Decision **PROPOSED DECISION OF ALJ SIMON** (Mailed 1/14/2013)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company Regarding the Distribution of SO2 Allowance Sale Proceeds Related to the Suspended Operation of Mohave Generating Station. (U 338-E)	Application 06-12-022 (Filed December 20, 2006)

DECISION DETERMINING TREATMENT OF SALE PROCEEDS OF SULFUR DIOXIDE ALLOWANCES FROM MOHAVE GENERATING STATION

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DECISION DETERMINING TREATMENT OF SALE PROCEEDS OF SULFUR DIOXIDE ALLOWANCES FROM MOHAVE GENERATING STATION

Summary

This decision sets a process for the use of proceeds from the sale by the applicant, Southern California Edison Company (SCE), of sulfur dioxide (SO2) emission allowances allocated to it pursuant to Title IV of the federal Clean Air Act that have been rendered surplus by the termination of operations at the Mohave Generating Station in Laughlin, Nevada (Mohave). The proceeds will be used as a "revolving fund" to allow projects offering to provide electricity to meet SCE's procurement obligations under the California renewables portfolio standard (RPS) program to post early-stage deposits and development security payments necessary for participating in SCE's RPS procurement process, so long as the projects also provide economic benefits to the Hopi Tribe and/or the Navajo Nation, pursuant to criteria set by this decision.

Once an RPS-eligible generation project making use of the revolving fund has advanced to the point where a performance security is required, or if the generation project does not advance in SCE's RPS procurement process, the funds used for the development security or other early-stage deposit will be returned to the revolving fund, to be available for other qualifying projects.

The use of the surplus Mohave SO2 allowance proceeds for the revolving fund will end the later of December 31, 2026, or six months after the last money advanced has been returned to the revolving fund, unless the Commission terminates or changes the process before that date. Within 15 months of the ending date of the revolving fund, SCE will distribute all money from the Mohave SO2 allowance proceeds to its customers through rates.

This proceeding is closed.

1. Procedural Background

As required by the Commission in Ordering Paragraph (OP) 15 of Decision (D.) 06-05-016, on December 20, 2006, Southern California Edison Company (SCE) filed an application regarding the distribution of the sale proceeds from the sale of sulfur dioxide (SO2) emission allowances (SO2 allowances, or allowances) related to the suspension of operation on December 31, 2005 of the Mohave Generating Station (Mohave), in Laughlin, Nevada. Protests were filed by the Hopi Tribe, The Utility Reform Network (TURN), and the Just Transition Coalition (Just Transition).[1] SCE filed a reply to the protests on February 13, 2007.

In response to the Administrative Law Judge's (ALJ) Ruling Requesting Proposals for Treatment of Proceeds from Sale of SO2 Allowances and Scheduling Workshop and Prehearing Conference (PHC) (February 8, 2007), in March 2007, the Navajo Nation; Coalition of California Utility Employees (CUE) and TURN (jointly; collectively, CUE/TURN); Just Transition; and CAlifornians for Renewable Energy (CARE) filed proposals on how the sale proceeds should be distributed. With the permission of the ALJ, Vernon Masayesva filed comments.

[1] TURN and Just Transition filed their protests on January 22, 2007; the Hopi Tribe filed its protest on January 31, 2007.

On September 21, 2007, the Scoping Memo and Ruling of Assigned Commissioner (Scoping Memo) confirmed the preliminary determination of the category of the proceeding as ratesetting. The Scoping Memo determined that a hearing was necessary.[2]

The Scoping Memo was issued while the parties were working on a possible settlement of this proceeding. Following a PHC and workshop on March 20, 2007, the parties requested the services of a Commission mediator. During the following year, the parties were actively involved in the mediation process, but did not reach a settlement.

After the mediation concluded, an Amended Scoping Memo and Assigned Commissioner's Ruling Scheduling a Prehearing Conference and Establishing Schedule for Testimony (Amended Scoping Memo) was issued on May 16, 2008. The Amended Scoping Memo maintained the determinations that this is a ratesetting proceeding and that hearings are necessary. SCE served updated testimony and reply testimony and other parties served testimony and reply testimony.[3] A second PHC was held on October 7, 2008. At the PHC, parties

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[2] Although the Scoping Memo characterized this determination as a change to the preliminary determination, Resolution (Res.) ALJ 176-3185 (January 11, 2007) preliminarily determined that a hearing was needed. This determination has been carried through all the scoping memos in this proceeding.

[3] SCE served Update Testimony on May 30, 2008. Served on August 1 2008 were: Direct Testimony of the Division of Ratepayer Advocates (DRA); Direct Testimony of Charles J. Cicchetti, Ph.D., Arbin Mitchell, and Arvin S. Trujillo on behalf of the Navajo Nation; Prepared Testimony of Just Transition Coalition; Opening Testimony of CARE; Testimony of David Marcus on behalf of CUE; and Prepared Testimony of Robert Finkelstein (TURN).

Served on September 19, 2008 were: Reply Testimony of SCE; Reply Testimony of the Division of Ratepayer Advocates; Rebuttal Testimony of Charles J. Cicchetti, Ph.D. and

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discussed the Commission's legal authority to undertake a variety of actions proposed by the parties with respect to the SO2 allowance proceeds. The ALJ's Ruling Establishing Briefing Schedule (October 14, 2008) set out the questions to be addressed and the timing for filing briefs.[4] Briefs were filed in November 2008 and reply briefs were filed in December 2008.[5]

In its monthly status report[6] on Mohave submitted June 10, 2009, SCE stated that the Mohave owners had decided to decommission the power plant

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Arvin S. Trujillo on behalf of the Navajo Nation; Prepared Rebuttal Testimony of Just Transition Coalition; and Reply Testimony of David Marcus on behalf of CUE.

[4] The issues set out in the ruling are:

1. Must the gain-on-sale from the sale of SO2 credits from Mohave by SCE, in proportion to SCE's ownership interest in Mohave, be returned to the SCE ratepayers?
2. Is there legal authority supporting the use of the proceeds from the sale of the SO2 credits to support the development of renewable resources on land belonging to the Hopi Tribe and the Navajo Nation?
3. Is there legal authority supporting the use of the proceeds from the sale of the SO2 credits to support an equitable distribution of the proceeds from the sale of SO2 credits to the Hopi Tribe and/or the Navajo Nation?
4. Is there legal and factual support for the proposals to donate the SO2 credits, for a tax benefit to SCE ratepayers, or to retire the SO2 credits?

Parties supporting distribution to the Hopi Tribe and/or the Navajo Nation were also instructed to discuss whether the distribution of funds must have a benefit to SCE ratepayers and how the distribution proposal directly benefits SCE ratepayers.

Finally, SCE was asked to clarify how many SO2 credits would actually be available.

[5] Opening briefs were filed November 18, 2008 by CARE, CUE/TURN, DRA, Hopi Tribe, Just Transition, Navajo Nation, and SCE. Reply briefs were filed on December 12, 2008 by CARE, CUE/TURN, DRA, Just Transition, Navajo Nation, and SCE.

[6] D. 04-12-016 required SCE to submit monthly status reports on Mohave to Energy Division. In D.10-09-035, the Commission ended the requirement for SCE to file and serve monthly status reports. The Commission ordered SCE to report relevant

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and remove the generating facility from the site. In the wake of this report, an ALJ's Ruling Requesting Additional Testimony (July 9, 2009) sought updated testimony from SCE on a range of issues in light of the announcement that Mohave would be closed. SCE served supplemental testimony on July 29, 2009 and other parties served reply testimony in accordance with the ALJ's ruling.[7]

A third PHC was held on September 14, 2009. Prior to the PHC, several parties filed PHC Statements in response the ALJ's Ruling Setting Prehearing Conference (August 21, 2009).[8] Most parties expressed strong interest in receiving a ruling on the legal issues identified in the ALJ's October 2008 ruling prior to addressing possible evidentiary hearing issues. At the PHC, parties reaffirmed their support for a ruling on the previously identified issues. The Third Amended Scoping Memo and Assigned Commissioner's Ruling (December 6, 2010) refined the schedule for the proceeding.

As scheduled in the Third Amended Scoping Memo, the ALJ issued a Ruling on Treatment of Proceeds From Sulfur Dioxide Allowance Sales by Southern California Edison Company (April 7, 2011) (Legal Ruling). The Legal Ruling addressed the legal issues previously raised by the parties and identified some actions proposed by the parties that would be considered further by the

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developments with respect to Mohave to Energy Division and to the service list for this proceeding. (D.10-09-035, OP 2.)

