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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
ENERGY DIVISION
Item 26 ID#2769
RESOLUTION E-3848
October 2, 2003

R E S O L U T I O N

Resolution E-3848. Southern California Edison Company (SCE) request for approval as reasonable Amendment No. 2 to the Power Purchase Contract between Southern California Edison Company and Ormesa Geothermal (QFID No. 3010) and Contract Termination Agreement between Ormesa Geothermal II (QFID No. 3012) and Southern California Edison. Approved.

By Advice Letter 1726-E filed on August 1, 2003.

SUMMARY

Southern California Edison Company (SCE) requests approval for Amendment No. 2 to the Power Purchase Contract between Southern California Edison Company and Ormesa Geothermal (QFID No. 3010) and Contract Termination Agreement between Ormesa Geothermal II (QFID No. 3012) and Southern California Edison as reasonable. Specifically, SCE's Restructuring Advice Letter Filing (RALF) would consolidate power purchase agreements (PPAs) for two viable adjacent geothermal Qualifying Facilities (QF) projects (the Ormesa Geothermal Project and the Ormesa Geothermal II Project), owned by the same developer, into a single restructured contract. This resolution approves SCE's request.

SCE requests that the Commission adopt a resolution at the earliest possible time, but, by no later than November 1, 2003, so that, after taking into account the 30-day period for applications for rehearing,¹ a condition of finality may be achieved by the December 1, 2003 deadline agreed upon by SCE and Ormesa. SCE requests the following findings:

¹ Filing of a timely application for rehearing is a jurisdictional requirement for further review of Commission decision in the courts. Pub. Util. Code Section 1731(b).

- (1) Approve Amendment No. 2 as reasonable in all respects;
- (2) Approve the Termination Agreement entered into concurrently with and pursuant to Amendment No. 2 as reasonable in all respects; and
- (3) All payments made pursuant to Amendment No. 2 and the Termination Agreement are fully recoverable in SCE's retail rates subject only to review by the Commission with respect to reasonableness of SCE's administration of the QFID 3010 PPA, as amended by Amendment No. 2.

BACKGROUND

The Commission sought to encourage QF contract restructuring in its Preferred Policy Decision, D.95-12-063, as modified by D.96-01-009, by proposing an incentive mechanism to encourage the restructuring of QF contracts so that total transition costs might be reduced. Specifically, shareholders would be allowed to retain 10% of the net ratepayer benefits resulting from a renegotiation.

In D.96-12-088 (the Roadmap 2 Decision), the Commission stated its interest in "establishing a generic and possibly expedited process by which we can assess the reasonableness of [QF] contract restructuring in a manner which respects the principles outlined in our Preferred Policy Decision" (D.96-12-088, p.79).

In 1998, the Commission adopted the Restructuring Advice Letter Filing (RALF)² process in D.98-12-066:

"The restructuring Advice Letter [filing] process attached as Attachment B to this decision, shall be adopted subject to the modifications and clarifications set forth in Section 7 of this decision." (D.98-12-066, Ordering Paragraph 1).

The Commission adopted the RALF process with modifications that were not included in Attachment B to D.98-12-066 but were instead set forth in the

² Restructuring Advice Letter Filing ("RALF") Procedure For Review of QF Contract Restructurings.

decision. The Commission included the following provisions in the adopted RALF process:

- "We will require that a statement of support or neutrality from ORA be attached to any restructuring Advice Letter filing. We will not limit the use of the restructuring Advice Letter in any other way, such as by dollar size or by type of QF (including affiliates of utilities). (D.98-12-066, p.27, and Conclusion of Law 9)
- "While an ORA statement must be included with the restructuring Advice Letter, any other party may file a protest to the Advice Letter in the proper timeframe. We believe the procedural safeguards set forth in Attachment B, as modified by the following discussion, will ensure fairness in addressing the protests. Energy Division will review such protests (and any responses), and prepare a Resolution for the Commission pursuant to Section 9 of Attachment B [to D.98-12-066]. However, we modify Section 9 so that Energy Division, at its discretion, may advise the utility that the matter is too complex and should be filed as an Application. Energy Division may also advise the utility to file an Application even if there are no protests, should the Division determine that there are complexities to the filing that the Division does not believe it is in the best position to resolve. The Energy Division should discuss any such recommendation with the Coordinating Commissioner for QF matters before advising the utility to file an Application." (D.98-12-066, p.17)
- "We do not adopt Section 4 in Attachment B addressing confidentiality. Confidentiality issues shall be consistent with the current practice for utility Advice Letters." (D.98-12-066, p.28).

