

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4182
September 18, 2008

R E S O L U T I O N

Resolution E-4182. Southern California Edison Company (SCE) is authorized to establish a memorandum account to record Operations and Maintenance (O&M) and capital-related revenue requirement associated with the first \$25 million of capital expenditures incurred in its Solar Photovoltaic Program (SPVP).

By Advice Letter 2226-E Filed on March 27, 2008.

SUMMARY

This Resolution authorizes SCE to establish a Solar Photovoltaic Program Memorandum Account (SPVPMA) to record all incremental Operations and Maintenance (O&M) and capital-related revenue requirement associated with the first \$25 million of direct capital expenditures incurred in the Solar Photovoltaic Program (SPVP). SCE may record only the incremental O&M and capital-related revenue requirement incurred on or after the date of this order.

Establishment of the SPVPMA will protect against retroactive ratemaking but will not guarantee recovery in rates of any of the recorded costs prior to Commission review and approval of those costs.

BACKGROUND

On March 27, 2008, SCE submitted Application (A.) 08-03-015, seeking authority to spend up to \$962 million in ratepayer funds to develop the SPVP, which aims to install 250 megawatts (MW) of solar panels on rooftops at the distribution level in urban areas of Southern California.

On the same day, SCE also submitted AL 2226-E, seeking authority to record in the SPVPMA incremental operations and maintenance (O&M), invoiced costs for outside services, insurance expenses and any capital-related revenue requirement associated with the first \$25 million of direct capital expenditures

incurred in SPVP. The first \$25 million of direct capital expenditures will not be recorded in the SPVPMA, only the other associated costs. SCE expects that this capital expenditure will provide 5 MW of rooftop solar PV connected at the distribution level in Southern California.

SCE proposes to use the SPVPMA only to record those costs listed above. SCE plans to seek rate recovery of the costs associated with the SPVP, including the \$25 million in direct capital expenditures, in the SPVPMA through a Solar PV Balancing Account proposed in A. 08-03-015.

SCE requests to calculate a rate of return (ROR) on rate base using SCE's current authorized ROR of 8.75%, plus 1%. In addition, SCE requests that if the Commission does not act on A. 08-03-015 during 2008, SCE may record incremental O&M and capital-related revenue requirement associated with the direct capital expenditures above the initial \$25 million in direct capital expenditures.

SCE's justification for requesting to establish the SPVPMA via advice letter is that it is proposing a fast-paced timeline for bringing the program on line, under which the first of the facilities would be installed prior to approval of the final application.

As SCE notes in its Advice Letter, establishment of the SPVPMA will protect against prohibitions on retroactive ratemaking that would not allow costs expended prior to Commission action on its Application to be recoverable, but at the same time the SPVPMA will not guarantee recovery in rates of any of the recorded costs prior to Commission review and approval of those costs. If the Commission ultimately denies SCE's request to move forward with the SPVP the Commission can approve or disapprove recovery of some or all of the amounts recorded in the SPVPMA.

Energy Division suspended AL 2226-E on April 24, 2008 to allow time for staff review.

NOTICE

Notice of AL 2226-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 2226-E was protested by the Division of Ratepayer Advocates (DRA) on April 28, 2008

SCE responded to the protest of DRA on May 5, 2008.

DRA argues that AL 2226-E should be rejected based on procurement rules where the Commission has stated that the Investor-Owned Utilities (IOUs) should submit an application for procurement five years or longer for pre-approval.

DRA further notes that the Commission has never approved a memorandum account prior to a procurement application, with the exception of SCE's peaker plants in 2006.

In that case, an Assigned Commissioner Ruling (ACR), issued August 15, 2006, authorized SCE to file an Advice Letter to establish a memorandum account for the purpose of recording acquisition and installation costs of black-start generation capacity to be available by summer 2007. The ACR stated that the action was necessary to respond to the critical near-term needs in southern California identified by the California Independent System Operator.

DRA contends that the only reason given by SCE to establish the requested memorandum account is SCE's own proposed schedule and that this reason is not sufficient to justify bypassing established Commission rules.

In its reply, SCE states that DRA inappropriately cites long-term rules as a basis for denying the advice letter. SCE's position is that the procurement rules cited by DRA apply only to SCE's procurement contracting authority under Assembly Bill (AB) 57, and not to costs incurred under a utility-owned renewable energy program.

SCE also rebuts DRA's assertion that the only instance in which the Commission approved a similar memorandum account request was for SCE's peaker plants under emergency circumstances. SCE notes that the Commission also approved memorandum accounts to record costs during phases I, II, and III of its Advanced Metering Infrastructure (AMI) project.

Finally, SCE makes it clear that it is not requesting rate recovery in AL 2226-E, but rather it is only requesting the opportunity to record costs in the SPVPMA, recovery of which may later be approved or disapproved by the Commission if A. 08-03-015 is ultimately denied.

