Decision 10-06-015 June 3, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA EDISON COMPANY (U338E) for Modification of Decision 05-09-018 to Extend EDR-Retention Rates.	Application 09-10-012 (Filed October 13, 2009)
And Related Matter.	Application 09-11-010

DECISION APPROVING SETTLEMENT AGREEMENT FOR SOUTHERN CALIFORNIA EDISON COMPANY'S AND PACIFIC GAS AND ELECTRIC COMPANY'S ECONOMIC DEVELOPMENT RATE PROGRAM

1. Summary

This decision adopts a Settlement Agreement among Southern California Edison Company, Pacific Gas and Electric Company, the Division of Ratepayer Advocates, The Utility Reform Network, and the Energy Users Forum. The Settlement Agreement, which is attached as Appendix A to this decision, resolves all of the issues in dispute in Application (A.) 09-10-012 and A.09-11-010.

2. Background

2.1. History

Public Utilities Code Section 740.4 requires the Commission to authorize economic development programs to the extent they provide ratepayer benefit. In April 2004, Southern California Edison Company (SCE) filed Application (A.) 04-04-008 seeking authority to implement Economic Development Rates

(EDR) based on previously authorized Economic Development rate schedules. Rates authorized by Decision (D.) 96-08-025 were: (1) the Economic Development Rate-Attraction; (2) Economic Development Rate-Expansion; and (3) EDR-Retention (EDR-R). In June 2004, Pacific Gas and Electric Company (PG&E) filed A.04-06-008 seeking authority to implement customer-specific Economic Development rates modeled on those the Commission first authorized in D.89-12-057. Those requests were consolidated on August 30, 2004 and resulted in the adoption of D.05-09-018.

D.05-09-018 authorized SCE and PG&E to file customer specific EDR tariffs for: (1) new customers; (2) customers expanding businesses with new load; and, (3) customers who would otherwise move all or a portion of their operations outside of California. A December 31, 2009 sunset date was set for enrollment of new customers in SCE and PG&E's Economic Development tariffs, pursuant to Ordering Paragraph 2 of D.05-09-018. D.05-09-018 authorized, in part, an EDR-R program cap of 100 megawatts (MW), a requirement that potential EDR customers attest that "but for" the EDR rate they would leave the SCE or PG&E systems, an allowance for liquidated damages, and a methodology for determining the EDR floor price and marginal cost.

The goal of the EDR program is to attract and retain those businesses in California that would otherwise go out of business or leave the state, reducing the number of jobs available to Californians. Another benefit of the program was to reduce the amount of fixed costs that would otherwise have been borne by remaining ratepayers if these businesses had gone out of business or left the state.

2.2. Proceeding

On October 13, 2009, SCE filed A.09-10-012, *Application for Modification of Decision 05-09-018 to Extend EDR-Retention Rates* (SCE Application). On November 13, 2009, PG&E filed A.09-11-010, *Application for Modification of Decision 05-09-018 to Extend the Economic Development Rate* (PG&E Application).

On October 29, 2009, Resolution ALJ 176-3243 preliminary determined that the SCE Application was ratesetting and that hearings would be necessary. On November 20, 2009, Resolution ALJ 176-3244 preliminary determined that the PG&E Application was ratesetting and that hearings would be necessary.

A protest to the SCE Application was filed by the Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN) on November 16, 2009. SCE filed a response to the protest on November 30, 2009. A protest to the PG&E Application was filed by DRA on December 18, 2009. PG&E filed a response to the protest on December 23, 2009.

On December 8, 2009, PG&E contacted the Commission's Executive Director, requesting extension of its EDR program, which was set to expire on December 31, 2009. On December 9, 2009, the Commission's Executive Director granted PG&E's request pending a final decision in A.09-11-010. On December 21, 2009, SCE contacted the Commission's Executive Director, requesting extension of its EDR program, which was set to expire on December 31, 2009. On December 23, 2009, the Commission's Executive Director granted SCE's request pending a final decision in A.09-10-012.