As described in SCE AL 1726-E, the Ormesa Geothermal and Ormesa Geothermal II Projects are geothermal QFs located in Imperial County, California. SCE's power purchases from Ormesa Geothermal and Ormesa Geothermal II are currently made in accordance with the terms and conditions of the Ormesa Geothermal and Ormesa II (QFID 3012) PPAs, which were entered into pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA), FERC's regulations implementing PURPA (18 C.F.R. § 292.101 et seq. (2002)), and decisions and orders of the Commission implementing PURPA in California. These PPAs account for approximately 65.3 MW of installed electric geothermal generating capacity. SCE states that the PPAs are based on Commission-approved standard offer forms and all provide for 30-year terms. The Ormesa Geothermal agreement was entered into on July 18, 1984 and the Ormesa

Geothermal II agreement (QFID 3012) on June 13, 1984. These agreements will expire in 2017 and 2018, respectively. Energy deliveries by the Projects during 2002 collectively totaled approximately 374,085,000 KWh.

NOTICE

Notice of AL 1726-E was made by publication in the Commission's Daily Calendar. Southern California Edison states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

Advice Letter AL 1726-E was filed on August 1, 2003. The protest period ended August 21, 2003. No protests were filed.

DISCUSSION

Energy Division has reviewed both the public and confidential versions of SCE AL 1727-E. SCE AL 1727-E included information required in Section 3 of RALF, and has complied with the other RALF filing requirements. These requirements are reproduced here as Attachment 1 to E-3848. Attachment 1 is modified from the original Attachment B to D.98-12-066 to reflect determinations made in D.98-12-066.

On July 14, 2003, ORA issued a letter in support of the contract restructuring, now proposed by SCE in AL 1726-E. The RALF procedure requires a statement of support or neutrality from ORA be attached to any restructuring Advice Letter filing.

SCE does not seek any shareholder incentive as a result of this contract restructuring.

With regard to historical performance, the projects have not experienced any operational issues such as probation or deration. From 1999 through 2002,

overall production from the projects decreased slightly, but increased after ORMAT's³ reacquisition of the projects, and the subsequent capital improvement program. As a geothermal QF, Ormesa is not subject to efficiency monitoring standards.

Section 3f. of the RALF procedure requires disclosure of any significant, pending legal or regulatory disputes between the utility and the QFs. Upon such request, SCE informed the Energy Division that there are no disputes of any nature between Edison and the projects.

With regard to future viability, Ormesa plans to repower some of the units with newer machinery of the same technology, and requested that Edison concur that the equipment change-out constituted a repower and not a change of prime mover. After an engineering review of Ormesa's plans, Edison ultimately concurred that the equipment change constituted a repower and would not violate the contract. During the negotiations surrounding contract consolidation, Ormesa engaged in their capital improvement program, including the replacement of the project's cooling towers. Ormesa demonstrated to Edison's satisfaction through its plans and actions that Ormesa was determined to maintain the viability of the projects either separately or as consolidated.

The primary ratepayer benefit that would result from the proposed contract restructuring is a one-time, lump sum payment by Ormesa, LLC to SCE. This payment could be received by SCE as soon as five days after Commission approval of SCE AL 1727-E. The payment amount is fixed and does not represent forecasted savings, nor is it tied to an energy index or other variable rate. Payment would be credited to SCE's 0103 Account for Purchased Power on behalf of QFID 3012, resulting in the same one-time, lump sum reduction amount eligible for inclusion in SCE's Energy Resource Recovery Account (ERRA).

Due to the relatively immediate ratepayer benefit that would accrue, the Commission should approve, as reasonable, Amendment No. 2 to the Power

³ ORMAT Group, an energy company based in Sparks, Nevada, purchased Ormesa Geothermal I & II in April 2002. The company owns and operates about 30 energy projects (geothermal, waste heat recovery, and solar), a total portfolio of about 200 MW. See www.ormat.com

Purchase Contract between Southern California Edison Company and Ormesa Geothermal (QFID No. 3010) and the Contract Termination Agreement between Ormesa Geothermal II (QFID No. 3012) and Southern California Edison. Accordingly, SCE should be allowed to recover all payments made pursuant to Amendment No. 2 and the Termination Agreement in SCE's retail rates, subject to review by the Commission with respect to the reasonableness of SCE's administration of the QFID 3010 PPA, as amended by Amendment No. 2.

