PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **RESOLUTION E-3977**
April 13, 2006

R E S O L U T I O N

Resolution E-3977. Southern California Edison (SCE) requests the Commission's authorization to establish a memorandum account to track and record costs that SCE may incur in order to seek modification of the December 1999 Mohave Consent Decree and to obtain any other applicable legal authorizations so that the Mohave Generating Station (Mohave) may continue operating with minimal interruption after December 31, 2005, prior to the installation of the pollution controls specified by the Consent Decree.

By Advice Letter 1953-E Filed on December 29, 2005.

SUMMARY

SCE may establish the MIOEMA and record up to $1.5 million in the account

This Resolution approves SCE's request to establish a Mohave Interim Operation Effort Memorandum Account (MIOEMA) to track costs of modifying Mohave's Consent Decree and regulatory permits to allow for near-term, interim operation. This Resolution authorizes SCE to record up to $1.5 million in the MIOEMA.

This Resolution reaffirms D.04-12-016 in response to SCE's request for express confirmation that it remains the desire of the Commission to minimize any interim period of Mohave in-operation and that potential SCE spending discussed in this filing would be recoverable in principle, subject to a reasonableness review, and not subject to a blanket disallowance.

This Resolution does not address SCE's request that the Commission determine how it would treat resumed Mohave operations from the standpoint of carbon dioxide emissions. That issue will be considered separately by the Commission.

BACKGROUND

Mohave shut down at the end of 2005 due to pollution control, water, and coal fuel supply issues

On December 31, 2005, the Mohave Generating Station (Mohave) a two-unit, coal-fired power plant located in Laughlin, Nevada, shut down operations as certain pollution control equipment[1] were not installed as required per the terms of 1999 Mohave Environmental Consent Decree (Consent Decree)[2]. Mohave's two generating units had an operating capacity of approximately 1,580 megawatts (MW). SCE is the plant operator and owns a 56% undivided interest in Mohave[3], which is equivalent to approximately an 885 MW entitlement.

In addition to the Consent Decree requirement for installation of pollution control equipment, Mohave's coal supply contract also expired at the end of 2005, and the availability of water for use at the mine and for the pipeline is uncertain after 2005. The Mohave co-owner's agreement, whereby SCE, Salt River, LADWP, and Nevada Power set forth the rights and obligations of the co-owners, terminates on July 1, 2006.

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[1] SO2 scrubbers, fabric filter dust collectors, and low-Nox burners. The pollution controls required by the 1999 Consent Decree do not address carbon and mercury emissions, which could become issues under future environmental regulations.

[2] The Consent Decree settled a federal civil lawsuit, CV-S-98-00305-LDG (RJJ) that was filed in 1997 by Grand Canyon Trust, Inc., Sierra Club, Inc., and National Parks and Conservation Association, Inc. against SCE and the other Mohave co-owners alleging various air quality violations at Mohave. Edison and the other Mohave co-owners were signatories to the 1999 Consent Decree and have known since then that either the required improvements had to be made, or the facility would shut-down at the end of 2005.

[3] The remaining percentage shares in the plant are owned 20% by Salt River Agricultural Improvement and Power District (Salt River), 10% by Los Angeles Department of Water and Power (LADWP), and 14% by Nevada Power Company (Nevada Power).

D.04-12-016 authorized SCE to make necessary expenditures on critical path investments while seeking resolution of the water and coal fuel supply issues. SCE efforts to modify the Consent Decree were not explicitly addressed.

In Decision 04-12-016, the CPUC authorized SCE to make necessary and appropriate expenditures on Mohave for critical path investments required by the 1999 Consent Decree to allow Mohave to continue operations post year-end 2005; to continue working on resolution of the water and coal issues including: the funding of the C-Aquifer hydro-geological and environmental studies; the study of options/alternatives; and to establish a memorandum account to track worker protection benefit expenses.

D.04-12-016 did not, however, explicitly address expenditures that SCE may make for the purpose of seeking a modification of the Consent Decree and other legal provisions that may be required to enable Mohave to operate prior to installation of the pollution controls.

SCE seeks to track, for future recovery, expenses that SCE incurs in its efforts to modify the Consent Decree to minimize the downtime of Mohave.

SCE filed Advice Letter 1953-E on December 29, 2005 requesting authority to establish a memorandum account, the proposed MIOEMA. In this account, SCE would track, for future recovery in rates subject to reasonableness determination, expenses that SCE may incur in order to seek modification of the December 1999 Mohave Consent Decree. SCE would also track in the MIOEMA, expenses incurred to obtain any other applicable legal authorizations so that the Mohave generating station may continue operating with minimal interruption after December 31, 2005, prior to the installation of the pollution controls specified by the Consent Decree.

SCE states that its efforts to minimize the period of Mohave non-operation, if successful, will mitigate the associated negative impacts on SCE's customers, employees, the Navajo and Hopi tribes and other stakeholders. SCE states this would not prejudge any eventual Commission decision on approval of the costs of the pollution controls and other upgrades required to operate long-term beyond 2005.

NOTICE

Notice of AL 1953-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

Advice Letter AL 1953-E was protested.

The Division of Ratepayer Advocates (DRA) and the Natural Resources Defense Council (NRDC) timely protested SCE's Advice Letter AL 1953-E on January 18, 2006.

DRA protests the proposed memorandum account for several reasons, while NRDC protests that SCE did not recognize, and request funding for, generation alternatives to Mohave.

DRA protests the proposed memorandum account on the following grounds:

1. It was not authorized in any decisions;
2. Monetary estimates were not provided;
3. Types of costs to be recorded were not defined;
4. Monthly status reports on Mohave do not indicate any potential for continued operation;
5. The GRC and ERRA accounts already provide for recovery of capital costs, litigation costs and operating costs for Mohave; and
6. SCE had six years to comply with the 1999 Consent Decree or negotiate an extension.

NRDC protests that SCE's advice letters do not recognize generation alternatives to Mohave and that SCE should request funds to pursue development of the alternatives identified in a forthcoming final study. NRDC also suggests that the CPUC should be mindful of the long-term effects associated with greenhouse gas emissions that are associated with a return to operation of Mohave.

SCE responded to both protests on January 25, 2006.

SCE responds to each point raised by DRA and advises that the Commission reject DRA's protest.

In its response, SCE agrees with DRA that there is no explicit mention of an account with the MIOEMA's purpose in D.04-12-016. However, SCE believes that the attempt to modify the Consent Decree to minimize the period of shut-down is consistent with the general purpose and intent of that decision. SCE also disagrees with DRA's insinuation that a memorandum account cannot be established unless it is explicitly authorized by a Commission decision.

SCE responded to DRA's protest that it had not defined the type of costs to be included in the memorandum account, nor an estimate or limit on the costs that can be recorded to the memorandum account. SCE points to its advice letter filing that stated that the costs to be recorded are those that do not fall into the categories authorized for recovery in the GRC or through the operation of the ERRA. SCE notes that it will likely incur these costs as modifications of the Consent Decree. SCE states that an estimate of, or a limit on, the costs to be recorded in the memorandum account would be subject to determination through discussion with the relevant air quality regulators and the plaintiffs in the Consent Decree. However, SCE's current estimate is $1.5 million. SCE states that if it is determined at any time that the costs recorded to the proposed memorandum account will exceed $1.5 million, SCE will inform the Commission and seek authorization to record additional amounts in the MIOEMA.

SCE disagrees with DRA's protest that none of the monthly update reports on the status of Mohave "indicate any consideration or potential for Mohave to continue operating." SCE cites October and December 2005 monthly reports as having mentioned the continuing operation potential of Mohave. SCE also cites the update hearings in SCE's 2006 GRC proceeding where the continued operation of Mohave was a significant issue.

SCE responded to DRA's protest that SCE had six years to comply with the Consent Decree or to negotiate an extension of it, and that "SCE provides no evidence that modifications of the Consent Decree is remotely possible." SCE argues that as Mohave was scheduled to be sold, the Mohave water and coal issues were largely on hold until 2001 when Assembly Bill (AB) 6X prohibited the sale of utility generation assets. SCE states that, soon after the resolution of

the energy crisis, SCE began focused efforts to identify an alternative source of water for Black Mesa mine and slurry pipeline uses.

SCE states that if modifications to Consent Decree are not accomplished, then there is nothing to concern DRA because no costs will be incurred to be recorded in MIOEMA.

SCE responds that while NRDC's comments are unrelated and irrelevant to the establishment of a memorandum account, SCE concurs with NRDC that the Commission should determine how it would treat any resumed operations of Mohave from the standpoint of CO2 emissions

SCE responds that NRDC's comments are unrelated to, and irrelevant to, the question of whether the MIOEMA should be established. While NRDC has correctly noted that the Mohave Alternative/Complements Study (MACS) ordered by the Commission is nearing completion, the MACS report and the potential alternative resources studied in it are fundamentally unrelated to, and irrelevant to, the question of whether the MIOEMA should be established. SCE reiterates that the purpose of the MIOEMA is to track for potential rate recovery the costs of modifying Mohave's Consent Decree and regulatory licenses. The account would allow for near-term, interim operation of the plant (roughly 2006-2010 at most), pending further resolution of Mohave's water and coal supply issues, Commission's approval of the pollution controls and other upgrades, and the installation of those upgrades for longer-term operation.

SCE responds that NRDC's suggestion that the establishment of the MIOEMA should be coupled with SCE funding to pursue development of alternative resources identified in the MACS report lacks logical basis and has no connection to the MIOEMA. SCE states that the question of whether SCE should replace future Mohave operations with development of renewable or energy efficiency options should be considered only when Mohave's water and coal supply issues have been adequately resolved. In this way, SCE can place a Mohave upgrade proposal before the Commission, allowing the Commission to make an informed decision between Mohave and any alternatives.

In regards to NRDC's comments that the "Commission should consider the long-term effect associated with a return to operation of Mohave from the perspective of greenhouse gas omission", SCE again responds that it is fundamentally unrelated to the MIOEMA. However, SCE concurs with NRDC that it is

appropriate for the Commission to determine at this time how it would treat any resumed Mohave operations from the standpoint of CO2 emissions. As filed in AL 1953-E, SCE seeks confirmation that the Commission continues to encourage efforts toward minimizing a Mohave suspension period, in light of the Commission's policy actions on CO2 emissions over the recent months.

DISCUSSION

Energy Division recommends, and we authorize SCE to establish MIOEMA, with a limit of $1.5 million, to track costs of modifying Mohave's Consent Decree and permits. In response to SCE's other requests, the Commission reaffirms D.04-12-016 and defers addressing how it would treat resumed Mohave operations from the standpoint of carbon dioxide (CO2) emissions to an order in a future proceeding.

The MIOEMA should be authorized to track costs of modifying Mohave's Consent Decree as the purpose and intent of Decision 04-12-016 was to preserve the "Mohave-open" option.

In D. 04-12-016, the Commission authorized SCE to make interim critical path expenditures, as necessary and appropriate to preserve the possibility of resuming Mohave operation after 2005, while efforts continued to resolve the water and coal issues. The decision stated that its goal was to return Mohave to service with as short of a shutdown period as possible. Ordering Paragraph 1 of the decision authorized SCE "…to spend necessary and appropriate funds on critical path investments at Mohave as defined herein…"

The decision did not, as noted in SCE's advice letter filing, address expenditures that SCE may make for the purpose of seeking a modification of the Consent Decree, nor did it address other legal provisions that may be required to enable Mohave to continue or resume operating in the interim prior to installation of the pollution controls. DRA raises a concern that the memorandum account was not authorized by the decision and that the monthly status report on Mohave filed by SCE did not indicate any potential for Mohave to continue operations. SCE responded to DRA's protest as noted above.

We did not explicitly authorize this memorandum account, and the monthly status reports do not communicate substantial progress in the continued operation of Mohave. However, the general purpose and intent of the decision is

to return Mohave to service with as short a shut-down period as possible to minimize the impact of a shut-down on Mohave stakeholders. As such, while it is questionable whether the decision anticipated that SCE would attempt to modify the Consent Decree, the effect, if successful, would serve to minimize the downtime of Mohave. SCE hopes that modification of the Consent Decree will limit the downtime of Mohave to less than one year.

SCE is required to file a formal application with the Commission for approval of modification to Consent Decree.

Should SCE succeed in its efforts to modify the Consent Decree, the Commission does not provide assurances that it will approve the modifications. In response to an Energy Division data request, SCE stated that…" The modifications would be subject to review and approval by the court and other relevant environmental agencies. In addition, SCE intends to present any modified Consent Decree to the CPUC for approval…." The Commission holds SCE to that statement and will require that SCE file a formal application if SCE succeeds in modifying the Consent Decree. The application should detail the modifications agreed to by all parties to the Consent Decree, identify regulatory and environmental permit requirements, include a schedule for obtaining the necessary permits and court approvals, and include a cost estimate. The application should be filed before SCE incurs licensing, permitting, or court expenses, to allow the Commission to weigh the benefits of the modifications to ratepayers.

The level of costs to be recorded in the MIOEMA is limited to $1.5 million, but zero if SCE fails to modify the Consent Decree.

In its advice letter filing, SCE states that the Mohave plant capital and O&M costs are included in SCE's GRC and that fuel-related costs will be tracked in the Energy Resources Recovery Account (ERRA). The MIOEMA will track other costs that do not fall within those categories. The one example cited by SCE is costs incurred "…to provide for comparable or superior environmental performance of the continued Mohave operations with respect to the air emissions covered by the Consent Decree." In responding to DRA's protest, SCE estimates that $1.5 million could be recorded to MIOEMA. SCE's response concluded by stating, "Moreover, if modifications to Consent Decree are not accomplished then there is nothing to concern DRA because no costs will be incurred to be recorded in MIOEMA."

The Commission takes SCE's statements at face value. Should SCE succeed in its efforts to modify the Consent Decree, SCE is authorized to record up to $1.5 million in the MIOEMA. Should SCE fail in its efforts to modify the Consent Decree, no costs recorded in MIOEMA, if any, shall be recovered in rates.

Recovery of MIOEMA balance is subject to Commission review prior to their recovery in rates.

Should SCE succeed in its efforts to modify the Consent Decree, any amount recorded in the MIOEMA will be subject to a reasonableness review before SCE can recover the recorded costs. SCE has stated in its response to DRA's protest that SCE will seek recovery of the amounts recorded in MIOEMA through an application (likely its annual ERRA Reasonableness Proceedings). We will allow SCE to request recovery of balances recorded to the MIOEMA in its annual ERRA proceeding.

The Commission reaffirms the directives provided to SCE in D.04-12-016.

In AL 1953-E, SCE requested express confirmation that it remains the desire of the Commission to minimize any interim period of Mohave non-operation pending a final Commission decision on the Mohave upgrades, and that all potential SCE spending as discussed in this filing would be recoverable in principle, subject to a reasonableness review, and not subject to a blanket disallowance.

We do not provide this confirmation SCE requests in this Resolution. Rather we reaffirm D.04-12-016. In that decision, SCE was authorized to spend any money necessary to preserve the "Mohave-open" option, but not authorized to proceed with the pollution controls, related capital improvements and construction costs for those items now. The decision found reasonable the following costs: (1) continued funding of the C-Aquifer studies; (2) funding of a study of alternative options; and (3) those specific design and construction costs that have been the subject of evidentiary hearings. The decision also adopted a proposal that if Mohave shuts down prematurely, SCE will not recover any un-amortized Mohave plant balances unless it can demonstrate that it took all such steps to preserve the "Mohave-open" alternative and that the shut-down is due to factors outside of the utility's control.

SCE should participate in a future proceeding addressing greenhouse gas emissions.

In its response to NRDC's protest, SCE concurred that it was appropriate for the Commission to determine at this time how it would treat any resumed Mohave operations from the standpoint of CO2 emissions. We disagree. As SCE noted in its advice letter filing, the Commission issued its Policy Statement on Greenhouse Gas Performance Standards on October 6, 2005. As such, it is too early for the Commission to have developed any specific guidelines to implement the policy statement.

Therefore, we do not address SCE's request that the Commission determine how it would treat resumed Mohave operations from the standpoint of CO2 emissions at this time. As the Commission anticipates opening a proceeding to address greenhouse gas issues, it would be premature and counter-productive to address one specific request. SCE may participate in this future proceeding to address its concerns.

We manage DRA's concerns by establishing limits and reject NRDC's protest as being without merit.

DRA's protest is not without merit. DRA has rightly raised valid concerns with SCE's request. However, D.04-12-016's stated goal was to return Mohave to service with as short of a shutdown period as possible. If SCE is able to modify the Consent Decree, the shutdown period may be minimized. As such, we will approve SCE's request to establish MIOEMA, but place a limit of $1.5 million, authorize recovery only if SCE is successful in its renegotiation of the Consent Decree, and require Commission review prior to recovery.

NRDC's protest does not address the specific question of whether the MIOEMA should be established. NRDC's concerns and comments may be better addressed in future Mohave proceedings that are broader in scope. NRDC's protest is denied.

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.

The 30-day comment period for the draft of this resolution was neither waived or reduced. Accordingly, this draft resolution was mailed to parties for comments. This draft resolution will be placed on the Commission's agenda for the April 13, 2006 meeting.

No parties submitted comments.

FINDINGS

1. Mohave Generating Station (Mohave), a two-unit, coal-fired power plant located in Laughlin, Nevada, shut down operations on December 31, 2005 as certain pollution control equipment were not installed as required by the terms of 1999 Mohave Environmental Consent Decree (Consent Decree).
2. Mohave's coal supply contract expired at the end of 2005, and the availability of water for use at the mine and for the pipeline is uncertain after 2005.
3. The Mohave co-owner's agreement, whereby SCE, Salt River, LADWP, and Nevada Power set forth the rights and obligations of the co-owners, terminates on July 1, 2006
4. In Decision 04-12-016, the CPUC authorized SCE to make necessary and appropriate expenditures on Mohave for critical path investments required by the 1999 Consent Decree to allow Mohave to continue operations post year-end 2005; to continue working on resolution of the water and coal issues including the funding of the C-Aquifer hydro-geological and environmental studies; to study options/alternatives; and to establish a memorandum account to track worker protection benefit expenses.
5. D.04-12-016 did not explicitly address expenditures that SCE may make for the purpose of seeking a modification of the Consent Decree and other legal provisions that my be required to enable Mohave to continue or resume operation in the interim prior to installation of the pollution controls.
6. SCE filed Advice Letter 1953-E on December 29, 2005 requesting authority to establish a memorandum account to track expenses that SCE may incur in order to seek modification of the December 1999 Mohave Consent Decree.
7. The Division of Ratepayer Advocates (DRA) and the Natural Resources Defense Council (NRDC) timely protested SCE's Advice Letter AL 1953-E on January 18, 2006.
8. SCE responded to both protests on January 25, 2006.

9. SCE's request for confirmation that all potential spending addressed in AL 1953-E is recoverable and not subject to a blanket disallowance should not be granted by this Resolution.
10. SCE's request that the Commission determine how it would treat resumed Mohave operations from the standpoint of carbon dioxide emissions should be considered later in a formal proceeding.
11. The Commission anticipates opening a proceeding to address greenhouse gas issues.

THEREFORE IT IS ORDERED THAT:

1. The request of the Southern California Edison (SCE) to establish a Mohave Interim Operation Effort Memorandum Account (MIOEMA) as requested in Advice Letter AL 1953-E is approved, as modified in Ordering Paragraph 7.
2. SCE shall file a formal application for Commission approval of any modification to the Consent Decree. The application will include:
    - Modifications agreed to by all the parties;
    - Identify regulatory and environmental permit requirements;
    - Include a schedule for obtaining the necessary permits and court approval;
    - Include a cost estimate.
3. SCE is authorized to record $1.5 million in the MIOEMA.
4. Should SCE fail in its efforts to modify the Consent Decree, no costs recorded in MIOEMA will be recovered in rates.
5. Any amounts recorded in the MIOEMA will be reviewed by the Commission in a formal proceeding prior to recovery in rates.
6. SCE is authorized to present MIOEMA balances in its annual ERRA Reasonableness Proceeding.
7. Within 10 days of today's date, SCE shall supplement AL 1953-E to include the following tariff changes:
    - Set monetary limit to be recorded in MIOEMA to $1.5 million;
    - Cost recovery of expenses recorded in MIOEMA is only authorized if the Consent Decree is modified;
    - SCE must submit a formal application, as specified in Ordering Paragraph 2, with the Commission for approval of Consent Decree modifications;
    - Recovery through rates is subject to Commission review and approval in a formal proceeding.

8. The protest of DRA is resolved as described herein.
9. The protest of NRDC is denied.
10. AL 1953-E, as supplemented pursuant to this order, shall be effective today, subject to Energy Division determination that it is in compliance with this order.

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 April 13, 2006; the following Commissioners voting favorably thereon:

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STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
GEOFFREY F. BROWN
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

Commissioner Grueneich recused herself from this agenda item and was not part of the quorum in its consideration.