On January 22, 2010, Tamco Steel Mini Mill (Tamco) filed a motion for party status. On January 22, 2010, the assigned Administrative Law Judge (ALJ) issued *Administrative Law Judge's Ruling Requiring Applicant and Parties to File*

Information. Responses were filed on January 27, 2010 by SCE, DRA, and the Greenlining Institute (Greenlining), and by PG&E on January 28, 2010.

On January 29, 2010, a prehearing conference (PHC) took place in San Francisco to establish the service list for the proceeding, to discuss the scope of the proceeding, and to develop a procedural timetable for the management of the proceeding. At the PHC, several parties were added to the service list for this consolidated proceeding, including Tamco, Energy Users Forum (EUF), and Greenlining.

On February 3, 2010, both SCE and PG&E filed amended applications. On February 10, 2010, both DRA and TURN filed protests to those amended applications, and SCE and PG&E filed responses on February 16 and 18, 2010, respectively.

The *Assigned Commissioner's Ruling and Scoping Memo* (Scoping Memo) issued on February 5, 2010, consolidated A.09-10-012 and A.09-11-010, set forth a procedural schedule, assigned the presiding officer, and addressed the scope of this proceeding and other procedural matters following the PHC held on January 29, 2010. On February 23, 2010, the assigned ALJ issued an *Administrative Law Judge's Ruling Requiring Southern California Edison, Pacific Gas and Electric Company, and Parties to File a Joint Statement of Facts and Disputed Facts by March 2, 2010.* On March 3, 2010 another PHC was held to consider whether hearings were required and to discuss whether the issue of increasing the EDR program cap could be dealt with in an expedited manner, and to consider expansion of the scope of this proceeding. This PHC adjourned and was reconvened telephonically on March 4, 2010. On March 10, 2010, the assigned ALJ issued a ruling *Administrative Law Judge's Ruling Summarizing the March 4, 2010 Telephonic PHC*.

On March 11, 2010, the *Amended Assigned Commissioner's Ruling and Scoping Memo* (Amended Scoping Memo) was issued. The Amended Scoping Memo determined it was appropriate to issue an interim decision on whether to expand the program cap for SCE. On March 18, 2010, the assigned ALJ issued a proposed *Interim Decision Increasing Southern California Edison Company's Economic Development Rate-Retention Program*. Upon the motion of SCE, PG&E, DRA, and TURN on March 29, 2010, the assigned ALJ issued *Administrative Law Judge's Ruling on Motion to Suspend Schedule* (Ruling) to allow the parties to engage in settlement discussions.

On April 9, 2010 SCE, PG&E, DRA, and TURN, filed their *Status Report of Southern California Edison Company (U 338-E), Pacific Gas and Electric Company, Division of Ratepayer Advocates, and The Utility Reform Network on Progress of Settlement Efforts* (Status Report). On April 15, 2010, SCE and PG&E served a Notice of Settlement Conference to be held on April 22, 2010. On April 23, 2010, another Status Report was filed by SCE, PG&E, DRA, TURN, and EUF.

On April 30, 2010, SCE, PG&E, DRA, TURN, and EUF executed the *Settlement Agreement for Extension of Economic Development Rates through December 31, 2012* (Settlement Agreement). On May 3, 2010, SCE, PG&E, DRA, TURN, and EUF filed their *Joint Motion of Southern California Edison Company (U 338-E) and Settling Parties for Adoption of Settlement Agreement for Extension of Economic Development Rates through December 31, 2012* (Joint Motion for Settlement Agreement) and their *Joint Motion of Southern California Edison Company (U 338-E) and Settling Parties to Eliminate Comment Period on Settlement Agreement* (Motion). Upon receipt of the Motion and Settlement Agreement, the ALJ withdrew the proposed decision from the Commission's agenda.