DISCUSSION

Establishment of a memorandum account to record costs associated with the first \$25 million of direct capital expenditures on SCE's SPVP does not prejudice the Commission's decision in A. 08-03-015, nor does it guarantee SCE recovery in rates of the costs booked in SPVPMA.

Allowing SCE to record into the SPVPMA the O&M and capital-related revenue requirement associated with the first \$25 million in capital expenditures on the SPVP does not pre-judge any part of the Commission's decision in A. 08-03-015, in which it is considering approval of the larger, 250 MW SPVP. Similarly, approving this memorandum account does not indicate a preference by the Commission toward allowing SCE to move forward with the SPVP.

Approval of the SPVPMA also does not guarantee that SCE will be able to recover in rates the costs it records in the SPVPMA. SCE recognizes this fact. In its reply to DRA's protest, SCE states: "If the Commission ultimately denies SCE's request to move forward with the Solar PV Program, the Commission can approve or disapprove recovery of the amounts recorded in the Solar PV Program Memorandum Account."

SCE is authorized to record the revenue requirement to the SPVPMA as each solar PV facility is completed, including installation and interconnection, and becomes used and useful. SCE may record only O&M costs and capital-related revenue requirement incurred on or after the date of this order.

SCE will need to justify the reasonableness of any costs booked to the SPVPMA. SCE will need the Commission to act on its Solar PV Balancing Account proposal in A. 08-03-015 before it will know whether it can recover any costs booked to the SPVPMA.

In the future, as a general matter, investor-owned utilities should not request authority to record costs for new generation or long term procurement in a memorandum account via Advice Letter prior to Commission approval of that generation via application.

The advice letter process is an informal procedure, with limited hearing requirements. A revenue requirement request, should, under normal circumstances, be filed under an application which would provide interested parties ample opportunity to participate in the decision making process.

As raised by the DRA protest, the procurement rules that best apply here are those governing utility-built and owned generation. Ordinarily, the Commission requires a utility to submit a request via application and receive approval of that application prior to beginning construction on new utility-owned generation. Requesting permission to book costs associated with construction of new generation prior to approval of that generation via application is a highly unusual request which the Commission would ordinarily deny.

In this case, however, the Commission finds that it can make an exception to its procurement rules. SCE has proposed California's first utility-owned rooftop solar PV program on an accelerated time schedule, and information gathered via early execution of that program could be valuable to Energy Division. For these reasons, the Commission finds it justified, in this instance, to allow SCE to record the incremental O&M costs and capital-related revenue requirement associated with early execution of the program, without guaranteeing recovery of those funds, to protect against retroactive ratemaking.

SCE's request to record revenue requirement associated with the direct capital expenditures above \$25 million in the SPVPMA until a final decision is reached in the application should not be granted.

In AL 2226-E, SCE requests that it be allowed to put into the SPVPMA incremental O&M and capital-related revenue requirement associated with direct capital expenditures above \$25 million in the event that the Commission does not reach a decision on its application in 2008.

To grant this request would effectively remove the cap on the memorandum account. This request is without precedent, and SCE has not provided a rationale that would justify granting it.

A decision on whether to grant SCE's request for an additional 1% return on rate base over its authorized ROR will be made when the Commission decides on A. 08-03-015.

In AL 2226-E, SCE states: "Consistent with D.06-05-039 SCE will calculate a rate of return on rate base using its current authorized ROR of 8.75%, plus 1%, since this new plant will be utility-owned renewable generation." Commission policy, however, does not guarantee an extra 1% return on rate base whenever a utility builds its own renewable generation.

SCE's request for an increase in ROR is being addressed in A.08-03-015. For the purpose of recording revenue requirement, SCE is allowed to apply a ROR of 9.75% to the first \$25 million of direct capital expenditures booked in the SPVPMA. If the Commission determines that SCE's ROR for this project should be less than 9.75%, the Commission will apply that adjusted ROR to calculate the revenue requirement in the SPVPMA that is eligible for recovery from ratepayers.

As a condition of approval of the SPVPMA, SCE should provide Energy Division with information on the actual costs of installation and solar electric output from each facility installed.

The Commission approves AL 2226-E in part because the solar PV facilities SCE intends to install will provide Energy Division with information on the total installed costs and electrical output of utility-owned solar PV projects connected at the distribution level. As such, SCE should provide to Energy Division a detailed account of all costs expended on its initial work on the SPVP, including plant and equipment, labor, warranty and lease costs. In addition, SCE should submit to Energy Division a summary of production output information from any solar PV facilities built under the SPVP once they are installed and operating. This information should be submitted to Energy Division Director every month until the Commission makes a decision on A. 08-03-015.

