Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Order Approving Settlement Agreement Between Southern California Edison Company and AES Huntington Beach, L.L.C.	Application 06-06-025 (Filed June 23, 2006)

OPINION APPROVING SETTLEMENT AGREEMENT BETWEEN SOUTHERN CALIFORNIA EDISON COMPANY AND AES HUNTINGTON BEACH, L.L.C.

This decision approves a settlement agreement between Southern California Edison Company (Edison) and AES Huntington Beach, L.L.C. (AESHB) to resolve complex disputes involving two power purchase agreements (PPA).

Procedural Background

Edison filed a public and a non-public version of this application on June 23, 2006, and concurrently filed a motion to file designated portions of the non-public application (and of supporting prepared testimony and appendices) under seal. Pursuant to its Rules of Practice and Procedure,[1] the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that no hearing was needed.[2] No party protested the application or

[1] Former Rule 6.1(a), recodified as Rule 7.1(a) effective September 13, 2006.

[2] Resolution ALJ-176-3156, July 20, 2006.

the motion. Consistent with then-pending Rules 11.4(b) and 13.8(d),[3] Edison filed a motion on August 17, 2006, to admit the public and non-public versions of its supporting prepared testimony and appendices into evidence, and concurrently moved to seal the non-public portions of this evidentiary record.

We confirm the preliminary categorization and that no hearings are necessary. We hereby grant Edison's motion to admit the prepared testimony and appendices into evidence. We address Edison's motions to seal the non-public versions of the filed application and the evidentiary exhibits below.

Summary of Dispute

On December 23, 2002, and pursuant to Decision (D.) 02-08-071, Edison and AESHB entered into two electrical PPAs. The PPAs require Edison to pay to AESHB a monthly payment for the capacity of certain generating units, and to procure and deliver the natural gas for their operation at Edison's cost. In exchange, Edison has the right to receive tolling electrical capacity and, upon dispatch, the associated energy output from the generating units.

The settlement agreement resolves four interrelated disputes related to the parties' contractual rights to payments from the California Independent Systems Operator (CAISO) for energy dispatches made pursuant to the CAISO tariff and protocols. First, both parties claim that they are entitled to CAISO imbalance energy (IE) payments pursuant to the tariff's "Must-Offer Obligation" dispatches.[4] Second, the parties disagree regarding the calculation of capacity payments. Edison contends that the output of the generating units determines

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[3] Rules 11.4(b) and 13.8(d) were effective September 13, 2006.

[4] In or about May 2003, the CAISO began requesting energy output from AESHB pursuant to this tariff provision.

unit availability, while AESHB contends that loss of unit availability should not adversely impact the capacity payment (even if the units do not produce the amount of energy Edison requested) if the units are fully available, Edison is made whole through the CAISO's IE market, and AESHB pays the CAISO the IE costs of providing any shortfalls in such deliveries. Third, Edison contends that it is due a refund for ancillary services because AESHB failed to cooperate in developing timely protocols to allow Edison to use these services, while AESHB contends that it appropriately sought to establish the protocols in the context of an overall resolution of the disputes. Fourth, both parties claim that, similar to their respective claims to CAISO IE payments, they are entitled to CAISO payments for "Supplemental Energy" dispatches as defined in the CAISO tariff.

Confidentiality of Settlement Terms and Valuation

By its motions to file under seal and to seal the evidentiary record, Edison seeks confidential treatment of the settlement agreement and its valuation, which Edison assesses on the basis of comparison to benchmarks that it derives from its summer 2005 competitive electric contract solicitation. Edison justifies its motions on the grounds that (1) the settlement agreement contains a confidentiality clause that prohibits the parties from disclosing the information, (2) disclosure of the designated information could impair Edison's ability in the future to obtain the best possible settlement terms on behalf of its ratepayers, and (3) the designated information is highly sensitive market information which, if revealed, would place both Edison and AESHB at an unfair business disadvantage.

The fact of the parties' private agreement not to disclose the information is not determinative (or, absent an issue of waiver, particularly informative) of whether it is entitled to confidential treatment.

Edison has, however, demonstrated that disclosure of the information might jeopardize ratepayers' interests. Furthermore, the information is deemed to be market-sensitive and entitled to confidential treatment under our recent *Interim Opinion Implementing Senate Bill No. 1488, Relating to Confidentiality Data Submitted to the Commission.* (D.06-06-066, App. 1, p. 15 (item VII.B) and p. 18 (item VIII.).) Accordingly, we grant Edison's motions to file its non-public application under seal and to seal the non-public versions of the evidentiary record. Pursuant to D.06-06-066, the information will be kept under seal for three years or until one year following expiration of the PPAs, whichever comes first; however, the duration of the PPAs under the settlement agreement is public.[5]

We nevertheless disclose in this order a summary of the settlement terms and a summary of the basis for our evaluation. In D.03-07-027 and D.04-08-032, although we granted Edison's similar motions to seal the record, we disclosed certain significant aspects of the settlements and their valuation in the interests of promoting a full and public process and open decisionmaking. In particular, we found that disclosure of a simple description of the settlement terms does not jeopardize ratepayers or advantage other parties in isolation from more detailed information about the settlement. (D.03-07-027, pp. 7-8.) Similarly here, we disclose summaries of the settlement and of its valuation to the extent necessary to explain our decision, without jeopardizing ratepayers or the parties to the settlement.