[7] CARE, DRA, and Just Transition served supplemental reply testimony on August 18, 2009. With permission of the ALJ, Navajo Nation served its Supplemental Rebuttal Testimony of Charles J. Cicchetti, Ph.D. on August 19, 2009.

[8] PHC statements were filed and served on September 10, 2009 by CARE, CUE, DRA, Hopi Tribe, Just Transition, Navajo Nation, SCE, and TURN.

Commission in this proceeding, as well as other actions that would not be considered further.

Also on April 7, 2011, the ALJ issued a Ruling Setting Prehearing Conference, Requesting Prehearing Conference Statements, and Requiring Update to Applicant's Testimony. The PHC was held July 26, 2011.[9] At the PHC, the parties discussed new developments in the administration of the federal Clean Air Act; the possible need for additional testimony in this matter; and the possibility of evidentiary hearings.

The Fourth Amended Scoping Memo and Ruling of Assigned Commissioner (August 8, 2011) (Fourth Amended Scoping Memo) confirmed the ALJ Legal Ruling. It also required parties to file and serve their complete and final proposals for the disposition of the Mohave SO2 allowance proceeds, along with any additional or revised testimony necessary to support the final proposal.[10]

SCE filed and served its supplemental testimony and update on August 12, 2011. Final proposals were filed and served by CARE, DRA, the Hopi Tribe, Just Transition, and the Navajo Nation on September 16, 2011. The Navajo Nation and Just Transition each served additional testimony on September 16, 2011, pursuant the instructions in the Fourth Amended Scoping Memo. The Navajo Nation also served rebuttal testimony on October 4, 2011.

Although each had participated in this proceeding earlier, neither CUE nor TURN filed a final proposal.

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[9] PHC statements were filed and served by CARE, DRA, Hopi Tribe, Just Transition, and SCE.

In accordance with the schedule set in the Fourth Amended Scoping Memo, on October 12, 2011, the Navajo Nation filed the Request of the Navajo Nation for Evidentiary Hearings (Hearing Request). Just Transition and SCE filed responses to the Hearing Request on October 11, 2011. The ALJ denied the Hearing Request in the ALJ's Ruling Denying Request of the Navajo Nation for Evidentiary Hearing and Setting Briefing Schedule (January 27, 2012) (Hearing Ruling).

As provided in the Hearing Ruling, final briefs were filed and served on February 21, 2012 by SCE, DRA, the Hopi Tribe, Just Transition, and the Navajo Nation. Reply briefs were filed and served by the same parties on March 9, 2012.

In response to the decision of the federal Court of Appeals for the District of Columbia Circuit in *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), the ALJ requested parties' views on the decision in the Ruling Requesting Supplemental Briefing on Impact of EME Homer City Generation, L.P. v. Environmental Protection Agency (August 29, 2012). Supplemental briefs were filed and served on September 10, 2012 by SCE, DRA, the Navajo Nation, and Just Transition.

The ALJ's Ruling Admitting Testimony into Evidence and Taking Official Notice (December 17, 2012) (Evidentiary Ruling) admitted into evidence all testimony that has been submitted in this proceeding and took official notice of certain information provided on the web site of the United States Environmental Protection Agency (EPA).

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[10] This included a requirement that SCE serve testimony updating the information it had previously supplied about its sales of Mohave SO2 allowances.

This matter was submitted on December 18, 2012. On December 28, SCE filed the Motion of Southern California Edison Company for Correction of Exhibit Index List of Admitted Testimony. The ALJ's Ruling Setting Aside Submission and Reopening Record to Admit Additional Testimony into Evidence (January 8, 2013) granted SCE's motion and revised the list of admitted testimony. This matter was finally submitted on January 9, 2013.

2. Factual Background

The parties did not enter into any formal stipulations of facts. In the Hearing Ruling, the ALJ determined that there were no material facts in dispute requiring evidentiary hearings. That ruling is confirmed. Since there were no hearings, and thus no cross-examination, the factual background set forth below is therefore based on undisputed facts presented in testimony, proposals, and briefs of the parties; federal court of appeals decisions; and information from the EPA web site of which the Commission takes official notice, as provided in the Evidentiary Ruling.

2.1. Mohave Generating Station

Mohave is a two-unit coal-fired power plant in Laughlin, Nevada with a capacity of 1580 megawatts (MW). Mohave is owned jointly by four utilities, with SCE having the majority (56%) of the shares.[11] It commenced operation in 1971 and ceased operations at the end of 2005.

Mohave obtained all of its coal supply from the Black Mesa Mine, operated by Peabody Western Coal Company and located in northeast Arizona on the

[11] The remainder of the ownership shares are: Salt River Project Agricultural Improvement and Power District, 20%; Nevada Power Company, 14%; and Los Angeles Department of Water and Power, 10%.

lands of the Hopi Tribe and the Navajo Nation. All of Mohave's coal supply was delivered from the mine to Mohave using a coal slurry pipeline, taking the water required for the coal slurrying operation from groundwater wells located on the lands leased by Peabody under its coal leases. The coal mine provided jobs to Hopi and Navajo people. The leases for the coal and the water necessary for the slurrying operation provided revenue to both tribal governments.

Mohave was a significant source of air pollution, including SO2 and nitrogen oxides. The Grand Canyon Trust and the Sierra Club initiated a federal lawsuit alleging that Mohave's owners had violated the federal Clean Air Act by not installing appropriate pollution controls. The lawsuit was settled in 1999. The Mohave owners agreed in a consent decree to install controls by December 2005 in order to continue operating Mohave. (D.04-12-016 at 3.)

Rather than install the pollution controls mandated by the consent decree, SCE and the other owners of Mohave chose the other option given by the consent decree, and ceased all generation operations on December 31, 2005. In June 2006, SCE concluded that it would not support efforts to resume operation of Mohave. In June 2009, SCE notified the Commission that all the owners of Mohave had decided to decommission the plant and dismantle the generating facility.

2.2. SO2 Allowances

Mohave is entitled to receive an annual allocation of allowances for the emission of SO2 under the federal acid rain program. "Title IV of the Clean Air Act aims to reduce acid rain deposition nationwide, and in doing so creates a cap-and-trade program for sulfur dioxide emitted by fossil fuel-fired combustion devices." (*North Carolina v. EPA*, 531 F.3d 896, 902 (D.C. Cir. 2008)).

Title IV includes detailed provisions for allocating allowances among electric generation facilities based for the most part on their share of total heat

input of all Title IV generation facilities during a 1985-87 baseline period. (*Id*.) The EPA allocates SO2 allowances to all qualified units at no cost, whether or not the units are currently operating. An allowance authorizes an electric generation facility to emit one ton of SO2 during a given year or any year thereafter. At the end of each year, a facility must hold an amount of allowances at least equal to its annual emissions; e.g., a facility that emits 5,000 tons of SO2 must hold at least 5,000 allowances that are usable in that year. A facility must operate within its allowances, or reduce its emissions to balance with its allowances, or buy allowances from another facility. A facility may sell or otherwise transfer any allowances that it does not need, or it may bank them for future use or sale. (42 U.S.C. § 7651(b).)

Allowances under the Title IV acid rain program are allocated to Mohave and other eligible sources 30 years in advance. Thus, in 2013, Mohave will have allowances allocated through 2042. Mohave's annual SO2 allowance allocation from 2000 through 2009 was 53,216 allowances per year, declining to 52,224 per year in 2010. SCE's share of the allowances is 56%, corresponding to its Mohave ownership share. For the years prior to 2010, SCE's share of the allowances is 29,801 annually. For 2010 and future years, SCE's share of the allowances is 29,245 annually. All parties agree that SCE owns the allowances allocated to its ownership share of Mohave. The entire amount of SCE's SO2 allowances that may be used in 2006 and later years that are attributable to SCE's ownership share in Mohave are surplus and available for disposition as directed by this decision. (Legal Ruling, Ruling ¶ 2.)

Pursuant to the Commission's authorization in Res. E-4112, SCE sold 31,204 surplus Mohave SO2 allowances between October 2007 and August 2011,

realizing a total of $3,495,137.[12] The average allowance price over this entire period is about $101. However, for allowances sold between April and August 2011, the average price is approximately $3.50. (Ex.6, SCE Supplemental Testimony at 1 (Aug. 12, 2011).)