3. Original Request

3.1. Original SCE Request

SCE sought to extend its EDR-R sunset date of December 31, 2009 set forth in D.05-09-018, as modified by D.07-09-016 and D.07-11-052 to December 31, 2012 for EDR-R tariff customers, because these retention customers use assets that are already in place. SCE did not seek to extend the sunset date for its EDR-A or EDR-E tariff customers because those potential customers may require investment in new distribution assets.[1] SCE also sought to set the marginal distribution cost component at zero for those EDR-R customers that will not require distribution upgrades. In its amended application, SCE requested an increase in the program cap authorized in D.05-09-018 from 100 megawatts (MW) to 250 MW. SCE currently has 47 MW enrolled under the EDR program.

3.2. Original PG&E Request

PG&E sought to extend its EDR program Tariff Schedule ED (Schedule ED) sunset date of December 31, 2009 set forth in D.05-09-018, as modified by D.07-09-016 and D.07-11-052 to December 31, 2012. In its amended application, PG&E requested an increase in the program cap authorized in D.05-09-018 from 100 megawatts (MW) to 200 MW. PG&E currently has 88.325 MW enrolled under the EDR program.

4. Proposed Settlement Agreement

An all party settlement conference was held on April 22, 2010. As discussed above, SCE, PG&E, DRA, TURN, and EUF all signed the Settlement Agreement. Per the Joint Motion, two parties, TAMCO and Greenlining, did not

[1] Application at 11.

sign the Settlement Agreement. Tamco indicated that it did not object to the proposed settlement terms and Greenlining did not attend the settlement conference and has since indicated it does not intend to be an active participant in the remainder of this proceeding.

That Joint Motion for Settlement Agreement, which included a copy of the signed Settlement Agreement, was filed on May 3, 2010, seeking adoption of their Settlement Agreement on all issues in A.09-10-012 and A.09-11-010. The Motion was also filed on May 3, 2010, seeking elimination of the comment period on the Settlement Agreement.

The terms of the proposed Settlement Agreement are as follows for both SCE and PG&E, unless otherwise noted:

1. Except as modified by the Settlement Agreement, all terms and conditions of the utilities existing EDR programs and related EDR contracts will remain unchanged.
2. The sunset date for the EDR program is extended to December 31, 2012.
3. The EDR Program Cap is 200 MW per Utility, and is not to be exceeded at any time.
4. Any customer who qualifies for and executes an EDR agreement under the provisions of each Utility's existing EDR program after the date each Utility filed its original application in this consolidated proceeding, but before the Settlement Agreement is adopted by the Commission, will have the option to take service under the terms and conditions applicable to new EDR customers if the customer exercises this option within sixty days after the Commission adopts the Settlement Agreement.
5. Subject to the Floor Bill (for SCE) or Floor Price (for PG&E) provision, the authorized maximum discount for new EDR customers will be twelve percent of the customer's Otherwise Applicable Tariff (OAT) each year for five years.

6. The Settlement Agreement does not change the current method used by PG&E for calculating the Floor Price. For new EDR customers serviced by SCE, the marginal generation components (energy and capacity) of the Floor Bill will be based on the marginal generation costs adopted in D.09-08-028, multiplied by the ratio of 6.06 divided by 7.00, to reflect an updated gas price. These marginal generation cost components will be in effect for the entire term of each new EDR contract with SCE.
7. The EDR discount will be calculated based on those rate components of the EDR customer's bill that correlate to services the Utilities provide to the EDR customer (as specified in the rate components listed in the customer's OAT).
8. In order to qualify as a new EDR customer for a retention agreement, billed electricity costs must account for at least five percent of the customers operating costs, less the cost of raw materials, on an annual basis.
    a. For attraction and expansion customers, estimated electricity costs must account for at least five percent of estimated operating costs, less the estimated cost of raw materials.
9. Customers seeking to execute EDR-R contracts who can demonstrate that electricity costs account for 15 percent or more of their current operating costs, less the cost of raw materials (or, for potential EDR-Expansion and EDR Attraction customers, estimated electricity costs must account for 15 percent or more of their estimated operating costs, less the estimated cost of raw materials) shall be provided expedited EDR screening, contract review and contract processing by the Utility.
10. The EDR discounts shall continue to be funded by the Utilities' ratepayers.
11. Each Utility's respective EDR contract will include the following provision, or words to the same effect: "This contract also shall be subject to review in any proceeding

the Commission may conduct regarding the Utilities' EDR program implementation."