COMMENTS

PU 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. However, since this is an uncontested matter in which the resolution grants the relief requested. Pursuant to PU Code 311(g)(2), the otherwise applicable 30-day period for public review and comment is being reduced.

FINDINGS

1. The Commission adopted the Restructuring Advice Letter Filing (RALF) process in D.98-12-066. On August 1, 2003, SCE filed Advice Letter 1726-E pursuant to the RALF process for approval to consolidate two QF contracts.
2. AL 1726-E was not protested.
3. On July 14, 2003, ORA issued a letter in support of the contract restructuring, now proposed by SCE in AL 1726-E.
4. SCE complied with RALF filing requirements.
5. SCE does not seek any shareholder incentive as a result of this contract restructuring.
6. The Ormesa QFs have not experienced any operational issues such as probation or deration, and project viability is expected to be enhanced through capital improvements.

7. There are no pending legal or regulatory disputes between SCE and the Ormesa QFs.
8. The primary ratepayer benefit that would result from the proposed contract restructuring is a one-time, lump sum payment by Ormesa, LLC to SCE. This payment would be credited to SCE's 0103 Account for Purchased Power on behalf of QFID 3012, resulting in the same one-time, lump sum reduction amount eligible for inclusion in SCE's Energy Resource Recovery Account (ERRA).
9. We should approve, as reasonable, Amendment No. 2 to the Power Purchase Contract between Southern California Edison Company and Ormesa Geothermal (QFID No. 3010) and the Contract Termination Agreement between Ormesa Geothermal II (QFID No. 3012) and Southern California Edison.
10. SCE should be allowed to recover all payments made pursuant to Amendment No. 2 and the Termination Agreement in SCE's retail rates, subject to review by the Commission with respect to the reasonableness of SCE's administration of the QFID 3010 PPA, as amended by Amendment No. 2.

THEREFORE IT IS ORDERED THAT:

1. Southern California Edison Company's request for approval of Amendment No. 2 to the Power Purchase Contract between Southern California Edison Company and Ormesa Geothermal (QFID No. 3010) and the Contract Termination Agreement between Ormesa Geothermal II (QFID No. 3012) and Southern California Edison, as requested in Advice Letter 1726-E, is granted.
2. SCE may recover all payments made pursuant to Amendment No. 2 and the Termination Agreement in SCE's retail rates, subject to review by the Commission with respect to the reasonableness of SCE's administration of the QFID 3010 PPA, as amended by Amendment No. 2.

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 October 16, 2003; the following Commissioners voting favorably thereon:

WILLIAM AHERN
Executive Director

Attachment 1 to Resolution E-3848

Formerly ATTACHMENT B to D.98-12-066

**[Modified Here in Attachment 1 to Resolution E-3848
To Reflect Modifications Set Forth In D.98-12-066]**

Revised Exhibit A

RESTRUCTURING ADVICE LETTER FILING ("RALF") PROCEDURE FOR REVIEW OF QF CONTRACT RESTRUCTURINGS

**THIS ATTACHMENT B IS SUBJECT TO THE MODIFICATIONS SET FORTH
IN SECTION 7 OF D.98-12-066, INCLUDING:**

- "We will require that a statement of support or neutrality from ORA be attached to any restructuring Advice Letter filing. We will not limit the use of the restructuring Advice Letter in any other way, such as by dollar size or by type of QF (including affiliates of utilities). (D.98-12-066, p.27, and Conclusion of Law 9)
- "While an ORA statement must be included with the restructuring Advice Letter, any other party may file a protest to the Advice Letter in the proper timeframe. We believe the procedural safeguards set forth in Attachment B, as modified by the following discussion, will ensure fairness in addressing the protests. Energy Division will review such protests (and any responses), and prepare a Resolution for the Commission pursuant to Section 9 of Attachment B [to D.98-12-066]. However, we modify Section 9 so that Energy Division, at its discretion, may advise the utility that the matter is too complex and should be filed as an Application. Energy Division may also advise the utility to file an Application even if there are no protests, should the Division determine that there are complexities to the filing that the Division does not believe it is in the best position to resolve. The Energy Division should discuss any such recommendation with the Coordinating Commissioner for QF matters before advising the utility to file an Application." (D.98-12-066, p.17)
- "We do not adopt Section 4 in Attachment B addressing confidentiality. Confidentiality issues shall be consistent with the current practice for utility Advice Letters." (D.98-12-066, p.28).