3. Discussion

3.1. Framework of This Decision

This proceeding arises from the suspension of operations at Mohave, followed by its closure. In addressing the possibility of Mohave's closure, the Commission noted that:

> … the closure of Mohave, even for a limited time, will have devastating effects on the Hopi and Navajo people and tribes as whole, as well as on the workers at the Mohave facility, at the mines, and on the pipeline. *(D.04-12-016 at 14.)*

In D.06-05-016, the decision in SCE's 2004 general rate case, the Commission identified the potential sale of surplus Mohave SO2 allowances for special treatment, ordering SCE to create the Mohave Sulfur Credit Sub-Account to record revenues from any such sale and to hold the proceeds until the Commission provided direction on their use. (OP 11, 12, 15.) Once it became clear that Mohave's operations had ceased, SCE filed this application in accordance with OP 15 of D.06-05-016.

The parties' initial proposals for disposition of the proceeds of the sale of surplus SO2 allowances attributable to the Mohave shut-down were filed and served in March 2007. Parties presented a wide array of possible uses for the funds. Responding to the parties' stated desire for greater clarity about the range

[12] This represents a small fraction of the more than 995,000 surplus Mohave SO2 allowances SCE had in hand. (SCE Opening Brief at 7.)

of allowable proposals for the disposition of the Mohave SO2 allowance proceeds, the ALJ issued the Ruling Establishing Briefing Schedule (October 14, 2008). The briefs in response to that ruling led to the Legal Ruling. The Legal Ruling, at 15-16, articulated the principle that

> [t]he Commission's role as a utility regulatory agency is . . . the touchstone in evaluating the parties' proposals for disposition of the SO2 allowance proceeds. Therefore, . . . the Commission's options for allocating the SO2 allowance proceeds are limited to those that are connected to the Commission's ongoing regulation of California public utilities and that may be implemented under the Commission's supervision.

We adopt this statement of principle and its application by the ALJ in the Legal Ruling. We now confirm the Legal Ruling. In this decision, we consider the parties' final proposals consistent with the parameters set in the Legal Ruling.

3.2. Federal Regulatory Framework

The Mohave SO2 allowances are traded in a national SO2 allowance market that was created by federal law to reduce acid rain. This program operated successfully for more than a decade before this application was filed.[13] The federal regulatory framework within which SO2 allowances are allocated, bought, and sold no longer consists simply of the Title IV acid rain program, however. This change in federal regulation both changes the market for the Mohave SO2 allowances and makes predicting future values of the allowances more difficult.

[13] See SO2 Reductions and Allowance Trading under the Acid Rain Program, found at http://www.epa.gov/airmarkets/progsregs/arp/s02.html.

In March 2005, EPA promulgated the Clean Air Interstate Rule (CAIR), under the authority of 42 U.S.C. § 7410(a)(2)(D)(i)(I).[14] CAIR applies to 28 states in the South, East, and Midwest, but not to any states in the Western Electricity Coordinating Council (WECC) region. The purpose of CAIR is not to reduce acid rain, but to reduce the contribution of "upwind" states to air pollution in "downwind" states, in particular fine particulate matter and eight-hour ozone (smog).[15] CAIR uses Title IV SO2 allowances in a trading program to meet new, more stringent SO2 emissions limits, but requires covered sources to turn in two SO2 allowances per ton of SO2 emissions beginning in 2010, going up to 2.68 allowances per ton in 2015. (531 F.3d at 921.)

The D.C. Circuit found this provision, among others, invalid. (531 F.3d at 921-22.) The entire CAIR was overturned and remanded to EPA by the *North Carolina* decision, but the D.C. Circuit subsequently allowed CAIR to remain in effect while EPA was revising the rule.[16]

The revised rule, promulgated by EPA in 2011, is called the Cross-State Air Pollution Rule (CSAPR).[17] This rule has never been implemented because the D.C. Circuit stayed it before the rule's effective date in *EME Homer City Generation, L.P. v. EPA*, Order No. 11-1302 at 2. (D.C. Cir. December 30, 2011), and subsequently invalidated it. (*EME Homer City Generation, L.P. v. EPA*, 696

[14] 70 Fed. Reg. 25,162 (May 12, 2005).

[15] See Clean Air Interstate Rule, Basic Information, found at http://www.epa.gov/cair/basic.html. See also *North Carolina*, 531 F.3d at 921.

[16] *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008).

[17] 76 Fed. Reg. 48,208 (July 8, 2011).

F.3d 7.) (D.C. Cir. 2012).[18] The court's decision also, however, required EPA to "continue administering CAIR pending the promulgation of a valid replacement." (696 F.3d at 38.) Therefore, the rules that increase control of SO2 emissions and change the role of Title IV SO2 allowances in the states covered by CAIR have been in effect since 2008 and will remain in effect for the foreseeable future.[19]

3.3. Parties' Final Proposals

3.3.1. SCE

SCE's proposal has not changed throughout this proceeding. SCE proposes that all of the net proceeds from SCE's sale of the SO2 allowances should be credited to SCE customers through rates.

3.3.2. DRA

DRA has also maintained the same position throughout the proceeding. DRA proposes that all net proceeds from SCE's sales of SO2 allowances, including any SO2 allowances attributable to the end of operations at Mohave, should be credited directly to SCE customers through rates.

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[18] With respect to reductions of SO2, CSAPR covered 23 states in the South, East, and Midwest, but, like CAIR, did not include any states in the WECC. CSAPR, unlike CAIR, did not utilize Title IV SO2 allowances, but established a new system of tradable allowances for SO2. CSAPR created two allowance trading markets: one for "Group 1 SO2 States", and one for "Group 2 SO2 States." Power plants in Group 1 SO2 States may not purchase Group 2 SO2 allowances, and vice versa. (696 F.3 at 18, n.11.)

[19] On January 24, 2013, the D.C. Circuit denied the petition for panel rehearing filed by the American Lung Association and four environmental organizations. EME Homer City Generation v. EPA, 2013 U.S. App. LEXIS 1623 (Jan. 24, 2013). On the same day, the D.C. Circuit denied three petitions for rehearing en banc filed by EPA; a group of nine states, five cities, and the District of Columbia; and the American Lung Association and four environmental organizations. EME Homer City Generation v. EPA, 2013 U.S. App. LEXIS 1624 (Jan. 24, 2013).

3.3.3. The Navajo Nation

The Navajo Nation proposes that the entire amount of the SO2 allowance proceeds should be used immediately to help fund development costs for either or both of two projects on Navajo Nation lands or under Navajo Nation ownership. One project is the Navajo Transmission Project, a 500 kilovolt (kV) transmission line that will extend 470 miles from the Shiprock Substation in the Four Corners area in northwestern Arizona to the Marketplace Substation in southeastern Nevada. The second project is the Gray Mountain Project. The Navajo Nation would own and develop this proposed wind generation facility, located on Gray Mountain on the Navajo Nation's land in Arizona. The generation facility would interconnect to the Moenkopi-Eldorado transmission line. The Navajo Nation asserts that these projects will be eligible to meet the requirements of the California renewables portfolio standard (RPS). (Navajo Nation Amended Proposal at 1).[20]

The Navajo Nation also proposes an alternative use of the funds. This alternative would require SCE to purchase power from a proposed solar facility,

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[20] The Navajo Nation, as well as other parties, initially referred simply to "renewable generation" in its proposal. As explained in the Legal Ruling, in California, utilities must procure sufficient renewable energy resources to meet the requirements of the RPS, Pub. Util. Code §§ 399.11 et seq. (All further references to sections are to the Public Utilities Code unless otherwise specified.)

In order for renewable procurement to count for RPS purposes, the generation facility must be certified as RPS-eligible by the California Energy Commission (CEC). (See Renewables Portfolio Standard Eligibility Guidebook, 6th ed. (Aug. 2012).) Various other RPS requirements set by statute and this Commission must also be met. In order to realize full value for California utilities and ratepayers, procurement of renewable resources must be consistent with RPS requirements. The Legal Ruling therefore discussed the parties' positions in terms of RPS-eligible resources. The parties have followed this approach in their final proposals.

the McKinley Solar Project, to be constructed on Navajo lands in western New Mexico.

3.3.4. The Hopi Tribe

The Hopi Tribe characterizes its proposal as "a revised approach to that being presented by the Just Transition Coalition." (Hopi Tribe Final Proposal at 5.) Similarly to the Just Transition proposal, the Hopi Tribe proposes that the SO2 allowance proceeds should continue to be tracked and specially accounted for by SCE in its Mohave Sulfur Credit Sub-Account, as approved in D.06-05-016. All the SO2 allowance proceeds would be available to be provided as additional payments within SCE's existing RPS procurement process, as an additional incentive for and compensation to renewable energy projects that would directly benefit affected tribal communities. This benefit could be demonstrated if the project is:

- Located on lands owned by the Hopi Tribe; or
- Located on lands owned by the Navajo Nation but in equally joint partnership with the Hopi Tribe; or
- If not so located, located in California or meeting the requirements of Section 399.16(b)(1) or (2), and owned or co-owned with at least a 33% ownership interest by the Hopi Tribe.

