17, 2001, Governor Gray Davis proclaimed a State of Emergency based on a dysfunctional electricity market, and the State of Emergency continues.

6. By emergency order on January 26, 2001, the Commission addressed potential jeopardy to public health, safety and welfare by temporarily waiving the tolling of hours and number of curtailment events against interruptible program maximums, along with temporarily waiving penalties otherwise payable for failure to curtail when requested.

7. By order on April 3, 2001, the Commission permitted SCE interruptible customers to opt-out of interruptible rate schedules back to November 1, 2000 without penalty.

8. The same large number of interruptions, and large penalties for failing to curtail, that affected interruptible customers also affected EDR customers who, in addition, were subject to minimum charges which exceeded bills under their OAT.

9. The profound dysfunction of the electricity market in 2000 and 2001 caused effects that no reasonable person could have foreseen when making the decision to subscribe to an EDR tariff, including the frequent operation of the minimum charge provision since the middle of 2000.

10. Enforcing the liquidated damages provision in EDR agreements would frustrate the fundamental purpose of the EDR, and make the opt-out option meaningless.

11. At least two customers have terminated their EDR agreements and paid liquidated damages.

12. Adopting no special or unique ratemaking treatment means not authorizing recovery from ratepayers of any revenue adjustments that result from this decision.

13. During its duration, the rate freeze prevents recovery from ratepayers of any revenue adjustments that result from this decision.

14. Revenue shortfalls in this case include any revenue adjustments resulting from this decision.

15. No hearing is necessary.

Conclusions of Law

1. The application should be granted to the extent provided herein, and denied in all other respects.

2. An EDR customer who terminated its EDR agreement on or after July 1, 2000, and paid, or incurred obligation for, liquidated damages up to the date of

notification by SCE of this decision, should be permitted to terminate its EDR agreement on December 7, 2000 with a refund of, or waiver of the obligation for, liquidated damages.

3. SCE should notify candidate EDR customers, and those who terminated their EDR agreements on or after July 1, 2000, of the decisions made herein within 30 days of the date that revised tariffs are effective.

4. EDR customers, and those who terminated their EDR agreements on or after July 1, 2000, should have up to 30 days from the date of the notification from SCE to make the election whether or not to opt-out effective December 7, 2000, with liquidated damage provisions waived.

5. No special or unique ratemaking treatment should be adopted that would otherwise permit recovery from ratepayers of any revenue adjustments that result from this decision.

6. Revenue shortfalls should be excluded from costs to be subtracted or netted out before sharing.

7. Rule 6.3 should be waived.

8. This order should be effective today so that this unintended consequence of the energy crisis can be resolved expeditiously, and EDR customers can reasonably soon make the decision whether or not to opt-out effective December 7, 2000.

O R D E R

IT IS ORDERED that:

1. The August 1, 2001 application of Poly-Tainer, Inc. petitioning for modification of Resolution E-3707 is granted to the extent provided herein, and

denied in all other respects. Resolution E-3707 is replaced with Resolution E-3707-A. Resolution E-3707-A is contained in Attachment A.

2. Southern California Edison Company shall notify all economic development rate (EDR) customers affected, or potentially affected, by this order, including EDR customers who terminated their EDR agreement on or after July 1, 2000, of the decisions made herein. The notification shall be made within 30 days of the date that revised tariffs are effective. The notice shall clearly state the available relief, and that the option expires 30 days after the date of notification.

3. Rule 6.3 is waived.

4. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RESOLUTION E-3707-A
Adopted January __, 2002
Effective December 7, 2000

R E S O L U T I O N

Resolution E-3707-A. Southern California Edison Company (SCE) requests modification to its Economic Development Rate (EDR) Agreements to reduce the minimum charge provision. Approved with modification.

By Advice Letter 1461-E, filed on July 3, 2000.