1. The utility will submit a restructuring advice letter to the Commission's Energy Division which will contain the essential information necessary to establish the reasonableness of the proposed voluntarily negotiated QF restructuring. Each such filing, and all protests, responses and replies concerning the filing, shall indicate a

postal address and (where appropriate) a FAX number or e-mail address at which the advice letter filer, protestant or respondent, agrees to receive subsequent documents and notices relevant to the advice letter. Each such filing will be reported in the Daily Calendar.

2. Service of the restructuring advice letter shall be as follows:

On or before the date a restructuring advice letter is submitted for filing, and unless otherwise directed by Commission order, the utility shall serve the restructuring advice letter (1) on the Consumer Services Division and the Office of Ratepayer Advocates (service on these parties may be made by Internet); and (2) on the utility's restructuring advice letter service list and any other third parties as specified by the Energy Division, other Commission order, or statute.

The utility's restructuring advice letter service list shall include the postal and e-mail address, as appropriate, of persons on the list. The utility shall include on the requested list any person that requests such inclusion and may periodically confirm the desire of any currently listed person to remain on the list.

After the filing of a restructuring advice letter, and pending its disposition, the utility shall promptly provide a copy of the advice letter to anyone so requesting. Such provision shall be without charge to anyone who is a current customer for utility services from the utility, or to anyone receiving the advice letter by Internet.

3. The restructuring advice letter shall contain the following categories of information, including all relevant work papers and other relevant supporting documents:

- a. Identification of the QF, location of the QF's generating facility, brief description of the generating facility size, type of technology and other pertinent or unique characteristics.
- b. Ownership of the QF project and related companies, including affiliate relationships of the parties involved in the transaction, if any.
- c. A detailed description of the historical operational performance of the project, including historical production and compliance with performance and efficiency monitoring standards.
- d. A summary of the proposed contract restructuring.
- e. A summary of the ratepayer benefits.
- f. A description of any significant, pending legal or regulatory disputes between the Utility and the QF, and their resolution or status.

- g. An assessment of the QF's projected economic and operational viability under the existing contract.
- h. A detailed description of ratepayer benefits, shareholder incentive, and sensitivity analyses.
- i. A copy of the QF's existing contract, including any amendments.
- j. A copy of the executed or unexecuted restructured agreement for which approval is sought and copies of all related agreements between the QF and the Utility.

4. The publicly available version of the restructuring advice letter may be redacted to delete the following types of confidential information, which redaction would be approved in advance by the Commission in its orders authorizing the use of the advice letter process:

a. The schedule of any restructuring payments to be made to the QF, including the total amount thereof.

b. The Utility's non-public projection of replacement energy and capacity costs.

c. The Utility's projection of future production by and payments to the QF under the existing contract.

d. Non-public financial and operating data provided on a confidential basis by the QF to the Utility.

e. The Utility's assessment of the QF's financial and operating viability under the existing contract.

f. The Utility's analysis of ratepayer savings under expected, best case and worst case scenarios (except that the projected range of savings under each scenario shall not itself be deemed confidential).

g. Portions of restructuring agreements that are deemed to be confidential by the parties and which, if made public, would place the Utility and/or the QF at a competitive disadvantage.

h. Other information which constitutes a protectable trade secret of a party or which, if publicly disclosed, would place the Utility or the QF at a competitive disadvantage.
[Deleted per D.98-12-066, p.18]

5. The restructuring advice letter shall only take effect upon Commission approval.

6. Any person may protest or respond to a restructuring advice letter as follows:

Within 20 days after the date that the advice letter is reported in the Daily Calendar, the protest or response shall be submitted to the Energy Division and served on the same day on the utility filing the restructuring advice letter. After filing a protest, and pending disposition of the restructuring advice letter, the protestant shall promptly provide a copy of the protest to anyone so requesting.

A restructuring advice letter may be protested on one or more of the following grounds:

- a. The utility did not properly serve or give notice of the restructuring advice letter;
- b. The relief requested in the restructuring advice letter would violate statute or Commission order;
- c. The restructuring advice letter contains material errors, or does not follow the Commission's approved methodology, if any.

In addition, a restructuring advice letter may be protested on the grounds that the proposed restructuring is unjust, unreasonable, or discriminatory, provided, however, that a restructuring advice letter is not subject to protest on these grounds where such protest would require relitigating a prior order of the Commission.