Any added payment from the SO2 allowance proceeds would be payable to the RPS-eligible generation project "upon approval of the project through Edison's renewable procurement process." (Hopi Tribe Final Proposal at 2-4). [21]

[21] The Hopi Tribe, like its model, Just Transition, identifies specific RPS procurement processes and programs in its discussion. Since the many procurement options in the RPS program are always evolving, the Hopi Tribe's proposal (as well as Just Transition's proposal) will be treated as covering all procurement of RPS-eligible generation resources by SCE, however that may be accomplished at any particular time.

The Hopi Tribe also proposes a plan to terminate this treatment of the SO2 allowance proceeds. Any allowances that remain unsold by December 31, 2026, should be retired by SCE. If any allowance proceeds remain unused by December 31, 2026, the unused proceeds should be credited to SCE customers through rates.

3.3.5. Just Transition

Just Transition asserts that its final proposal has been refined based on discussions with other parties. The Just Transition proposal provides that all the SO2 allowance proceeds in SCE's Mohave Sulfur Credit Sub-Account would be made available to be provided as additional payments within SCE's existing RPS procurement process, as an additional incentive for and compensation to renewable energy projects that would directly benefit affected tribal communities.

Just Transition identifies benefit to the affected tribal communities as being shown if the project is:

- Located on lands owned by the Navajo Nation and/or the Hopi Tribe; or
- If not so located, located in California or meeting the requirements of Section 399.16(b)(1) or (2), and owned or co-owned with at least a 5% ownership interest by the Navajo Nation and/or the Hopi Tribe.

Just Transition proposes that any allowances that remain unsold by December 31, 2026, should be retired by SCE. If any allowance proceeds remain unused by December 31, 2026, the unused proceeds should be credited to SCE customers through rates.

3.3.6. CARE

CARE proposes that the SO2 allowance proceeds be provided to "a legal trust fund with the Black Mesa Trust" to be used for various projects, including creation of a charitable trust fund that incorporates local native skills and arts in to the worldwide market place to help improve the lives of members of the Navajo Nation and the Hopi Tribe. **(**CARE Proposal, at 11.)

3.3.7. TURN and CUE

Neither TURN nor CUE submitted a final proposal. In order to ensure that the Commission considers only proposals that take into account the requirements of the Legal Ruling and any updates to federal rules on SO2 allowances, the Fourth Amended Scoping Memo provides that "[t]he Commission will not consider any proposal that is not filed and served on [the] schedule" set forth in the Fourth Amended Scoping Memo. The prior proposals of CUE and TURN will therefore not be considered in this decision.

3.4. Evaluation of Proposals

3.4.1. Value of Mohave SO2 Allowances

The fundamental premise of this application is that SCE will sell the surplus Mohave allowances in the open market for SO2 allowances and then apply the proceeds as the Commission directs. Although the parties agree that the mere amount of money at issue is not dispositive of the legal or policy issues in allocating the SO2 allowance proceeds, the amount of money available does affect the viability and practicality of the parties' proposals. Because the parties' understanding of the value of the SO2 allowance proceeds to be distributed has changed through the course of the proceeding, it is useful to begin by briefly examining the value of the SO2 allowances.

Just Transition's initial estimate in 2005 of the value of the Mohave SO2 allowance proceeds was approximately $65 million annually.[22] In 2008 testimony, Just Transition noted that the SO2 allowance market had declined, citing a report that the price of an SO2 allowance had dropped from about $325 to about $132 over the course of two months in summer 2008. (Ex. JTC-2, Just Transition Prepared Rebuttal Testimony (Bessler) at 4 (September 19, 2008).) The Navajo Nation's economic expert, Dr. Charles Cicchetti, initially presented a range of estimated values for SCE's Mohave SO2 allowance proceeds over the 30-year period 2006-2035. His estimates of the present value (2006) of the allowance proceeds ranged from a low of about $64 million to a high of about $427 million for the total value of the allowances over the entire period. (Ex. NN-1, Direct Testimony of Charles J. Cicchetti, Ph.D. at 5, and Table B-1. (August 1, 2008).) [23]

In a stable market for Title IV SO2 allowances, the Mohave SO2 allowances could be regularly sold by SCE as contemplated in Res. E-4112 and as assumed by the parties in their opening testimony. The SO2 allowance market has not, however, remained stable. The EPA's CAIR regulation has changed SO2 emission limits and the use of Title IV SO2 allowances in the states covered by that regulation. After CAIR was invalidated, the subsequent CSAPR regulation,

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[22] Cited in D.06-05-016 at 26. In its findings of fact, the Commission accepted that "[s]ale of Mohave sulfur credits will result in substantial revenue to SCE." D.06-05-016, Finding of Fact 21 (at 353).

[23] All estimated monetary values are used only to demonstrate the range of possible values for the allowance proceeds that parties to this proceeding have, at various times, believed was reasonable. Since no evidentiary hearing was held, the factual accuracy of these estimates has not been established in this proceeding. The Commission therefore expresses no views on their accuracy.

which would have ended the use of Title IV SO2 allowances in the states covered by CSAPR, was promulgated but never implemented. The D.C. Circuit invalidated first CAIR and then CSAPR. However, in practice, the D.C. Circuit has kept CAIR in effect since late 2008. Thus, CAIR's stricter emissions limits and changes in the use of Title IV allowances have become the *status quo* in the SO2 allowance marketplace.

The change in the parties' estimated value of SO2 allowances since their original 2008 testimony has been dramatic. The Navajo Nation's witness, Dr. Cicchetti, estimated that in 2006, the annual value of SCE's surplus Mohave SO2 allowances ranged from a low of about $4 million to a high of about $27 million. By contrast, using more recent data in 2009, Dr. Cicchetti estimated a low annual value for 2006 allowances of about $198,000 and a high annual value of about $2,100,000. (Ex. NN-6, Supplemental Rebuttal Testimony of Charles J. Cicchetti, Ph.D. at 3-4 (August 19, 2009).)

SCE's actual sales of surplus Mohave SO2 allowances have yielded average prices of about $101 for an allowance, though prices in 2011 had collapsed to less than $4 per allowance. (Ex. SCE-6, SCE Supplemental Testimony at 1 (August 12, 2011).)

Although the future value of the more than 995,000 Mohave SO2 allowances that can be used in 2011 and future years and are already allocated to SCE, but not yet sold, is not clear, it is reasonable to conclude that the value will not be very large.[24] The value of allowances to be allocated to Mohave in 2012 and later years, after the invalidation of CSAPR, is even murkier. The parties'

[24] See discussion in SCE's Opening Brief at 7-8.

proposals should therefore be evaluated in the context of a current fund that is much smaller than initially anticipated, and a future value that is very difficult to foresee.

3.4.2. Analysis of Proposals

3.4.2.1. Consistency with Legal Ruling

The requirements of the Legal Ruling (set out in Appendix A) are met by all final proposals except the proposal of CARE.

The SCE and DRA proposals would immediately distribute all the allowance proceeds to ratepayers. (See Ruling ¶ 8.) The Navajo Nation proposal would have SCE disburse proceeds of the allowance sale for particular projects (both generation and transmission) that, as presented in the proposal, are related to developing or acquiring energy resources that would be available for California retail customers. (See Ruling ¶ 6.) Both the Hopi Tribe and Just Transition proposals rely on SCE's process for the procurement of RPS-eligible generation resources, and thus are within the ambit of Ruling ¶ 9.

CARE's proposal, on the other hand, requires that the allowance proceeds be given to a third party, Black Mesa Trust, to administer for various purposes, including incorporating local native skills and arts in to the worldwide market place. (CARE Proposal at 10-12.) This proposal is not consistent with the requirements of Ruling ¶¶ 4 and 6, and thus will not be considered further in this decision.[25]

[25] This conclusion relates solely to CARE's proposal in this proceeding. It is not intended as, and should not be interpreted to be, a comment or judgment on the value of the work of the Black Mesa Trust or on the fitness of the Black Mesa Trust to administer any funds that may be entrusted to it.