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. Accordingly, this draft resolution was issued

to parties for comments no later than 30 days prior to being considered by the Commission. Comments were filed by SCE and the Joint CCA Parties (Community Choice Aggregators: The City of Victorville and the San Joaquin Valley Power Authority) on September 9, 2008 and by PG&E on September 11, 2008. Reply comments were filed by SCE and DRA on September 15, 2008.

The Joint CCA parties state that nothing in the resolution should prejudice the issue of whether the CCA customers should be forced to pay the costs of meeting an IOU's RPS obligation in addition to the costs of the CCAs' RPS obligation.

This resolution approves only SCE's request to record costs associated with the SPVP. Concerns raised by the Joint CCA parties with regards to cost recovery will be addressed in A. 08-03-015.

SCE states that the draft Resolution should be revised to clarify that Commission policy supports increased rate of return on rate base for utility-owned renewable generation. DRA states that Commission policy does not guarantee an extra 1% return on rate base whenever a utility builds its own renewable generation.

SCE states that a third sentence should be added to paragraph two on page six stating: "The Commission can provide such an increased return where it is reasonable and appropriate following evidentiary hearings on SCE's application."

DRA states that SCE's proposed SPVP does not warrant any extra return on rate base.

As stated above, the Commission will address this issue in A. 08-03-015. Whether Commission policy can provide such an increase or not is beyond the scope of this resolution. Therefore, no revision is necessary.

SCE states that the Draft Resolution should explicitly state on page 4 in the fifth paragraph that SCE is authorized to record only O&M Costs and capital-related revenue requirement incurred on or after the date of this order.

We have modified the draft resolution so that the last sentence of paragraph 5 on page 4 explicitly states that “SCE may record only **O&M** costs and **capital-related** revenue requirement incurred on or after the date of this order.”

SCE and PG&E both object to Finding 7, which states that IOUs should not request authority to record costs for new generation or long-term procurement in a memorandum account via Advice Letter prior to Commission approval of that generation or procurement via application. The Joint CCA parties and DRA both state that an Advice Letter is a procedurally inappropriate method of requesting authority to record costs for new generation or long-term procurement.

SCE states that finding 7 is inappropriate because SCE is only seeking the ability to record costs associated with the Solar PV program, not recovery of new generation costs. SCE also objects to the issuance of what it calls “a policy statement” and states that it would be inequitable for the Commission to adopt “such a broad policy statement affecting all investor-owned utilities (IOUs) in a proposed resolution on an advice letter of only one IOU, SCE.”

PG&E states that an Advice Letter is the correct vehicle for requesting memo account treatment for recording costs that will ultimately be decided in a reasonableness review. PG&E goes on to state that the draft resolution fails to justify denial of the Advice Letter process for requesting a memo account and that the recordation of costs in a memo account does not create a revenue requirement.

In addition, PG&E states that consumers have the same protection regardless of whether an application or an advice letter is used to establish the memo account.

The Joint CCA Parties and DRA state that an Advice Letter is a procedurally inappropriate method of requesting authority to record costs for new generation and that if the Commission adopts the Draft Resolution, it will be inviting SCE and other IOUs to use the advice letter process in seeking pre-approval of costs related to their respective future generation programs.

The Commission agrees with the Joint CCA Parties and DRA that an Advice Letter is the procedurally inappropriate vehicle for recording costs associated with new generation or long-term procurement that has not already been

approved by the Commission. This is not a new policy, but rather a long-standing procedure clearly elaborated in General Order 96-B.

General Order 96-B, General Rule 5.1 states that a utility may request relief by means of an Advice Letter where the utility “has been authorized or required, by statute, by this General Order, or by other Commission order, to seek the requested relief by means of an advice letter.” Likewise, General Rule 5.2 states that a utility must file an application, application for rehearing, or petition for modification when the utility “seeks Commission approval of a proposed action that the utility has not been authorized, by statute, by this General Order, or by other Commission order, to seek by advice letter.”

Recordation of costs associated with new generation is clearly a proposed action by the utility, and if that action has not been authorized by the Commission or by statute, the IOUs should file an application to pursue it, in accordance with General Order 96-B. Neither this Commission nor statute has previously authorized SCE to pursue the SPVP and record costs associated with it in a memorandum account.

The Commission may on occasion make an exception to this rule when mitigating circumstances dictate it. For instance, in Resolution E-4031, the Commission permitted SCE to establish via Advice Letter a memorandum account to record costs associated with new peaker plants for the purpose of meeting reliability needs. That Resolution, however, explicitly stated that approval of the memorandum account deviated from standard Commission procedure and was only being permitted due to mitigating circumstances. Similarly, in this case, as described above, we find the potential benefits of allowing Edison to record some costs associated with this program as sufficiently compelling to depart from this policy.