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[5] Because we identify the duration of the PPAs in this order, it is not necessary and would therefore be unduly burdensome to require Edison to re-submit its public version of the application and prepared testimony for purposes of disclosing this public information.

Reasonableness of Settlement

In determining whether a settlement is reasonable, the Commission reviews a number of factors including whether the settlement reflects the relative risks and costs of litigation, whether it reasonably resolves the disputed issues and conserves public and private resources, whether its terms fall within the range of possible outcomes if the parties litigated the dispute, whether the litigation had progressed to the stage where it was ripe for a reasonable compromise, whether the negotiations were at arm's length, and whether the parties were adequately represented. (*See, e.g.,* D.04-08-032, p. 6.)

The essential terms of the settlement agreement are as follows:

- For the delivery period from January 1, 2003, through August 31, 2005, the parties agree to an allocation between them of the disputed amounts related to the CAISO payments, capacity payment adjustments, and ancillary services refunds.
- For the delivery period from September 1, 2005, forward, the parties agree to (1) amended capacity payments, ancillary services parameters, and startup costs and times; (2) the appointment of Edison as Scheduling Coordinator; and (3) a common interpretation of the disputed PPA terms regarding the parties' respective rights to CAISO payments and the calculation of capacity payments.
- The term of the PPAs is extended for two years.

This settlement agreement resolves a dispute that has been on-going since at least September 2003 and that concerns the parties' respective rights to revenues back through May 2003. Since then, the parties have expended significant resources and effort to resolve the dispute, including participation in formal mediation in which the parties made substantial progress but did not succeed in resolving the dispute. The record of the dispute demonstrates that the dispute is complex, it was not resolved before the parties had an opportunity to

thoroughly assess the relative strengths and weaknesses of their positions, the parties' negotiations were at arm's length, and both parties were adequately represented in those negotiations.

The terms of the settlement agreement (apart from the extension of the PPAs, which was not a disputed issue) fall within the range of possible litigation outcomes. Edison compared the value of the extension of the PPAs to benchmarks developed in the context of Edison's summer 2005 competitive electric contract solicitation,[6] which was carried out in consultation with the Procurement Review Group.[7] The value of the settlement agreement, including the value of the extension of the PPAs, compares favorably to the range of values of possible outcomes if the matter had been litigated.

For all these reasons, the settlement is reasonable and in the public interest.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2) and Rule 14.6 (c)(2), we waive the otherwise applicable 30-day period for public review and comment.

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[6] The solicitation was issued pursuant to Edison's procurement plan adopted in D.04-12-048.

[7] The Procurement Review Group is a group of non-market participants who consult with Edison and review the details of proposed procurement processes including, but not limited to, the Request for Offers.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Hallie Yacknin is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The settlement agreement resolves a complex dispute, after the parties had an opportunity to thoroughly assess the relative strengths and weaknesses of their positions, in arm's length negotiations in which both parties were adequately represented.
2. The terms of the settlement agreement (apart from the extension of the power purchase agreements (PPA), which was not a disputed issue) fall within the range of possible litigation outcomes. The value of the settlement agreement, including the value of the extension of the PPAs, compares favorably to the range of values of possible outcomes if the matter had been litigated.
3. No party protested the application.
4. No hearing is necessary.

Conclusions of Law

1. The settlement agreement is reasonable and should be approved.
2. This decision should be effective immediately.
3. Application 06-06-025 should be closed.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company's (Edison) motion to file the non-public version of this application under seal is granted to the extent set forth below.

2. Edison's motion to admit its prepared testimony and appendices into the evidentiary record, and to seal the non-public versions of these evidentiary exhibits, is granted to the extent set forth below.

3. Pursuant to Decision 06-06-066, the above information will be kept under seal for three years or until one year following the expiration of the power purchase agreements (PPAs), whichever comes first.

4. Edison's application for approval of the settlement agreement resolving disputes with AES Huntington Beach, L.L.C. in regard to two PPAs between the parties is granted.

5. This application is categorized as ratesetting and no hearings are required.

6. Application 06-06-025 is closed.

This order is effective today.

Dated _____, at San Francisco, California.