PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **RESOLUTION E-3894**
November 19, 2004

R E S O L U T I O N

Resolution E-3894. Southern California Edison Company (SCE) seeks approval to transfer Federal Energy Regulatory Commission (FERC) -jurisdictional approved settlement refunds to specific procurement related accounts. Approved, as modified.

By SCE Advice Letter 1811-E filed on July 23, 2004.

SUMMARY

SCE is receiving energy crisis settlement refunds for the period of October 2000 to January 17, 2001 from Williams Energy Companies (Williams) pursuant to a FERC order issued on July 2, 2004.

- **We adopt SCE's proposal to pass through the refund monies through the Energy Settlement Memorandum Account (ESMA).**
- **SCE is authorized to recover litigation costs actually incurred on these refund settlements, but total recovery shall not exceed the total of amounts provided for under the Claimants' Escrow accounts in the refund settlements.[1] Should SCE's litigation expenses exceed the totals of the Claimants' Escrow, SCE should file separately to the Commission for recovery.**
- **Recovery of litigation fees is subject to review under the Energy Resource Recovery Account (ERRA) proceeding.**

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[1] SCE and the CPUC entered into a Settlement Agreement settling SCE's Filed Rate Doctrine case on October 2, 2001. The Settlement Agreement provides that SCE has the right to recover its actual litigation costs.

- **SCE will retain 10% of the refunds net of costs for shareholders in accordance with the 2001 SCE-CPUC Settlement. The remainder of the refunds net of costs will be added to the ERRA to be passed through to consumers by February 2005.**

- **In acting on this proposal, our policy is to ensure that ratepayers receive the maximum benefit from the refunds obtained in a timely fashion. We will apply this over-arching policy to future refund case settlements as well.**

BACKGROUND

FERC has approved the Williams settlement under which Williams will refund money to SCE, as well as SDG&E and PG&E, for overcharges during the energy crisis period of October 2000 to mid-January 2001. SCE is likely to receive similar refunds from some other companies as well.

On July 2, 2004, the FERC issued an order (Docket No. EL00-95, et al.) approving a settlement agreement (Williams-IOU[2] Settlement), also approved by the California Public Utilities Commission (CPUC), between PG&E, SDG&E, SCE, the Williams Companies, Inc., and Williams Power Company Settlement (Williams). SCE is likely to receive similar refunds from Dynegy and Duke soon. These refunds relate to purchases of energy and ancillary services made by SCE on behalf of electric utility bundled service customers in markets operated by the California Independent System Operator Corporation (CAISO) and the California Power Exchange (PX). The Williams-IOU Settlement allocates SCE $28.4 - $31.9 million, plus a separate allocation of $5.5 million to SCE through the Settling Claimants Escrow, for a total allocation of $33.9 - $37.4 million. The lower range value represents the initial refund to be transferred to SCE on behalf of ratepayers. The upper range value represents additional amounts the FERC must still rule on for this particular case. All amounts identified above are stated before interest.

[2] IOU stands for Investor Owned Utility.

SCE proposes a refund memorandum account in compliance with October 2001 Settlement Agreement.

SCE currently has no account to handle the settlement refunds. SCE requests authority to establish the Energy Settlements Memorandum Account (ESMA) to record refund amounts it receives. [3] SCE proposes to credit all refunds received on behalf of bundled customers for purchases made during portions of 2000 and 2001 into the ESMA. In accordance with Section 3.3 of the October 2001 Settlement Agreement, certain debit entries will be made to the ESMA (other than accrued interest):

- Debit entries to record the costs that SCE incurred related to obtaining the proceeds and other relief provided for in the settlement agreements (e.g., litigation fees and other professional fees)
- Debit entries for payments that SCE must make (if any) to other market participants
- Debit entries equal to 10 percent of the liquidated value of any and all net refund amounts received by SCE.

The ESMA will be an interest bearing account using the actual 3-month Commercial Paper rates as published by the Federal Reserve.

SCE states that it will file its ratemaking proposal for the disposition of amounts recorded in the ESMA on August 1, 2004 as part of its ERRA 2005 Forecast filing. The proposal will provide a reduction to the Generation component of SCE's Bundled Service customers' rates. The refunds will be passed through to customers after the Commission approves the ERRA 2005 Forecast filing to establish procurement rates to be effective January 1, 2005.

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[3] Section 3.3(a) of the October 2, 2001 Settlement Agreement between SCE and the CPUC (October 2001 Settlement Agreement) provides that until the PROACT (Resolution E-3765) account is fully recovered, 100% of "all Refunds" are to be applied to the PROACT account. The PROACT account was fully recovered in 2003. Section 3.3(a) further provides that, after the PROACT account is fully recovered, 90% of "net Refunds" are to be refunded to ratepayers as directed by the CPUC.

SCE receives an additional $3.0 million from SDG&E for SONGS operational responsibility.

Under its Advice Letter 1601-E (see related Resolution E-3893), SDG&E estimates that it will be allocated $14.6 million from the Williams-IOU Settlement. Of this amount, SDG&E states that it is obligated to reimburse SCE $3.0 million for SDG&E's share of the San Onofre Nuclear Generating Station (SONGS). This amount is a refund liability due to SCE from the Williams-IOU Settlement for its operational responsibility of SONGS, not accounted for separately for SDG&E by the CAISO or the PX.

NOTICE

Notice of AL 1811-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

No protests were made to SCE Advice Letter 1811-E.

DISCUSSION

SCE's advice letter was reviewed to ensure a compliant refund disposition.

Energy Division has reviewed SCE's AL 1811-E for compliance with the October 2001 Settlement Agreement (Southern California Edison Co. v. Loretta Lynch, et al, U.S. Dist. Ct. (C.D. Cal) Case No. 00-12056-RSWL(Mcx) and with other applicable decisions. Under Public Utilities Code § 453.5, the Commission "shall require public utilities to pay refunds to all current utility customers, and when practicable, to prior customers, on an equitable pro rata basis....". These particular refunds cover the time period of post October 2000 through January 17, 2001. As of January 17, 2001, the Department of Water Resources (DWR) began its role in purchasing energy for the utilities' customers.

SCE's proposal to establish the ESMA account to distribute energy crisis settlement refunds complies with the SCE-CPUC 2001 Settlement Agreement.

The disposition of energy crisis settlement refunds as proposed under SCE's AL 1811-E complies with the October 2001 Settlement Agreement. In addition to the refunds directly received by SCE from Williams, SCE should transfer the monies received from SDG&E associated with the SONGS refund liability described above to the ESMA. The ESMA account should be subject to audit under the ERRA proceedings.

The current Williams-IOU Settlement refund has been distributed to the market participants and the pending refunds associated with Dynegy and Duke are expected before the end of 2004. All refunds received should flow to ratepayers as soon as possible for immediate rate relief. Energy Division requested SCE to describe the extent of any outstanding liabilities subject to current litigation in order to determine the magnitude of ratepayer refunds to be distributed. SCE replied that as of this date, its other outstanding debts have been resolved.

SCE should be granted recovery of litigation fees related to energy crisis cases.

SCE proposes to retain "costs of recovery", including litigation costs incurred to obtain refunds, pursuant to the October 2001 Settlement Agreement. SCE's proposal does not state what amount it expects to retain for litigation fees associated with the Williams-IOU Settlement, although this amount is identified through the Settling Claimants Escrow as $ 5.5 million. SCE's proposal is to establish a memorandum account to record all the refund amounts it receives with a ratemaking proposal in the 2005 ERRA Forecast filing for the disposition of amounts recorded.

Both the October 2001 Settlement Agreement and the global settlement reached last year with El Paso (D.03-10-087) provide for the recovery of attorneys' fees. Both of these earlier settlements were approved by the CPUC. Together, the earlier settlements establish a CPUC policy precedent authorizing recovery of attorneys' fees in cases where the IOUs expend extraordinary efforts on behalf of ratepayers.

SCE should be authorized to recover litigation costs actually incurred that are reasonably related to each refund settlement, but recovery should not exceed the total of amounts provided for under the Claimants' Escrow accounts in the

refund settlements. However, should SCE's litigation expenses exceed the totals of the Claimants' Escrow, SCE may apply separately to the Commission for recovery. Recovery of litigation fees should be reviewed under the ERRA.

SCE should recover the costs actually incurred that are reasonably related to the refund settlements. We understand that in each settlement, there is an amount set aside in the form of a Claimants Escrow account for litigation costs which may be higher or lower than the costs actually incurred. Total recovery of litigation fees for all of the refund settlements should not exceed the totals provided for in the Claimants' Escrow Account. Should SCE's litigation expenses exceed the totals of the Claimants' Escrow, SCE should apply separately to the Commission for recovery. SCE should retain the amount that is set aside in each settlement as each refund is received and track it along with the actual incurred costs. After all the refunds are received, the memorandum account should be settled in the ERRA proceeding.