3.4.3. Availability of Value to California Retail Customers

3.4.3.1. SCE and DRA Proposals

The proposals of SCE and DRA would provide the monetary value of the allowance proceeds to customers through rates. This is clearly a value to SCE customers, though the monetary amount is likely to be small.[26]

3.4.3.2. Navajo Nation Proposal

The Navajo Nation proposes that the Commission direct SCE to use the SO2 allowance proceeds on specific projects under development, as identified in the proposal. The Navajo Nation describes both of its preferred projects--the proposed 500 kV Navajo Transmission Project and the proposed wind generation facility at Gray Mountain--as RPS eligible. Strictly speaking, only renewable energy generation projects may be RPS eligible.[27] Thus, the Navajo Transmission Project is not an RPS-eligible project.[28]

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[26] Navajo Nation witness Cicchetti estimates that a typical SCE customer would receive only a few cents from such a distribution. (Ex. NN-6; Supplemental Rebuttal Testimony of Charles J. Cicchetti, Ph.D. at 4-5 (Aug. 19, 2009).)

[27] Section 399.12(e) provides:

> 'Eligible renewable energy resource' means an electrical generating facility that meets the definition of a 'renewable electrical generation facility' in Section 25741 of the Public Resources Code. . . (emphasis added.)

The CEC is responsible for certifying that a particular generation facility meets the requirements for RPS eligibility. Pub. Util. Code § 399.13(a).

[28] Funding for the transmission project is not, however, prohibited by Ruling ¶ 6 of the Legal Ruling, which provides:

> Requiring that some or all of the proceeds of the sale of the Mohave Generating Station sulfur dioxide emission allowances be expended on projects that are not related to developing or acquiring energy

Footnote continued on next page

The proposed transmission line would run from the Four Corners area to southeastern Nevada. The proposed line could provide transmission for RPS-eligible energy to California customers, but it is not possible to predict how the transmission constructed in the Navajo Transmission Project will ultimately be utilized.[29]

The proposed Gray Mountain wind project could provide RPS-eligible energy to California consumers, if it were certified by the CEC. The Navajo Nation proposal does not, however, suggest that the project has a power purchase agreement (PPA) with any California retail seller or publicly owned utility.

The Navajo Nation's fallback option is for SCE to enter into a PPA to buy electric output from the proposed McKinley Solar Project. If that facility were certified as RPS-eligible by the CEC, it could provide RPS-eligible electricity to California consumers. Similarly to the proposed Gray Mountain wind project, however, the Navajo Nation proposal does not suggest that the proposed McKinley project has a PPA with any California retail seller or publicly owned utility.

3.4.3.3. Hopi Tribe Proposal

Unlike the Navajo Nation, the Hopi Tribe does not put forward any specific projects for use of the SO2 allowance proceeds. Rather, the Hopi Tribe provides criteria for projects that could receive funding from the allowance

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resources that would be available for California retail customers will not be considered further in this proceeding.

[29] Predicting the use to which a projected transmission line may be put in the future can be a difficult and inexact process. See, e.g., D. 08-12-058 (Certificate of Public Convenience and Necessity for Sunrise Power Link transmission project).

proceeds. Among the criteria is the requirement that an eligible project has "bid into [SCE's] renewable procurement process or respond[ed] to RPS eligible tariffs … and [has been] accepted and contracted for …" (Final Proposal at 3.). Thus, the Hopi Tribe's proposal provides that any project that could receive funds from the SO2 allowance proceeds would be available to California customers, because by definition it would have contracted with SCE for the provision of RPS-eligible electricity.

3.4.3.4. Just Transition

As the model for the Hopi Tribe proposal, the Just Transition proposal also contains the criterion that any project receiving funds from the SO2 allowance proceeds would have contracted with SCE for the provision of RPS-eligible electricity.

3.4.4. Equitable Considerations

In its consideration of SCE's 2002 application addressing the future of Mohave, the Commission noted that "the closure of Mohave, even for a limited time, will have devastating effects on the Hopi and Navajo people. . ." (D.04-12-016 at 14.) It is therefore reasonable to consider whether a proposal for use of the SO2 allowance proceeds is structured so that it is at least possible that both the Navajo Nation and the Hopi Tribe could derive economic benefit from the use of the allowance proceeds.

The proposals of SCE and DRA, since they would have all allowance proceeds distributed to SCE customers, do not provide any mechanism to capture any economic benefit for the Hopi Tribe or the Navajo Nation.

The Navajo Nation proposes that all Mohave SO2 allowance proceeds be allocated exclusively to a project or projects that would provide economic benefit to the Navajo Nation, but not to the Hopi Tribe. Adopting the Navajo Nation

proposal would eliminate the possibility that proceeds from the Mohave SO2 allowances could also benefit the Hopi Tribe. Although this outcome is not prohibited by the Legal Ruling or any Commission decision, it would not fully address the equities of the situation created by the closure of Mohave, as previously identified by the Commission.

The Hopi Tribe's proposal focuses on projects that would benefit the Hopi Tribe, whether through location on land of the Hopi Tribe or through the Hopi Tribe's ownership interest. The proposal also provides for the possibility of some forms of joint ownership of projects by the Hopi Tribe and the Navajo Nation, or location of facilities that receive funds on land of both the Hopi Tribe and the Navajo Nation.

The Just Transition proposal approaches benefits to the Navajo Nation and the Hopi Tribe equally. It provides for joint ownership and location on lands of either or both of the Hopi Tribe and the Navajo Nation. The Just Transition proposal also provides a low threshold (5%) for ownership participation in an eligible project by the Hopi Tribe and/or the Navajo Nation.

The proposals for criteria for allocation of the SO2 allowance proceeds made by the Hopi Tribe and Just Transition have the potential to benefit both the Hopi Tribe and the Navajo Nation. This approach better serves the interest in equity that the Commission has previously identified than does the Navajo Nation's proposal.

3.5. Process and Criteria for Distributing SO2 Allowance Proceeds

SCE and DRA propose that the proceeds be distributed to SCE customers through rates. The Navajo Nation proposes that the Commission order SCE to disburse the funds from the Mohave SO2 allowance proceeds directly to the Navajo Nation for use for the designated project or projects. The proposals of

Just Transition and the Hopi Tribe require that the allowance proceeds be distributed to generation projects chosen by SCE through its regular procurement processes for RPS-eligible generation at some time in the future.

In view of the history of Mohave and the Commission's long-standing concern for the consequences of its closure, it is reasonable to use the SO2 allowance proceeds to benefit the Hopi Tribe and the Navajo Nation, as well as SCE customers. We do not adopt any of the parties' proposals in full, but apply principles enunciated by the parties and in the Legal Ruling, as well as particular practical suggestions made in the parties' proposals. The goal is to make the best use of the SO2 allowance proceeds for the Hopi Tribe and the Navajo Nation, while providing current value to SCE customers through the RPS program and preserving value for future distribution to customers.

Under this process, any RPS-eligible generation projects meeting the criteria set out in Section 3.5.2. of this decision will be eligible to the use money from a "revolving fund" of the allowance proceeds, as explained below. The revolving fund will be administered by SCE as a part of its RPS procurement process, but will make no changes to SCE's RPS procurement process beyond those necessary to implement the specific requirements of this decision. By placing the use of the allowance proceeds firmly in the context of SCE's RPS procurement process, all participants will have access to the same rules and the same processes for availing themselves of the benefit of the allowance proceeds.

3.5.1. Revolving Fund for Early-stage Deposits for RPS-Eligible Generation Projects

All three proposals that advocate using the SO2 allowance proceeds in a way that provides benefits to the Hopi Tribe and/or the Navajo Nation require that funds be allocated to a particular project. The Navajo Nation urges the Commission to order SCE to disburse the proceeds to one of the projects

identified in its proposal. The Hopi Tribe and Just Transition each propose that funds go to a project that meets the criteria they set out. If the Commission adopts any of the three proposals, it would result in the limited allowance proceeds being committed to one and only one project.

Because all parties agree that the amount of money currently available for distribution is substantially less than they earlier estimated, it is reasonable to consider the proposed methods for distribution in light of the reduced funding, and the likelihood that the SO2 allowance market will be unpredictable, but probably low, for some time into the future. Throughout this proceeding, parties urging that the proceeds be used to help projects that would provide benefits to the Hopi Tribe and/or the Navajo Nation have emphasized that money early in the development process is most useful.

To improve the likelihood that the allowance proceeds will provide the best value to the Hopi Tribe and the Navajo Nation, the allowance proceeds should be used to establish a "revolving fund" to provide funds that projects being developed to provide RPS-eligible generation could use to meet SCE's development and bid security requirements. The money advanced would be returned to the fund when no longer required for the particular project. In this way, the Commission can maximize the opportunities for the allowance proceeds to provide benefit to the Hopi Tribe and Navajo Nation, while providing benefits to and preserving SO2 allowance proceeds for SCE customers.