The utility filing the restructuring advice letter shall reply to each protest and may reply to any response. Any such reply shall be submitted to the Energy Division not later than five business days after the last day to serve a protest or response, and shall be served on the same day on the person making the protest or response. If there are multiple protests or responses to a restructuring advice letter, the utility's reply may be to all such protests and responses.

The Energy Division may consider a late-filed protest or response. If the Energy Division considers a late-filed protest or response, it shall notify the utility filing the restructuring advice letter, and the utility shall have five business days from the date of issuance of the notice within which to reply to the late-filed protest or response.

7. The utility filing the restructuring advice letter may make minor revisions or corrections to the filing at any time before the effective date by filing and serving a supplement or substitute sheet. The utility shall withdraw the advice letter without prejudice in order to make major revisions. Supplements, substitute sheets, and withdrawals shall be filed and served in the same manner and on the same persons as was the original advice letter.

Minor revisions do not automatically extend the protest period. The Energy Division on its own motion or at the request of any person, may issue a notice extending the protest period. Any protest during the extended period shall be confined to the substance of the revision.

8. A supplement to a restructuring advice letter may be used to make minor revisions. The following revisions are examples of what commonly, but not necessarily, qualify as minor: a modification in response to a protest; a language clarification; or a later effective date. The supplement shall bear the same identifying number as the original advice letter but shall have a letter suffix "A" for the first supplement, "B" for the second supplement, etc.

9. Upon completion of the protest, response and reply period, the Energy Division will have 40 days within which to review the proposed restructuring to determine whether the information provided under paragraph 2 above and in response to any protest establishes that the proposed restructuring is reasonable under the Commission's standards and should be approved.

"Energy Division will review such protests (and any responses), and prepare a Resolution for the Commission pursuant to Section 9 of Attachment B. However, we modify Section 9 so that Energy Division, at its discretion, may advise the utility that the matter is too complex and should be filed as an Application. Energy Division may also advise the utility to file an Application even if there are no protests, should the Division determine that there are complexities to the filing that the Division does not believe it is in the best position to resolve. The Energy Division should discuss any such recommendation with the Coordinating Commissioner for QF matters before advising the utility to file an Application." (D.98-12-066, p.17)

When such review has been completed, and within such 40-day period, the Energy Division will prepare and submit to the Commission for consideration at the Commission's next public meeting which is at least 10 days thereafter a proposed resolution either approving or rejecting the restructuring advice letter. (To facilitate this process, the utility may submit a proposed form of resolution as part of the advice letter package.) A proposed resolution approving the restructuring advice letter shall make at least the following finding:

- (a) That the restructuring is reasonable;
- (b) That all payments to be made pursuant to the restructuring shall be recovered by the utility through its Annual Transition Cost Proceeding or other mechanism authorized by the Commission, subject only to the utility's prudent administration of the restructuring agreement.

The Commission may then adopt the proposed resolution or modify it in whole or in part. After the Commission has acted on the resolution, its action will be reported in the Daily Calendar and the resolution will be served on the utility filing the restructuring advice letter, the affected QF and on any person filing a protest or response to the restructuring advice letter.

10. Pursuant to Public Utilities Code Sections 1731 to 1736 and Rules 85 to 86.7 of the Commission's Rules of Practice and Procedure, the utility filing the restructuring advice letter, the affected QF, or any person filing a protest to the restructuring advice letter may apply for rehearing of a resolution approving or rejecting the restructuring advice letter pursuant to paragraph 9 above. The application for rehearing shall set forth specifically the grounds on which the applicant considers the resolution to be unlawful. Other than the affected QF, a person filing a response does not have standing to apply for rehearing.

The application for rehearing shall be submitted to the Commission's Docket Office, which will assign a docket number to the application, and with the Energy Division. If the applicant is the utility filing the restructuring advice letter, it shall serve all persons filing protests or responses to the restructuring advice letter. If the applicant is the affected QF or a person filing a protest, the applicant shall serve the utility and all other persons filing protests or responses to the restructuring advice letter.

11. If the Commission's final resolution does not approve the proposed restructuring in its entirety, then the terms of the agreement between the utility and the QF will determine whether or not the restructuring effort will terminate or whether the proposed restructuring will be resubmitted for consideration through a formal application process. Also, subject to its agreement with the QF, the utility will have the right to withdraw a restructuring advice letter without prejudice at any time prior to Commission action on the draft resolution prepared by the Energy Division, or to pursue a formal application process in lieu of the advice letter procedure.

12. Nothing in the restructuring advice letter filing procedure shall preclude the utility from electing not to use the advice letter process.