a. The Utilities agree that if such review occurs, information relevant to the screening and enrollment of each EDR customer may be subject to discovery under Commission rules pursuant to protections that ensure confidentiality of proprietary and market-sensitive information.

12. In addition to the information the Utilities currently provide to the California Public Utilities Commission in their annual reports, the reports will include the following:

    a. A detailed process flow chart describing the Utilities' EDR screening and enrollment processes; and

    b. For new EDR customers who have commenced operation under an EDR contract, the amount paid to the utility above the Floor Bill or Floor Price and the discount provided relative to the customer's OAT (defined as the difference between the OAT and the discount rate).

13. Each Utility will retain correspondence between the Utility and the EDR customer associated with the evaluation of eligibility for enrollment on an EDR, and will also retain the Schedule ED Project Evaluation Checklist for PG&E, and the Economic Development Rate Process Checklist for SCE, as well as all documents referred to in those checklists, in accordance with each Utility's respective document retention policy.

5. Standard of Review for Settlements

We review the Settlement under the requirements set forth in Rule 12.1(d) of the Commission's Rules of Practice and Procedure. The rule provides that, prior to approval, the Commission must find a settlement "reasonable in light of the whole record, consistent with law, and in the public interest."

5.1. Discussion of Settlement

There was no opposition to the proposed Settlement Agreement. Beyond the signatories to the Settlement Agreement, the two other parties, TAMCO and Greenlining, have stated that they are agreeable to it.

The record in A.09-10-012 and A.09-11-010 includes SCE's and PG&E's amended applications, protests of the interested parties, replies by SCE and PG&E, transcripts from three PHC's, joint progress reports, and the Joint Motion for Settlement Agreement. This record provides sufficient information for us to determine the reasonableness of the Settlement Agreement. It is clear from the Joint Motion for Settlement Agreement, as well as the attached Settlement Agreement, that the parties considered all of the issues in dispute that the assigned Commissioner included in the Scoping Memo. The terms of the Settlement Agreement are a balanced compromise among the participating parties, and do not favor any one party over the other. For example, SCE and PG&E will provide more information in their annual reports to the Commission regarding the EDR program, while the program cap level has been raised, and the calculation of the floor price for SCE has been revised. The Settlement Agreement is reasonable in light of the whole record.

The Settlement Agreement was reached in accordance with Rule 12.1, via notice to parties of the settlement meeting and ultimate filing of the final document with the Commission. The Settlement Agreement retains certain aspects of the programs authorized in D.05-09-018, while making modifications based on the experience of the programs to date. For example, the utilities will continue to file an annual report, but now it will contain more detailed information; and, the program cap will continue to be based on MW, but is raised to a higher level, given the indicated higher level of participation that is

possible, with the downturn in the economy. The Settlement Agreement is consistent with the law.

Economic Development tariffs were previously approved for SCE and PG&E because: (1) electricity is a major cost of doing business in California; (2) Economic Development tariffs lower rates for all ratepayers by increasing or retaining revenues that contribute to utilities' fixed costs; and (3) Economic Development tariffs provide indirect benefits to ratepayers by increasing local employment opportunities and economic vitality.[2]

Economic conditions in California are generally worse than in 2005 when D.05-09-018 authorized SCE and PG&E's Economic Development tariffs. Over 900,000 California jobs have been lost since December 2007, when the current recession first began.[3] Although the United States unemployment rate was 9.6% in August 2009, California's unemployment rate grew to 12.2%, its highest level since World War II.[4] In some areas served by SCE, unemployment rates are even higher. For example, in the Riverside-San Bernardino-Ontario metropolitan area the unemployment rate in August 2009 was 14.5%.[5] SCE believes that extending its Schedule ED sunset date is vital to retain businesses in its service area.