SUMMARY

This Resolution approves with modification both SCE's request to revise its EDR tariffs, and the petition of Poly-Tainer, Inc. to modify Resolution E-3707. As a result, EDR tariffs are revised to base the minimum charge on the lower of Short Run Avoided Cost (SRAC) or the Power Exchange (PX) price. EDR customers may elect to terminate EDR schedules without liquidated damage provisions effective December 7, 2000. EDR tariffs are closed to new customers.

BACKGROUND

Decision (D.) 96-08-025 authorized flexible pricing options, including three EDR tariffs:

- Schedule REDR (Retention Economic Development Rate)
- Schedule AEDR (Attraction Economic Development Rate)
- Schedule EEDR (Expansion Economic Development Rate)

The purpose of EDRs is to encourage businesses to locate, remain, and expand within SCE's service area, in order to increase the number of customers and the electric load supporting SCE's distribution revenue requirement. EDRs provide eligible customers with a discount from an otherwise available tariff (OAT) rate.

ATTACHMENT A

The discount decreases over the term of each agreement. These optional rates, established after June 1996, are not subject to the rate freeze.[1]

While EDR agreements provide for a specified percentage discount from the OAT rate, they also contain a minimum charge provision. The minimum charge is the hourly cost of procuring energy from the PX, plus the marginal cost for transmission and distribution facilities, plus loss factors.

By Advice Letter 1461-E, SCE claims that high PX energy prices have caused EDR minimum charges to exceed OAT rates, thereby eliminating discounts. SCE believes this situation is unfair to EDR customers, who made investment decisions based on the expectation of discounts, but who could end up paying higher rates than customers on an OAT. SCE has, therefore, interpreted the minimum charge provision as requiring SCE to charge EDR customers no more than the OAT, and has billed EDR customers on that basis. SCE requests Commission approval of SCE's interpretation, and authorization to revise the EDR agreements accordingly. SCE requests that the proposed tariff sheets have an effective date of August 2, 2000.

NOTICE

Notice of AL 1461-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

On July 21, 2000, the Commission's Office of Ratepayer Advocates (ORA) protested Advice Letter 1461-E. ORA claims that SCE has violated Commission procedures by unilaterally reducing EDR customer rates and asking for retroactive approval. ORA believes that EDR customers signed a contract and should be held to that contract. ORA is concerned that if the proposed change is approved, other customers will be forced to make up the lost revenues.

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[1] See Pub. Util. Code § 368.

ATTACHMENT A

ORA recommends, in order of preference, that we:

1. Deny the advice letter, and defer EDR issues to the Post Transition Rate Design Application (A.) 00-01-009.

2. Enforce the current minimum charge, by placing the difference between the higher EDR rate and the OAT in a memorandum account subject to refund pending a decision in A.00-01-009.

3. Order EDR rates capped at OAT rates for SCE bundled service customers who apply for an Hourly PX Pricing Option.

On July 28, 2000, SCE responded to ORA's protest. SCE believes ORA's recommendations are flawed, and do not address inequities to EDR customers. SCE is concerned that waiting for a decision in A.00-01-009 will involve months of delay while customers need relief now. SCE says EDR customers at least need a ruling so that each customer may decide whether or not to terminate its EDR agreement. Further, SCE does not support ORA's recommendation for the Hourly PX Price option. SCE believes the Hourly PX Price option would require that the tariff be revised, customers would need to purchase hourly meters, customers should not be forced to accept this option, and this option will not create demand responsiveness.

SUSPENSION

By letter dated August 1, 2000, Paul Clanon, Energy Division Director, suspended the tariff sheets for up to 120 days to allow for further review.

On August 11, 2000, SCE responded to the suspension. SCE claims the Energy Division Director does not have authority to take such action on behalf of the Commission.

DISCUSSION

The Commission decision authorizing EDR programs states that shareholders and ratepayers will split benefits derived from EDR programs, but that

ratepayers will be protected from costs.[2] The decision specifically states that the allocated Competition Transition Charge (CTC) will come from SCE shareholders if EDR agreements do not generate enough revenue to cover cost plus allocated CTC.[3]

High energy prices beginning in Summer 2000 have made EDR agreements untenable. The discounts originally envisioned with these agreements have been eliminated as a result of EDR minimum charges exceeding OAT charges. This has occurred because OAT rates are protected by the rate freeze, with SCE at risk for unrecovered expenses. EDR agreements, however, are not covered by the rate freeze.

SCE believes that it is unfair for EDR customers to pay more than customers whose rates are not subject to an EDR discount. Therefore, SCE proposes that the minimum charge be capped. This would normally be unacceptable. The EDR minimum charge provision was established to ensure EDR customers are charged their cost of the service. D.96-08-025 specifically considered the eventuality of costs exceeding the OAT rate and created the minimum charge to protect ratepayers from a potential cost shift. As discussed more below, however, events in late 2000 and 2001 were not reasonably foreseeable, and now justify program modification.

In a real sense, EDR rates are no longer appropriate for today's markets. EDR tariffs were originally adopted in a time of excess capacity, and their purpose (i.e., to retain or increase load) was reasonable. The shortage of generation experienced in Summer 2000, uncertain balance in Summer 2001, and likely shortage in Summer 2002, undercut the justification for EDR tariffs. With recent

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[2] "If discount sales gross revenues fail to exceed costs, which is highly unlikely, ratepayers will therefore not share in any expenses." (D.96-08-025, 67 CPUC2d 297, 324.)

[3] "Customers participating in Edison's flexible pricing options should assume responsibility for any future CTC assignments, and shareholders should guarantee that no such CTC will be shifted to non-discount customers." (D.96-08-024, 67 CPUC2d 297, 338, Conclusion of Law 19.)

initiatives encouraging load management, along with the California Independent System Operator seeking demand responsiveness, it is inappropriate to offer discounts in order to increase the load in California without demand responsive components. Therefore, the EDR tariffs should be closed to new customers.

SCE has interpreted minimum charge provisions in EDR tariffs as requiring SCE to charge customers no more than the rate in the OAT, and has billed EDR customers on that basis. SCE requests Commission approval of SCE's interpretation, along with authorization to revise the EDR agreements accordingly. The plain language of EDR tariffs, however, does not support SCE's interpretation. The rate sections of the EDR tariffs are clear, and contain no provision that would limit customer charges to the rate in the OAT.

Re-examination of the tariff language concerning minimum charges, however, reveals that the filed tariffs are not in compliance with D.96-08-025. That decision adopted the energy portion of the minimum charge as the lower of the PX price or SRAC. The tariffs rely solely on the PX price. Therefore, the tariffs are not in compliance with the decision. EDR customers should only be required to pay the rates adopted by the Commission, and should not be charged a filed rate that does not comply with the Commission's adopted program.

We will not cap EDR customers' rates at OAT rates, but we will require that they pay no more than the rates established in D.96-08-025. EDR customers signed an agreement that specifically required participants to pay a minimum charge provision. Since the calculation of the minimum charge contained in the EDR agreements is not in compliance with the Commission's adopted program, we will adjust the agreements. We will require SCE to file revised tariffs in compliance with the floor price discussion in D.96-08-025, and collect the amounts due under those tariffs. In addition, SCE should review all EDR customers' past bills and credit customers for periods when they were billed the minimum charge and that charge was based on a PX price higher than SRAC.

SCE is concerned with the situation of EDR customers, and has been billing them at the OAT rate for a period of time. We will require SCE to apply a minimum charge based on the lower of SRAC or the PX price when billing EDR customers for all service rendered after the effective date of today's Resolution. However, we will give SCE an additional option with regard to service rendered before the effective date of today's Resolution. Where the SRAC-based rate for that period

would exceed the OAT rate, SCE may, if it wishes, depart from its previously authorized rates and charge these EDR customers at the OAT rate for that past period. However, if SCE chooses this option, the uncollected amount (the

difference between the billed amount and the amount due under the authorizing decision) must be absorbed by SCE (at shareholder expense) and that rate reduction must be extended to all of SCE's EDR customers. This option only applies to uncollected amounts, and does not apply to any overcollections due to EDR customers. Overcollections must be credited as discussed above. We will require SCE to file an advice letter informing us whether or not it has chosen to exercise this option.