Using examples from SCE's current RPS procurement processes, the revolving fund would be available to be used for shortlist deposits for projects in solicitations; development deposits for solicitation projects, projects bidding into the renewable auction mechanism (RAM), and projects with contracts under the

feed-in tariff (FiT) program.[30] For any projects contracting through bilateral agreements, the funds would be available for analogous deposits. Illustrative examples are provided in Appendix B.[31]

It is important to note that the funds in the revolving fund are intended to be made available on a time-limited basis. Thus, for example, if a project qualifying for money from the revolving fund is on SCE's shortlist for a particular RPS solicitation but is not selected for a contract, any funds used for the shortlist deposit must be promptly returned to the revolving fund. Similarly, if a project is withdrawn or cancelled, money from the revolving fund must be promptly returned. Finally, if a project has advanced to a step in the procurement process where a long-term performance guarantee is required, the project would supply the entire amount of the long-term commitment. The SO2 allowance funds used for the earlier deposits would be returned to the revolving fund. The SO2 allowance funds would then be available to be used for other projects meeting the criteria set out above, and, once returned, for other projects. There is no limit, other than availability of the SO2 allowance proceeds, to how many projects may use the funds for deposits at any one time.

It is possible, though unlikely, that at any one time there may be more demand by qualifying projects for money from the revolving fund than there is money available at that time. In that event, SCE should distribute the money to

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[30] See D.11-04-030 at 33 (solicitations); D.10-12-048 at 53 (RAM); D. 11-11-020 at 33 (FiT).

[31] Neither the list in the text nor the examples in Appendix B are meant to be exhaustive or binding on SCE, a particular project, or the Commission. Rather, the deposits and amounts required will be those in effect at the time a qualifying project requests money from the revolving fund.

all qualifying projects in the same proportion as the amount of available money in the fund bears to the total request for funds.

For example, if there is $800,000 available in the fund and one qualifying project applies for $600,000 and another for $400,000 at the same time, each project would be awarded 80 percent of its requested amount:

1. 800,000/1,000,000 is the proportion of available funds to requested funds.
2. 80% * $600,000 = $480,000
3. 80% * $400,000 = $320,000.

3.5.2. Criteria for Qualifying Projects

We adopt Just Transition's framework of providing equal opportunity for projects of the Navajo Nation and the Hopi Tribe to have access to the SO2 allowance proceeds. The criteria for determining whether a project provides a benefit to the Hopi Tribe and/or the Navajo Nation, for purposes of the allocation of the SO2 allowance proceeds pursuant to this decision, are adapted from the proposals of the Hopi Tribe and Just Transition. These criteria are to be used by SCE to evaluate requests for use of the SO2 allowance proceeds in accordance with this decision.

In order to ensure that the use of the revolving fund for RPS-eligible projects provides reasonable benefit to the Hopi Tribe and Navajo Nation, we adopt clarifying criteria for projects located on land controlled by the Hopi Tribe and/or the Navajo Nation. We add express criteria that the project must make lease or similar payments to the Hopi Tribe and/or Navajo Nation, or that the Hopi Tribe and/or Navajo Nation, or a governmental agency of either, has at least a one-half share in ownership of the project.

For projects not located on land controlled by the Hopi Tribe and/or the Navajo Nation, we agree with the Navajo Nation's analysis that the ownership

threshold of 5% proposed by Just Transition is too low to ensure real benefit from the project to the Hopi Tribe or the Navajo Nation. We therefore adopt the Hopi Tribe's proposal of a 33% ownership stake in a qualifying project, to be held by the Hopi Tribe and/or the Navajo Nation, and/or governmental agencies of the Hopi Tribe and/or Navajo Nation.

The adopted criteria for a project to demonstrate benefit to the Hopi Tribe or Navajo Nation are:

- The project is located on land (whether reservation, trust, or fee simple) of the Hopi Tribe and/or the Navajo Nation and
  - The project either pays a lease, rent, royalty or similar payment to the Hopi Tribe and/or the Navajo Nation, or
  - The Hopi Tribe or a governmental agency thereof, including a tribal utility, and/or the Navajo Nation or a governmental agency thereof, including a tribal utility, possess at least a 50.0% ownership interest in the project,
  - Or both conditions obtain; or
- The project is not located on land of the Hopi Tribe or the Navajo Nation, as described above, but the Hopi Tribe or a government agency thereof, including a tribal utility, and/or the Navajo Nation or a government agency thereof, including a tribal utility, possesses at least a 33% ownership interest in the project.

3.5.3. Termination of Revolving Fund

It is reasonable to set a date for ending SCE's obligations under this decision now, rather than at some point in the future. Because the federal regulatory framework for controlling SO2 emissions, and thus the market for SO2 allowances, is uncertain, it is not clear that any later time would be better than now for making such a determination.

The Hopi Tribe and Just Transition each propose that SCE's obligation to allocate the SO2 allowance proceeds to projects that benefit the Hopi Tribe

and/or the Navajo Nation end as of December 31, 2026. SCE objects to this termination date as being unsupported.

The Commission has recognized the significant economic consequences of the shut-down of Mohave for the Hopi Tribe and the Navajo Nation. It is reasonable to allow use of the SO2 allowance funds for projects that will bring benefit to the Hopi Tribe and Navajo Nation for a long enough period of time that they can, in fact, realize some real benefit. Because developing RPS-eligible generation projects takes time, it is reasonable to allow ample time for the Hopi Tribe and Navajo Nation to host or develop a project, or indeed more than one. This amount of time will provide the opportunity for the fund to revolve; i.e., for the money in the fund to be used, returned, and used again, in accordance with the criteria set by this decision.

Because the monetary value of the SO2 allowances to individual SCE customers is so small, it will not deprive customers of any significant benefit if the ultimate distribution of the allowance proceeds to them waits until after a reasonably extended period of time for the allowance funds to be used to benefit the Hopi Tribe and Navajo Nation. We therefore adopt the December 31, 2026 termination date, and add more specific requirements to ensure orderly wind-up of the revolving fund.

No funds may be advanced for qualifying projects, as described in this decision, after December 31, 2026. Because the invalidation of two major federal regulatory initiatives makes the future of the SO2 allowance market quite uncertain, we do not adopt the suggestion of the Hopi Tribe and Just Transition that any surplus Mohave allowances remaining at the end of the term of the revolving fund be retired. This specific instruction, although it may appear to be reasonable now, may not be reasonable at the end of 2026. Rather, after

December 31, 2026, all surplus Mohave SO2 allowances that SCE has not sold by December 31, 2026 must be treated by SCE in the same way as other surplus SO2 allowances that are allocated to SCE but not needed for the operation of its generation facilities. All funds attributable to SCE's sale of surplus Mohave SO2 allowances prior to January 1, 2027 must be provided to SCE customers through rates not later than 15 months after termination of the revolving fund

3.5.4. Obligations of SCE

3.5.4.1. Good Faith Augmentation of Proceeds

Although the market for SO2 allowances is unsettled, SCE should use good faith efforts to continue to sell its surplus Mohave SO2 allowances, if appropriate, to increase the amount of money available to implement the provisions of this decision. In doing so, SCE must continue to follow the requirements of Res. E-4112, including but not limited to the prohibition on speculating in any SO2 futures market. (Res. E-4112 at 12.)

3.5.4.2. Administration

Within 60 days of the date of this decision, SCE should file a Tier 2 advice letter specifying how it will maintain and account for the revolving fund established by this decision, within its Mohave Sulfur Credit Sub-account. The advice letter should also identify how SCE will treat the revolving fund for purposes of review and audit in any Energy Resource Recovery Account (ERRA) proceeding or other supervisory process of the Commission.

Within 30 days of the date of this decision, SCE should provide to the Director of Energy Division and the service list of this proceeding a complete list of its current project development security requirements in all RPS procurement processes, including but not limited to solicitations, RAM contracts, FiT contracts, and bilateral contracts not fitting under other processes. SCE should update this

list not less than annually and provide it to the Director of Energy Division and the service list of this proceeding, so long as the revolving fund established by this decision is in effect.

In its comments on the proposed decision, SCE suggests that disputes may arise about the administration of the revolving fund that the disputing parties[32] cannot resolve. In view of the limited scope of the revolving fund and the detailed nature of the requirements of this decision, we consider it unlikely that such disputes would arise. However, in the event that a dispute about the administration of the revolving fund arises that cannot be resolved by the parties to the dispute, such a dispute could be referred to the Commission's alternative dispute resolution program, administered by the Administrative Law Judge Division.[33]

3.5.4.3. Reporting

Because of the uncertainties in the SO2 allowance market and the duration of SCE's obligations under this decision, SCE should report regularly on the proceeds realized from the sale of additional surplus Mohave SO2 allowances, and the state of the SO2 allowance market more generally. A report should be filed with the Director of Energy Division and provided to the service list in this proceeding annually, not later than March 15 of each year. The report should provide information, in a publicly available form, about sales of surplus Mohave SO2 allowances in the prior year, and cumulatively from 2007, as well as the net

[32] The parties to a dispute about the administration of the revolving fund would be, if such a dispute arises, SCE and the entity or entities making a claim to money from the fund.