A separate memorandum account for recording the litigation costs related to refunds is essential because the litigation fees associated with the energy crisis are not part of the revenue requirement authorized in general rate cases. The litigation memorandum account should be part of the ESMA. The ESMA tracking account for litigation fees should be subject to audit in the ERRA proceedings. Similar to the global settlement with El Paso, SCE should demonstrate that the amount of its litigation and related professional fees is reasonable and that the fees arose from refund work related to the particular refund case at hand.

Utility recovery of litigation fees or other costs of recovery should not be made until the actual funds are received from each settlement. As stated above, additional adjustments above the known settlement amounts approved by the FERC will be made at a later time. These additional amounts should be booked into the ESMA as received and should be reviewed under a subsequent ERRA proceeding.

Any remaining balance in the SCE litigation memorandum account after SCE has fully recovered its incurred litigation costs and paid off any outstanding liabilities related to refunds should be split 90%-10% between ratepayers and shareholders.

SCE should transfer the SONGS related refunds received from SDG&E to its ESMA.

Energy Division requested SDG&E to provide additional support explaining its $3.0 million liability for SONGs power to be paid to SCE separately identified under the Williams-IOU Settlement. Regarding the SONGs refund liability, SDG&E replies:

> "...because sales into the PX from SONGS are subject to FERC's price mitigation, SCE, as the entity responsible for SONGS, received all of the attendant refund liability. Hence, an adjustment is necessary to compensate SCE for SDG&E's share of the SONGS refund liability. SDG&E's refund liability for SONGS was calculated as SDG&E's entitlement to the SONGS output as a fraction of all supply in the ISO & PX markets, multiplied by the total of buyers' refund entitlements in the PX and ISO markets during the October 2, 2000 through January 17, 2001 period. SCE and SDG&E agreed that the $3 million adjustment to the distributions from the settlement escrow account is needed to account for SDG&E's 20% ownership (of SONGS)."

SDG&E notes in AL 1601-E that it expects to make similar payments to SCE for its SONGS refund liability from each of the pending Dynegy and Duke refund settlements of approximately $3.3 and $3.5 million, respectively. SDG&E's payments to SCE should be transferred by SCE to its ESMA, as proposed under its AL 1811-E and as addressed by this resolution. Since SCE has not identified any outstanding debts, these amounts should flow directly to ratepayers and shareholders on a 90%-10% basis. None of these monies should be applied to litigation fees.

SCE should incorporate the Williams-IOU Settlement refunds with any other refunds received before the end of the year 2004 into the ERRA to be passed on to ratepayers January 1, 2005 through the ERRA procurement rate changes.

To ensure that SCE bundled customers receive the benefit of the refunds as soon as possible, SCE should incorporate the Williams-IOU Settlement refund monies with any refund(s) received from Dynegy and Duke before the end of the year 2004, into the ERRA promptly to be passed on to ratepayers effective January 1, 2005 through the ERRA procurement rate change (A.04-08-008)]. This refund,

consolidated with other rate changes anticipated under the ERRA, should provide bundled customers with a credit effective January 1, 2005. Utility recovery of litigation fees or other costs of recovery should be made when the actual funds are received from each settlement. As stated above, additional adjustments above the known settlement amounts approved by the FERC will be made at a later time. These additional amounts should be booked into the ESMA account as received, should be addressed under a subsequent ERRA proceeding, and ultimately should flow to ratepayers and shareholders, as provided for under the 2001 Settlement Agreement. Ratepayers will realize the refund benefit through a lowered procurement rate.

Comments

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was reduced upon a stipulation made by the parties. Accordingly, this draft resolution was mailed to parties for comments.

SCE comments clarify that consolidated ERRA rate changes are expected by February 2005 and that it may still be obliged to refund market participants in the future. We modify the resolution based on SCE's comments.

SCE filed timely comments on October 18, 2004. No reply comments were received. SCE states that it generally agrees with the draft resolution, but is concerned that the timing of the anticipated refunds will provide customers with a "piece-meal" approach to receipt of the refunds. SCE wants Commission assurance that, if at a later date, SCE has to return amounts to market participants that it has already given back to its customers, that such amounts are eligible for recovery through the operation of the ESMA. SCE is also concerned about the timing of the draft resolution's rate change of January 1, 2005, stating that the consolidated ERRA and DWR rate changes are not expected until February 2005.

We agree that the intent of this resolution is to consolidate the settlement refunds received with the ERRA and DWR rate change, but also recognize that the expected dates of this rate change may not occur exactly on January 1, 2005. Therefore, we modify the order to accommodate this issue. However, we expect SCE to update the ERRA Forecast record in A. 04-08-008 with the settlement refund amounts received through December 31, 2004, so that the consolidated ERRA and DWR rate changes will reflect the refunds received through the end of the year. The April 2005 ERRA Reasonableness of Operations will provide an audit of the ESMA balancing account. It is reasonable to provide under the ESMA that if at a later date, SCE has to return amounts to market participants that it has already given back to its customers and its shareholders, that such amounts are eligible for recovery through the operation of the ESMA. A provision for this should appear in the ESMA tariff description. SCE should supplement Advice Letter 1811-E with this provision.

FINDINGS

1. On July 2, 2004, the FERC issued an order (Docket No. EL00-95, et al.) approving a settlement agreement also approved by the California Public Utilities Commission (CPUC) with the Williams Companies, Inc and Williams Power Company Settlement (Williams). Additional settlements are pending.

2. The Williams-IOU Settlement allocates SCE $28.4 - $31.9 million, with a separate allocation of $5.5 million to SCE through the Settling Claimants Escrow.

3. SDG&E is obligated to reimburse SCE $3.0 million from the Williams-IOU Settlement to settle its refund liability for SCE's operation of SONGS associated with this particular refund. SCE should add this amount to its initial Williams-IOU Settlement allocation and should treat reimbursements from SDG&E for future refund allocations similarly.

4. SCE's ESMA account complies with the October 2, 2001 SCE-CPUC Settlement Agreement. The ESMA account should be subject to audit conducted under the ERRA proceedings.

5. SCE should record energy crisis related refunds in the ESMA account.

6. SCE should apply energy crisis related refunds to any outstanding procurement debts.

7. SCE states that it has no outstanding procurement debts as of this date.

8. SCE should be authorized to recover litigation costs actually incurred that are reasonably related to each refund settlement, but recovery should not exceed the total of amounts provided for under the Claimants' Escrow amounts of the refund settlements.

9. SCE should apply to the Commission for separate recovery if its energy crisis litigation fees exceed the total of all Claimants' Escrow amounts.

10. SCE should retain 10% of the settlement refund monies after deducting litigation fees and other costs for shareholders.

11. For the refund settlement amount(s) received from SDG&E related to SONGS, SCE should record the entire amount in the ESMA and should not deduct for any litigation fees or other costs of recovery. SCE did not incur any costs for that part of the refund. However, the net amount is subject to the 90% - 10% distribution to ratepayers and shareholders, respectively.

12. SCE should apply 90% of the net remaining settlement refund monies to ratepayers, through the ERRA Forecast proceeding.

13. Any additional refunds stemming from the Williams-IOU Settlement including interest should be passed through the ERRA account in a manner similar to the SONGS receipts from SDG&E.

14. SCE should apply refunds received and any pending refunds, if received before the end of 2004, into a consolidated ERRA rate change for bundled customers expected by February 2005.

15. It is reasonable to provide under the ESMA that if, at a later date, SCE has to return amounts to market participants that it has already given back to its customers and its shareholders, that such amounts are eligible for recovery through the operation of the ESMA. A provision for this should appear in the ESMA tariff description as a supplement to Advice Letter 1811-E.

THEREFORE IT IS ORDERED THAT:

1. Southern California Edison Company's request to establish an account to record energy crisis settlement refunds as proposed in Advice Letter AL 1811- E is approved, as modified.

2. Southern California Edison shall consolidate receipts of all refunds actually received before the end of 2004, net of refund related costs, and pass these refunds through to bundled customers through its consolidated, ERRA procurement-related rate change expected in February 2005.

3. Within 10 days of today's date, SCE shall supplement AL 1811-E to conform its proposed tariffs with the requirements of this Order. The amounts booked in the ESMA during 2004 shall be reviewed in the 2006 ERRA Reasonableness of Operations proceeding to be filed in April 2005.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on November 19, 2004, the following Commissioners voting favorably thereon:

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STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

I reserve the right to file a dissent.
/s/ CARL W. WOOD
Commissioner

I reserve the right to file a dissent.
/s/LORETTA M. LYNCH
Commissioner