By letter dated August 1, 2000, the Energy Division Director suspended for up to 120 days the revised tariff sheets included with Advice Letter 1461-E. SCE claims that the Director lacks authority to take such action. We disagree. We hereby ratify the Director's suspension of the tariff sheets attached to Advice Letter 1461-E, and determine that the advice letter and attached tariff sheets, as originally filed, never became effective.

COMMENTS

A draft alternate Resolution was mailed to parties in accordance with Public Utilities Code Section 311(g) on October 6, 2000. Comments were received from SCE. SCE states that since the draft alternate provides acceptable relief, SCE agrees that the draft alternate, with minor modifications, should be adopted. As a result of these comments, a number of changes, corrections, and clarifications have been made in the draft alternate Resolution.

A revised draft alternate Resolution was mailed to all parties on October 23, 2000. Comments were received from SCE on November 8, 2000. SCE requests three modifications to the revised draft alternate Resolution. First, SCE believes the revised draft alternate Resolution inappropriately deletes EDR customer's opportunity to opt-out of their agreements without paying liquidated damages, and requests that the deleted language be restored. Second, concerning the closure of EDRs to new customers, SCE requests the revised draft alternate provide that SCE may propose revised EDRs that incorporate elements of demand responsiveness. Third, SCE renews its objection to the revised draft alternate Resolution's ratification of the Energy Division Director's suspension of

the advice letter. We considered these comments in adopting Resolution E-3707, and made changes as necessary.

APPLICATION SEEKING MODIFICATION OF RESOLUTION E-3707

On August 1, 2001, Poly-Tainer, Inc. (applicant) filed a petition for modification of Resolution E-3707. Applicant requests that EDR customers be allowed to opt-out of EDR agreements effective December 7, 2000 (the date of Resolution E-3707), with all liquidated damages waived. SCE filed a response in support, and responses or comments in support were filed or received from several EDR customers. No responses or comments in opposition were filed or received.

Applicant is correct that dramatic events occurred after December 7, 2000 which require reconsideration of our treatment of EDR tariffs and agreements. For example, on January 17, 2001, Governor Gray Davis proclaimed a State of Emergency based on a dysfunctional electricity market. On January 26, 2001, the Commission issued an emergency order to address potential jeopardy to public health, safety and welfare that might be caused by our interruptible program. (D.01-01-056.) On April 3, 2001, we made important improvements to interruptible tariffs, and, among other things, permitted SCE interruptible rate customers to opt-out of those rate schedules back to November 1, 2000 without penalty. (D.01-04-006.)

These same dramatic events affected EDR customers. In fact, EDR customers with Schedule I-6 as their OAT were hit twice. First, they were subject to frequent interruptions and large penalties for failure to interrupt. Second, they were forced by Resolution E-3707 to continue to pay minimum charges. The minimum charges resulted in EDR customers paying rates greater than those under their OAT. As SCE reports, all EDR customers have at some time paid monthly bills exceeding what they would have paid under their OAT. This has occurred since the time that wholesale prices began to dramatically increase in Summer 2000, or on or after July 1 2000.

EDR customers were recruited or encouraged by the State of California to locate, continue or expand load within the state that might otherwise be located, moved or expanded outside the state. EDR customers acted upon a reasonable belief that EDRs would normally result in a discount from the OAT for the first five years. Minimum charge provisions were not reasonably expected to be used

often, if at all, just as the number of calls to interrupt and penalty provisions were not reasonably expected to dominate the interruptible program. The profound dysfunction of electricity market in 2000 and 2001 produced different outcomes. These outcomes resulted in our taking extraordinary actions in D.01-01-056 and D.01-04-006 for interruptible programs, and require similar actions here.

As a result, we generally grant the application. We authorize EDR customers to opt-out of EDR agreements effective December 7, 2000, with liquidated damages waived. This relief is available to all EDR customers from July 1 2000 through the present, including any who might have terminated and paid, or incurred liability for, liquidated damages before being informed of our decision.

To implement this order, SCE should notify all EDR customers within 30 days of the date that revised tariffs become effective. EDR customers should have up to 30 days after the date of notification to make the election whether or not to opt-out effective December 7, 2000. The notification should clearly state the available relief, and that the option expires 30 days after the date of notification.

Applicant asserts that SCE's shareholders should not be penalized by being required to absorb the differences between billed amounts and amounts due if SCE adopts the option of capping EDR rates at OAT rates for services rendered before December 7, 2000, the date of Resolution E-3707. We decline to adopt applicant's recommendation to exclude that option. SCE did not exercise the option, but no showing is compelling that the option was not viable. No other specific recommendations are made for ratemaking treatment, and none are adopted.

Adopting no special or unique ratemaking treatment means we do not authorize recovery from ratepayers of any revenue adjustments, or lost revenues, that may result from this resolution. The rate freeze itself has this effect during the duration of the rate freeze.[4] Moreover, just as we did in D.96-08-025, we exclude

[4] We note that recent settlement of litigation between SCE and the Commission results in frozen rates for up to several years beyond March 31, 2002, the date that might otherwise control pursuant to Pub. Util. Code § 368.

revenue shortfalls from costs to be subtracted or netted out before sharing. (67 CPUC2d 297, 324.) Revenue shortfalls here include any revenue adjustments, or lost revenues, resulting from this Resolution.

FINDINGS

1. D.96-08-025 authorized SCE's EDR tariffs and agreements, but does not permit the shifting of costs from EDR customers to non-EDR customers.

2. EDR tariffs provide rate discounts from the rates in business customers' OATs to attract new customers, retain existing customers, or to encourage customers to expand load in SCE's territory.

3. It is currently not desirable to increase California's electric load without demand responsive components.

4. The EDR tariffs should be closed to new customers.

5. Current EDR agreements require EDR customers to pay a minimum charge even if that minimum charge exceeds the charge under the customers' OAT.

6. Recently high electricity costs have caused minimum charges in EDR agreements to exceed charges under the customer's OAT.

7. SCE has billed EDR customers a rate capped at the OAT rather than the minimum charge in EDR tariffs because SCE interpreted the minimum charge provision as being capped by the OAT.

8. By Advice Letter 1461-E, SCE requests approval of its interpretation that minimum charge provisions of EDR tariffs and agreements should not result in rates higher than rates under the EDR customer's OAT, along with authorization to revise the EDR tariffs and agreements consistent with this interpretation.

ATTACHMENT A

9. ORA protested Advice Letter 1461-E, claiming SCE's proposal would shift costs from EDR customers to non-EDR customers.

10. SCE's interpretation of the tariff should not be adopted.

11. SCE's filed EDR tariffs are not in compliance with the floor price provision adopted in D.96-08-025, which requires that the minimum charge be based on the lower of the SRAC or the PX price.

12. SCE's EDR customers must be charged minimum rates consistent with those adopted by the Commission, rather than the single floor price provision incorrectly filed in SCE's tariffs.

13. SCE should be permitted to let shareholders fund the difference between the minimum charge and the OAT rate before December 7, 2000, to the extent described in the discussion section of this resolution.

14. As a result of the suspension of Advice Letter 1461-E by the Energy Division Director, the tariff sheets attached to the Advice Letter never became effective.

15. On August 1, 2001, applicant petitioned for modification to Resolution E-3707, proposing that EDR customers be permitted to opt-out of EDR agreements effective December 7, 2000, with all liquidated damages waived.

16. Responses and comments in support were filed and received, while no responses or comments in opposition were filed or received.

17. Dramatic events after December 7, 2000 justified extraordinary action with regard to interruptible rate programs, and similarly justify granting applicant's request to the extent provided herein.

ATTACHMENT A

18. Not adopting special or unique ratemaking treatment means recovery is not authorized from ratepayers of any revenue adjustments, or lost revenues, that may result from granting applicant's request.

19. The rate freeze itself prevents shifting revenue adjustments, or lost revenues, that may result from granting applicant's request to other ratepayers for the duration of the rate freeze.

20. Revenue shortfalls include any revenue adjustments, or lost revenues, resulting from this resolution, and, as the Commission provided in D.96-08-025, revenue shortfalls are excluded from costs to be subtracted or netted out before sharing. (67 CPUC2d 297, 324.)

THEREFORE, IT IS ORDERED that:

1. Advice Letter 1461-E, filed on July 3, 2000 by Southern California Edison Company (SCE), is approved with modification.

2. The August 1, 2001 application by Poly-Tainer, Inc., petitioning for modification of Resolution E-3707, is granted with modification.

3. To the extent SCE has not already done so, SCE shall, within 30 days of the date this resolution is mailed, provide written notice to all Economic Development Rate (EDR) customers. The notice shall state that: (1) SCE billed customers a minimum charge different than the rate approved by Decision (D.) 96-08-025, (2) EDR customers are responsible for the charges that were approved by D.96-08-025, (3) EDR customers shall be credited for any over-collections by SCE, and (4) in the future EDR rates shall not be capped at OAT rates. SCE should indicate in this notice if it intends to have its shareholders absorb EDR rate differences, to the extent described in the discussion section of this resolution.

ATTACHMENT A

4. To the extent SCE has not already done so, SCE shall, within 10 days of the date this resolution is mailed, file revised tariff sheets. The revised tariff sheets shall: (1) close the EDR tariffs to new customers, and (2) revise the minimum charge provisions to comply with Decision 96-08-025. The tariff sheets shall become effective upon filing, provided the Energy Division staff determines they are consistent with this Resolution. In addition, SCE shall indicate in this filing whether or not it has chosen the option to have its shareholders absorb EDR rate differences, to the extent described in the discussion section of this resolution.

5. To the extent SCE has not already done so, SCE shall review all bills of EDR customers, and credit customers for periods when they were billed the minimum charge with that charge based on a Power Exchange (PX) price higher than Short Run Avoided Cost.

6. The Energy Division Director's suspension of the tariff sheets attached to Advice Letter 1461-E is affirmed. The tariff sheets attached to Advice Letter 1461-E, as originally filed, never became effective.

7. SCE shall, within 10 days of the date this resolution is mailed, file revised EDR tariffs. The tariffs shall permit EDR customers to opt-out of EDR tariffs effective December 7, 2000, with all liquidated damages waived. The opt-out option is available to current EDR customers, and prior EDR customers who opted-out on or after July 1, 2000 and paid, or incurred the obligation to pay, liquidated damages. The tariffs shall provide that the option is available for a 30-day period beginning on the date that the EDR customer is notified by SCE of the option. The advice letter filing including the tariffs shall also include a draft notice required in Ordering Paragraph 8 of this Resolution. When SCE files its advice letter, it shall provide a copy of the draft notice to the Public Advisor's

office. The revised tariffs shall become effective one day after filing unless suspended by the Energy Division Director.

ATTACHMENT A

8. SCE shall, within 30 days of the effective date of the revised tariffs, notify all EDR customers of the changes in the revised tariffs. Prior to notifying customers, SCE shall provide a draft notice to the Public Advisor's office as set forth in Ordering Paragraph 7 of this Resolution. SCE shall notify customers after the draft notice is approved by the Commission's Public Advisor.

9. This Resolution is effective today.

This Resolution is effective today. I certify that the foregoing resolution was duly introduced, passed and adopted as an attachment to Decision 02-01-_____, at a conference of the Public Utilities Commission of the State of California held on _____, 2002.

_____

WESLEY M. FRANKLIN
Executive Director