[33] For information about this program, see http://www.cpuc.ca.gov/PUC/adr/.

proceeds from the sales (if any).[34] The report should also identify any significant changes in federal regulations affecting SO2 allowances, and any significant changes or trends in the market for SO2 allowances. Finally, the report should state the amount of money available in the revolving fund on the date of the report, as well as the amount of money currently advanced to qualifying projects.

4. Categorization and Need for Hearing

This proceeding was categorized as ratesetting. The categorization as ratesetting is hereby confirmed. The various scoping memos also maintained the original determination that a hearing was needed. However, no evidentiary hearings were necessary and none were held. The determination as to the need for a hearing is changed, to indicate that no hearings are necessary.

5. Comments on Proposed Decision

The proposed decision (PD) of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

Comments were filed on February 4, 2013 by DRA, the Hopi Tribe, Just Transition, the Navajo Nation, and SCE. Reply comments were filed on February 11, 2013 by DRA, Just Transition, the Navajo Nation, and SCE.

The comments and reply comments have been carefully considered. A small number of clarifying revisions have been made to the PD in response to the comments. The PD has also been revised to reflect new federal court decisions, to improve consistency, and to correct minor errors.

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[34] The format used by SCE in its supplemental filings in this proceeding is acceptable for this purpose.

6. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Anne E. Simon is the assigned ALJ for this proceeding.

Findings of Fact

1. Mohave ceased operations December 31, 2005.
2. SCE has a 56% ownership share in Mohave.
3. In June 2009, SCE notified the Commission that all the owners of Mohave had decided to decommission the plant and dismantle the generating facility.
4. Mohave is allotted SO2 allowances under the acid rain program of Title IV of the federal Clean Air Act.
5. SCE's share of the Mohave SO2 allowances is 29,801 annually for the years prior to 2010, and 29,245 annually for 2010 and future years.
6. SO2 allowances are allocated for the current year and for 30 years thereafter. They may be used in the year on their face or any subsequent year.
7. Res. E-4112 authorizes SCE to sell surplus SO2 allowances, subject to certain conditions.
8. The entire amount of SCE's Mohave SO2 allowances that may be used in 2006 and later years are surplus and available for disposition.
9. The market value of the surplus Mohave allowances declined sharply between 2007 and 2012.
10. Federal EPA regulations mandating the reduction of SO2 emissions in the Midwest, South, and East have been invalidated twice by the D.C. Circuit Court of Appeals since 2008.
11. The EPA's CAIR has been in effect since the end of 2008 and is currently in effect.

Conclusions of Law

1. In order to maximize the benefit of the SO2 allowance proceeds for the Hopi Tribe and the Navajo Nation, SCE should make the proceeds available as a revolving fund to be used to meet project development security requirements for RPS-eligible projects that benefit the Hopi Tribe and/or the Navajo Nation.

2. In order to provide a uniform standard, the criteria for determining whether a proposed generation project benefits the Hopi Tribe and/or the Navajo Nation, solely for purposes of determining eligibility to use the SO2 allowance revolving fund, should be set as follows:

- The project is located on land (whether reservation, trust, or fee simple) of the Hopi Tribe and/or the Navajo Nation and
  - The project either pays a lease, rent, royalty or similar payment to the Hopi Tribe and/or the Navajo Nation, or
  - The Hopi Tribe or a governmental agency thereof, including a tribal utility, and/or the Navajo Nation or a governmental agency thereof, including a tribal utility, possess at least a 50.0% ownership interest in the project,
  - Or both conditions obtain; or
- The project is not located on land of the Hopi Tribe or the Navajo Nation, as described above, but the Hopi Tribe or a governmental agency thereof, including a tribal utility, and/or the Navajo Nation or a governmental agency thereof, including a tribal utility, possesses at least a 33% ownership interest in the project.

3. In order to make the funds from the allowance proceeds available early in the project development process, funds may be provided to projects proposed to contract with SCE to provide RPS-eligible electricity, to be used for shortlist deposits or development deposits or similar early-stage deposits, so long as the projects meet the criteria for benefit to the Hopi Tribe or Navajo Nation, and meet all applicable requirements of SCE's RPS procurement process. In the event

that at any one time there may be more demand by qualifying projects for money from the revolving fund than there is money available at that time, SCE should distribute the money to all qualifying projects in the same proportion as the amount of money in the fund bears to the total request for funds.

4. In order to provide clarity to the parties, within 30 days of the date of this decision, SCE should provide to the Director of Energy Division and the service list of this proceeding a complete list of its current project development security requirements in all RPS procurement processes, including but not limited to solicitations, RAM contracts, FiT contracts, and bilateral contracts not fitting under other processes. SCE should update this list not less than annually and provide it to the Director of Energy Division and the service list of this proceeding so long as the revolving fund established by this decision is in effect.

5. In order to make the revolving fund available expeditiously, within 60 days of the date of this decision, SCE should file a Tier 2 advice letter specifying how it will maintain and account for the revolving fund established by this decision, within its Mohave Sulfur Credit Sub-account. The advice letter should also identify how SCE will treat the revolving fund for purposes of review and audit in any ERRA proceeding or other supervisory process of the Commission.

6. In order to preserve the value of the revolving fund for the Hopi Tribe and the Navajo Nation and for SCE customers, any funds advanced for early-stage deposits should be returned promptly to the revolving fund if the qualifying project does not advance to the next step in SCE's RPS procurement process, is withdrawn, or is cancelled.

7. In order to preserve the value of the revolving fund for the Hopi Tribe and the Navajo Nation and for SCE customers, the funds should not be used for performance security for an RPS-eligible generation project that has entered into

operation, but should be returned to the revolving fund when performance security must be posted by the project developer.

8. In order to maximize the benefit of the SO2 allowance proceeds, SCE should use good faith efforts to continue to sell its surplus Mohave SO2 allowances, if appropriate, to increase the amount of money available to implement the provisions of this decision. In doing so, SCE must continue to follow the requirements of Res. E-4112, including but not limited to the prohibition on speculating in any SO2 futures market.

9. In order to provide information to the Commission and the parties about the SO2 allowance proceeds, SCE should file a report with the Director of Energy Division not later than March 15 of each year, stating in publicly available form the number and total price of allowances sold the previous calendar year, as well as the cumulative total of allowances sold and proceeds realized since the date of Res. E-4112. The report should also identify any new trends or developments in the SO2 allowance market and/or the federal SO2 regulatory system since the previous report. The report should also state the amount of money available in the revolving fund as of the date of the report, as well as the amount of money currently advanced to qualifying projects. The report should be served on the service list of this proceeding. The first report should be filed not later than March 15, 2013.

10. In order to promote the efficient and equitable administration of the revolving fund established by this decision, in the event that a dispute about the administration of the revolving fund arises that cannot be resolved by the parties to the dispute, the parties to such a dispute should refer the dispute to the Commission's alternative dispute resolution program, administered by the Administrative Law Judge Division.

11. In order to bring the process set forth in this decision to an orderly conclusion, no funds should be provided from the revolving fund after December 31, 2026.

12. The revolving fund should terminate the later of December 31, 2026 or six months after the return of the last funds provided under it, unless terminated or altered earlier by the Commission.

13. In order to provide a monetary benefit to SCE customers, not more than 90 days after the termination of the revolving fund, SCE should file a Tier 2 advice letter, served on the service list of this proceeding, setting forth the amount of money in the Mohave Sulfur Credit Sub-account and providing a plan for distributing the total amount to SCE customers through rates within 12 months of the date of the advice letter.

14. In order to promote administrative consistency, after the revolving fund is terminated, SCE should treat any surplus Mohave SO2 allowances in the same manner as it treats any other Title IV SO2 allowances allocated to it but not needed for the operation of any generation facilities in which SCE has an ownership interest.

15. In order to allow the benefits of the SO2 allowance proceeds to be realized as soon as possible, this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company (SCE) must maintain the Mohave Sulfur Credit Sub-account established by Decision 06-05-016 to maintain the proceeds from the sale of sulfur dioxide emission allowances rendered surplus by the closure of the Mohave Generating Station until SCE has completed the termination process set forth in Ordering Paragraph 13, below.

2. The funds realized by Southern California Edison Company (SCE) from the sale of sulfur dioxide emission allowances rendered surplus by the closure of the Mohave Generating Station must be made available as a revolving fund to be used to allow projects that provide generation that is eligible to meet the procurement obligations of SCE under the California renewables portfolio standard (RPS) and provide benefit the Hopi Tribe and/or the Navajo Nation to post project development security in the SCE RPS procurement process.

3. In the event that at any one time there may be more demand by qualifying projects for money from the revolving fund established by this decision than there is money available in the revolving fund at that time, Southern California Edison Company must distribute the money to all qualifying projects in the same proportion as the amount of money in the fund bears to the total request for funds.

4. In the event that a qualifying project utilizing money from the revolving fund established by this decision fails to advance to the next step in Southern California Edison Company's (SCE) renewables portfolio standard (RPS) procurement process, or is withdrawn from SCE's RPS procurement process, or

is cancelled, SCE must return any money used for deposits by that qualifying project to the revolving fund within 60 days of such event.

5. In the event that a qualifying project utilizing money from the revolving fund established by this decision is required to post performance security, or upon its entry into operation (whichever first occurs), Southern California Edison Company must return any money used for earlier deposits by that qualifying project to the revolving fund within 60 days of such event.

6. Solely for purposes of determining eligibility to use the surplus sulfur dioxide allowance revolving fund established by this decision, the criteria for determining whether a proposed generation project benefits the Hopi Tribe and/or the Navajo Nation are as follows:

- The project is located on land (whether reservation, trust, or fee simple) of the Hopi Tribe and/or the Navajo Nation and
  - The project either pays a lease, rent, royalty or similar payment to the Hopi Tribe and/or the Navajo Nation, or
  - The Hopi Tribe or a governmental agency thereof, including a tribal utility, and/or the Navajo Nation or a governmental agency thereof, including a tribal utility, possess at least a 50.0% ownership interest in the project,
  - Or both conditions obtain; or
- The project is not located on land of the Hopi Tribe or the Navajo Nation, as described above, but the Hopi Tribe or a governmental agency thereof, including a tribal utility, and/or the Navajo Nation or a governmental agency thereof, including a tribal utility, possesses at least a 33% ownership interest in the project.

7. In the event that a dispute about the administration of the revolving fund arises that cannot be resolved by the parties to the dispute, such a dispute may be

referred by the parties to the dispute to the Commission's alternative dispute resolution program, administered by the Administrative Law Judge Division.

8. Within 30 days of the date of this decision, Southern California Edison Company (SCE) must provide to the Director of Energy Division and the service list of this proceeding a complete list of its current project development security requirements in all its processes for the procurement of energy eligible to meet the California renewables portfolio standard (RPS), including but not limited to RPS solicitations; contracts under the renewable auction mechanism; contracts under the feed-in tariff program; and bilateral contracts not fitting under other processes. SCE must update this list not less than annually and provide it to the Director of Energy Division and the service list of this proceeding so long as the revolving fund established by this decision is in effect.

9. Within 60 days of the date of this decision, Southern California Edison Company (SCE) must file a Tier 2 advice letter specifying how it will maintain and account for the revolving fund established by this decision, within its Mohave Sulfur Credit Sub-account. The advice letter must also identify how SCE will treat the revolving fund for purposes of review and audit in any Energy Resource Recovery Account proceeding or other supervisory process of the Commission.

10. Southern California Edison Company (SCE) must file a report with the Director of Energy Division not later than March 15 of each year, stating in publicly available form the number and total price of sulfur dioxide (SO2) allowances rendered surplus by the closure of Mohave Generating Station that SCE sold the previous calendar year, as well as the cumulative total of allowances sold and proceeds realized since the date of Resolution E-4112. The report must state the amount of money available in the revolving fund as of the date of the

report, as well as the amount of money currently advanced to qualifying projects. The report must also identify any new trends or developments in the SO2 allowance market and/or the federal SO2 regulatory system since the previous report. The report must be served on the service list of this proceeding. The first report must be filed and served not later than March 15, 2013.

11. No funds may be provided from the revolving fund established by this decision after December 31, 2026.

12. The revolving fund established by this decision will terminate the later of December 31, 2026 or six months after the return to the revolving fund of the last funds provided under it, unless the fund is terminated or altered earlier by the Commission.

13. Not more than 90 days after the date of termination of the revolving fund established by this decision, Southern California Edison Company (SCE) must file a Tier 2 advice letter, served on the service list of this proceeding, setting forth the amount of money in the Mohave Sulfur Credit Sub-account and providing a plan for distributing the total amount in the Mohave Sulfur Credit Sub-account to SCE customers through rates within 12 months of the date of the advice letter.

14. After the revolving fund established by this decision is terminated, Southern California Edison Company (SCE) must treat any sulfur dioxide (SO2) allowances rendered surplus by the closure of the Mohave Generating Station in the same manner as it treats any other SO2 allowances allocated to it pursuant to Title IV of the federal Clean Air Act but not needed for the operation of any generation facilities in which SCE has an ownership interest.

15. The hearing determination is changed to no hearings are necessary.

16. Application 06-12-022 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

Ruling Paragraphs, Administrative Law Judge's Ruling on Treatment of Proceeds From Sulfur Dioxide Allowance Sales by Southern California Edison Company (April 7, 2011)

1. All of the Mohave Generating Station sulfur dioxide emission allowances allocated to Southern California Edison Company for 2006 and succeeding years are available for sale.

2. The proceeds of the sale of all of the Mohave Generating Station sulfur dioxide emission allowances allocated to Southern California Edison Company for 2006 and succeeding years are subject to disposition in this proceeding.

3. Requiring the expenditure of funds in excess of the actual amount of the proceeds of the sale of Mohave Generating Station sulfur dioxide emission allowances will not be considered further by the Commission in this proceeding.

4. Requiring the administration or distribution of some or all of the proceeds of the sale of Mohave Generating Station sulfur dioxide emission allowances by an entity other than the Commission or Southern California Edison Company will not be considered further by the Commission in this proceeding.

5. Requiring that a specific amount of money must accrue to the Navajo Nation or the Hopi Tribe as a result of the expenditure of the proceeds of the sale of the Mohave Generating Station sulfur dioxide emission allowances will not be considered further in this proceeding.

6. Requiring that some or all of the proceeds of the sale of the Mohave Generating Station sulfur dioxide emission allowances be expended on projects that are not related to developing or acquiring energy resources that would be available for California retail customers will not be considered further in this proceeding.

7. Requiring Southern California Edison Company to take steps to develop renewable generation at the Mohave Generating Station site will not be considered further in this proceeding.

8. Requiring that some or all of the proceeds of the sale of the Mohave Generating Station sulfur dioxide emission allowances be returned to Southern California Edison Company ratepayers through rates may be considered further by the Commission in this proceeding.

9. Requiring that some or all of the proceeds of the sale of the Mohave Generating Station sulfur dioxide emission allowances be expended by Southern California Edison Company on projects that would produce energy resources that could be used to satisfy the California renewables portfolio standard may be considered further by the Commission in this proceeding.

10. Setting a termination date for any plan for the expenditure of the proceeds of the sale of the Mohave Generating Station sulfur dioxide emission allowances may be considered further by the Commission in this proceeding.

11. Requiring Southern California Edison Company to donate the Mohave Generating Station sulfur dioxide emission allowances to a non-profit entity that would retire the allowances may be considered further by the Commission in this proceeding.

(END OF APPENDIX A)

APPENDIX B

ILLUSTRATIVE TABLE OF DEVELOPMENT DEPOSITS and SECURITY FOR CONTRACTS WITH SCE FOR RPS-ELIGIBLE GENERATION

RPS Procurement program	**Bid deposit**	**Development security**
RPS solicitation	Short-list deposit: greater of $25,000 or contract capacity x $3/ kW	$60/kW (intermittent) $90/kW (baseload)
Renewable Auction Mechanism (RAM)	None	$20/kW(projects ≤ 5MW) $60/kW (intermittent projects 5-20MW) $90/kW (baseload projects 5-20MW)
Feed-in-Tariff	None	$20/kW
Bilateral contracts, not in any of above groups	As determined	As determined

NOTE: This table is meant to illustrate the types of deposits or security to which the SO2 allowance proceeds may be applied. Performance security is excluded. The amounts given in the table are taken from recent requirements of SCE. They are not required by the terms of this decision and may or may not apply at the time of any specific transaction for which use of the revolving fund of Mohave SO2 allowance proceeds is sought.

(END APPENDIX B)