As discussed in past decisions, the Commission defers to settlements when "the settlement commands broad support among participants fairly reflective of the affected interests. Second, that it does not contain terms which contravene statutory provisions or prior Commission decisions."[6] In the current case, all

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[2] D.05-09-018 at 27, Findings 1, 2, and 3.
[3] Application at 6.
[4] Application at 6.
[5] Application at 6.
[6] 1992 Cal. PUC LEXIS 867, *16.

parties to the consolidated proceeding have signed the Settlement Agreement or do not oppose it, illustrating that it is a reasonable compromise of the respective positions of the parties. The Settlement Agreement fairly resolves the issues in dispute and provides a much-needed incentive for businesses to stay and/or expand their business operations in California, which benefits ratepayers and other Californians alike. Adoption of the Settlement Agreement avoids the cost of further litigation, and frees up the time and resources of the Commission, applicants, and other parties. The Settlement Agreement and resulting continuation of EDR rates is in the public interest. Therefore, the Settlement Agreement in its entirety is reasonable and should be granted.

6. Categorization and Need for Hearing

In Resolutions ALJ 176-3243 dated October 29, 2009, and ALJ 176-3244, dated November 20, 2009, the Commission preliminarily categorized SCE's and PG&E's applications, respectively, as ratesetting, and preliminarily determined that hearings are necessary. We affirm that this is a ratesetting proceeding but, given the comprehensive settlement, hearings are not necessary.

7. Waiver of Comment Period

There is no opposition to the Settlement Agreement. Therefore, 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) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

8. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in these proceedings.

Findings of Fact

1. Pub. Util. Code § 740.4 requires the Commission to authorize economic development programs to the extent they provide ratepayer benefit.

2. SCE's EDR-R tariff had a sunset date of December 31, 2009.

3. PG&E's EDR tariff had a sunset date of December 31, 2009.

4. The Executive Director granted SCE an extension of its Schedule ED sunset date pending resolution of the application.

5. The Executive Director granted PG&E an extension of its Schedule ED sunset date pending resolution of the application.

6. SCE has enrolled 47 MW of its authorized 100 MW in the EDR program.

7. PG&E has enrolled 88.325 MW of its authorized 100 MW in the EDR program.

8. The unemployment rate in California averages 12.3%.

9. On May 3, 2010, SCE, PG&E, DRA, TURN, and EUF filed a motion for adoption of the proposed Settlement Agreement, attached as Appendix A to this decision.

10. On May 3, 2010, SCE, PG&E, DRA, TURN, and EUF filed a motion to eliminate the comment period on the proposed settlement.

11. The Settlement is comprehensive and reflects a thoughtful compromise among the parties.

Conclusions of Law

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

2. The comment period on the Settlement Agreement should be eliminated.

3. The Settlement Agreement should be adopted, and should be effective immediately.

4. SCE and PG&E should each file an Advice Letter within thirty days of the date of this decision. These Advice Letters should become effective on the date filed, subject to review by the Commission's Energy Division for compliance with this decision.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement attached to this decision as Appendix A is adopted.
2. Southern California Edison Company and Pacific Gas and Electric Company must each file an Advice Letter within thirty days of the date of this decision. These Advice Letters will become effective on the date filed, subject to review by the Commission's Energy Division for compliance with this decision. The Advice Letters must contain the revised Economic Development Rate tariff schedules, agreements, and affidavits, shown in the Settlement Agreement.
3. Application (A.) 09-10-012 and A.09-11-010 are closed.

This order is effective today.

Dated June 3, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

Wilson Appendix A