In reply comments, SCE requests that the Commission ignore the opening comments of the Joint CCA parties, partly because SCE believes that the Joint CCA parties have misconstrued the Draft Resolution to be authorizing rate recovery of the costs recorded in the memorandum account. However, it is not clear from the comments of the Joint CCA parties that the intent of the Draft Resolution has been misinterpreted, and therefore SCE’s request is denied.

FINDINGS

1. SCE filed A. 08-03-015 on March 27, 2008 to implement a new Solar Photovoltaic Program (SPVP) to construct up to 250 mega watts (MW) of utility-owned solar PV generating facilities on the rooftops of large commercial buildings.
2. SCE filed AL 2226-E on March 27, 2008 to establish the Solar Photovoltaic Program Memorandum Account (SPVPMA) for the purpose of recording incremental O&M and capital-related revenue requirement associated with the first \$25 million of direct capital expenditures incurred in the SPVP.
3. AL 2226-E was protested by the Division of Ratepayer Advocates (DRA) on April 28, 2008. DRA recommends the Commission deny the advice letter on the grounds that it violates long-term procurement rules and contravenes Commission policy on the establishment of memorandum accounts.
4. SCE responded to DRA's protest on May 5, 2008. SCE argues that the Commission's long-term procurement rules cited by DRA do not apply to this case and that there is precedent for the establishment of a memorandum account of the type SCE proposes.
5. Establishment of a memorandum account to record costs associated with the first \$25 million of SCE's SPVP does not prejudice the Commission's decision in A. 08-03-015, nor does it guarantee SCE recovery in rates of the costs booked in SPVPMA.
6. The Commission will address rate recovery of costs and revenue requirement booked to the SPVPMA when it acts on its Solar PV Balancing Account proposal in A. 08-03-015.
7. As a general matter, investor-owned utilities should not request authority to record costs for new generation or long term procurement in a memorandum account via Advice Letter prior to Commission approval of that generation via application.
8. In this case, the Commission finds that it can make an exception to its procurement rules. SCE has proposed to build California's first utility-owned rooftop solar PV program on an accelerated time schedule, and information gathered via early execution of that program could be valuable to Energy Division.
9. SCE's request to record revenue requirement associated with the direct capital expenditures above \$25 million in the SPVPMA until a final decision is reached in the application should not be granted.

10. A decision on whether to grant SCE's request for an additional 1% return on rate base over its authorized rate of return (ROR) will be made in A. 08-03-015.
11. SCE may apply an ROR of 9.75% to the first \$25 million of direct capital expenditures booked in the SPVPMA. (SCE's authorized ROR of 8.75% plus 1 percent) until a decision is made in A.08-03-015
12. As a condition of approval of the SPVPMA, SCE should provide Energy Division with information on the actual costs of installation and solar electric output from each facility installed.

THEREFORE IT IS ORDERED THAT:

1. The request of the Southern California Edison Company (SCE) to establish a Solar Photovoltaic Memorandum Account (SPVPMA) to record incremental operations and maintenance (O&M) and capital-related revenue requirement associated with the first \$25 million of direct capital expenditures of its Solar Photovoltaic Program (SPVP), as requested in Advice Letter AL 2226-E is approved with modifications herein.
2. SCE may record only the incremental O&M and capital-related revenue requirement incurred on the SPVP on or after the date of this order.
3. SCE is authorized to record the revenue requirement (i.e. incremental O&M expenses, book depreciation, applicable taxes, and an authorized return on rate base) associated with the first \$25 million of direct capital expenditures incurred in the SPVP.
4. The Commission will address rate recovery of amounts recorded in the SPVPMA when it acts on its Solar PV Balancing Account proposal in A. 08-03-015.
5. SCE's recovery of the amounts it records in the SPVPMA is contingent [among other things] on a showing by SCE that the costs of owning and operating the \$25 million of Solar PV, that is the subject of this resolution, have not already been included in its rates (as the costs of owning and operating unspecified capital additions).
6. For the purpose of tracking revenue requirement in the SPVPMA, SCE may calculate its rate of return using SCE's current authorized rate of return of 8.75% plus 1%, but the amount that SCE is ultimately authorized to recover from ratepayers will be determined in A.08-03-015.

7. SCE's request to continue recording incremental O&M and capital-related revenue requirement to the SPVPMA, in excess of the amounts associated with the first \$25 million in direct capital expenditures, is denied.
8. SCE is authorized to record the revenue requirement to the SPVPMA as each solar PV facility is completed, including installation and interconnection, and becomes used and useful.
9. Until the Commission reaches a decision on A. 08-03-015, SCE will submit to the Energy Division Director a monthly status report detailing: all expenses associated with the SPVP, including plant and equipment, labor, warranty and lease costs; progress as measured by number of panels installed; status of facility interconnection; and electrical output of installed facilities.

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 September 18, 2008; the following Commissioners voting favorably thereon:

/s/ Paul Clanon
Paul Clanon
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners