Decision **ALTERNATE PROPOSED DECISION OF COMMISSIONERS BROWN AND PEEVEY (Mailed 7/3/2002)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Verification, Consolidation, and Approval of Costs and Revenues in the Transition Revenue Account.	Application 98-07-003 (Post PX Direct Access Credits) (Filed July 1, 1998)

SOUTHERN CALIFORNIA EDISON COMPANY'S HISTORICAL PROCUREMENT CHARGE PROPOSAL

(See Appendix A for a list of appearances.)

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OPINION AUTHORIZING THE PROPOSAL OF SOUTHERN CALIFORNIA EDISON COMPANY TO ESTABLISH A HISTORICAL PROCUREMENT CHARGE

I. Introduction and Summary

On October 2, 2001, this Commission and Southern California Edison Company (SCE) reached a Settlement Agreement in Federal District Court Case No. 00-12056-RSWL (Mcx) that allows SCE to recover its past procurement cost undercollections as measured by the starting balance in SCE's Procurement Related Obligation Account (PROACT). That balance was $3.577 billion as of August 31, 2001. The Settlement Agreement was approved by the Federal District Court on October 5, 2001.

Under the current ratemaking framework, the surcharges adopted in 2001 are reflected in the generation rate component and Direct Access (DA) customers' bills are credited with the entire generation rate component. SCE asserts that this approach means that only bundled service customers are contributing to the recovery of the PROACT balance. SCE proposes to establish a Historical Procurement Charge (HPC), and to adjust the credit that DA customers receive so that DA and bundled service customers make equivalent contributions to the recovery of SCE's past procurement cost undercollections.

The California Large Energy Consumer Association (CLECA) and other parties assert that DA customers did not contribute to the undercollection in the same manner as bundled customers nor did many DA customers benefit from the undercollection. The Utility Reform Network (TURN), and others, support

SCE.[1] Public hearings were held before Administrative Law Judge Barnett and the matter was submitted.

We conclude that SCE should be authorized to establish a HPC and apply it to DA customers by reducing the DA customers' generation credit by 2.7¢/kWh until the effective date of a PUC decision implementing a direct access cost responsibility surcharge. On that date, the HPC shall be reduced to 1.0¢/kWh until such time as $391 million is collected, ensuring bundled customer indifference in the collection of PROACT.

II. Background

Since April 1998, SCE has offered service to two distinct types of customers. Bundled service customers receive the full range of electric services from SCE, which include energy procurement and delivery. SCE customers could also choose, under the DA option, to purchase energy from an energy service provider (ESP). SCE continues to deliver electricity to both DA and bundled service customers.

A. Rate Freeze

Total rates were frozen at levels in effect on June 10, 1996 for all customers. Bundled service customers paid these frozen rates for the duration of the transition period (January 1, 1998 through March 31, 2002 or a Commission-

[1] Parties filing briefs include: the Alliance for Retail Energy Markets (AReM), the California Energy Commission (CEC), California Industrial Users (CIU), CLECA, the California Manufacturers & Technology Association (CMTA), California Retailers Association (CRA), the Energy Producers and Users Coalition (EPUC); the Kroger Co. and Tricon Global Restaurants, Inc., New West Energy Corporation (New West), San Diego Gas & Electric Company (SDG&E), Sempra Energy Solutions (Sempra), 7-Eleven, Inc. (7-Eleven), TURN, and SCE.

authorized earlier end date). These frozen tariff rates included a generation rate component. The generation rate component was unbundled into the market price and a competition transition charge (CTC) component. The CTC was calculated residually as the difference between the fixed generation rate component and the market price, where the market price was based on SCE's cost of procuring power from the Power Exchange (PX) and the California Independent System Operator (ISO). All customers paid the CTC and the CTC revenues were used to pay for SCE's stranded generation costs, also known as transition costs.

B. The Avoided Cost Credit

SCE calculated a market price for billing purposes utilizing the cost and quantities of power purchased from the PX. This PX price was used to determine the contribution to the recovery of CTC (when compared to the generation rate component of frozen rates) and also represented SCE's avoided cost of procuring energy. The PX component of the generation rate was either applied to recover the cost of purchasing power for bundled service customers or given as a credit to DA customers. The credit reflected the fact that DA customers had chosen to procure their energy through an ESP rather than SCE. So long as the market price, or DA credit, remained below the generation component of the customer's frozen rate, the DA customer continued to make a contribution to CTC in exactly the same manner as a similarly situated bundled service customer.

III. History of the DA Credit

A. Zero Minimum Bill Provision

Because the DA credit was based on the market price from the PX, it was possible that the credit would exceed either the generation rate component or the entire bill. If the PX credit exceeded the generation rate component, there

was a negative CTC, i.e., no contribution to recovery of stranded costs. If the PX credit exceeded the entire amount of the bill, meaning that the PX credit was greater than the sum of the generation, distribution, transmission, public purpose, and the other rate components, there would be a negative bill. In other words, the DA customer would receive a credit for the entire utility bill. This is also known as a "credit" bill.

Prior to June 1999, under the adopted tariffs, DA customers receiving the PX credit could experience, at a minimum, a monthly bill of $0. In D.99-06-058, the Commission approved a stipulation between SCE, Western Power Trading Forum, and Enron and eliminated the zero minimum bill provision. The elimination of the zero-minimum bill provision allowed DA customers to receive the entire PX credit even if it resulted in a negative (credit) bill. Prior to market dysfunctions in mid 2000, PX credits in excess of total monthly charges were generally carried over to succeeding months and were netted against positive bills.

B. Escalation of PX Prices

The rise of market energy prices in the summer of 2000 resulted in numerous occurrences of negative CTC entries. As PX credits in excess of total bundled services charges became the norm, DA customers enjoyed consistent credits for the entire bill. On January 5, 2001, SCE stopped making payments to DA customers utilizing ESP consolidated billing for credit bills resulting from the application of the DA credit. Prior to that time, SCE generally paid these DA customers for their credit bills upon request by the customer, or with the closing of an account. SCE states that the payment of these credit bills as well as the need to finance the costs of procuring energy for bundled service customers contributed to the deterioration of its cash and credit position. The credit bills for

DA customers utilizing UDC consolidated or dual billing were carried forward and were netted out against any positive bills even after SCE became non-creditworthy.

C. Going Forward Procurement Surcharges

On May 27, 2001, the Commission issued D.01-05-064, which adopted new rate levels for SCE customers, adding roughly 4¢/kWh to the frozen generation rate component. The new surcharge was comprised of the then existing 1¢/kWh emergency procurement surcharge (EPS) plus an additional 3¢/kWh authorized in D.01-03-082: the 3¢ surcharge did not apply to DA customers. The Commission did not state whether the EPS was applicable to DA customers. SCE had billed the 1¢/kWh surcharge to DA customers, but stopped after D.01-03-082 was issued. SCE began billing the new rates on June 3, 2001. At this point SCE's method was to credit DA customers with the generation rate of their otherwise applicable tariff (OAT). This approach resulted in DA customers avoiding surcharges adopted by the Commission in year 2001 on a prospective basis.

IV. SCE'S Procurement Related Liabilities

SCE asserts that it is clear that DA customers have contributed to SCE's procurement-related liabilities in the same manner as bundled service customers. Until the June rates were implemented, DA customers were receiving a credit based on SCE's weighted-average energy cost. To the extent this energy cost continued to exceed the generation rate component of frozen rates, SCE continued to incur a liability to fund both energy purchases for bundled service customers and energy credits for DA customers. With the subsequent drop in market energy and gas prices, SCE has received positive revenues from bundled service customers toward reducing its procurement-related obligations, while

DA customers have contributed nothing to the recovery of the liabilities to which they contributed.[2] SCE states that the proposed HPC is designed to rectify this inequity.

A. Equivalence of Impact on SCE's Liabilities

SCE explained its position with an example: Consider a bundled service customer with 1000 kWh usage during a particular billing cycle and an average rate of 10¢ / kWh, resulting in a total bill of $100. If $40 of this total amount is for recovery of non-generation transmission and distribution costs (T&D) then the customer contributed $60 to recovery of SCE's procurement costs and uneconomic or stranded generation costs. As long as the price of power procured for this customer was less than 6¢ / kWh, the customer contributed positively to SCE's recovery of its transition costs. When the price of energy rose above 6¢ / kWh the customer did not contribute anything to recovery of transition costs and in addition, SCE started accumulating its procurement-related liabilities. For instance, if SCE had to procure energy for this customer at 14¢ / kWh, the customer contributed $80 [(14¢ / kWh – 6¢ / kWh) x 1000 kWh] to SCE's procurement-related liabilities for the billing cycle. In other words, from the customer's original bill of $100, $40 went to pay non-generation costs leaving only $60 to cover generation costs. Because SCE incurred $140 for the cost of procuring energy for this customer, SCE was left responsible for $80 in procurement-related liabilities for this bundled customer.

[2] Under D.99-06-058, SCE is still liable to pay credits to DA customers should energy costs rise sufficiently.

Now consider a similarly situated DA customer. This customer's bill was first calculated just as for a bundled service customer ($100), and then the customer was credited for the cost of procured energy. When the cost of power was 3¢/kWh, the DA customer would have received a credit of $30, leaving a net bill of $70. If the cost of power were 14¢/kWh as in the previous example, the DA customer would have received a credit of $140, resulting in a credit bill, or payment from SCE of $40. While bundled customers contributed to $80 of SCE's liabilities in the above example, DA customers caused $40 in procurement related liabilities at the same PX prices. As this example shows, high PX prices caused both bundled and DA customer contributions to SCE's procurement-related liabilities, but not equal contributions.

CLECA argues that SCE has failed to establish the responsibility of current direct access customers for recovery of a portion of its procurement undercollection amount. It says payment of direct access credits in excess of the generation rate component of frozen tariff rates occurred only because in 1999 SCE voluntarily entered into a stipulation with representatives of the ESPs to change the manner of calculating the direct access credit. The stipulation permitted the direct access credit to float with the PX price, going above the frozen rate level if necessary. No customer group asked for that stipulation and none signed it. It was strictly an arrangement between SCE and the ESPs, one in which SCE agreed to remove the "zero minimum bill" provision from its tariff in exchange for the ESPs' dropping their demand to see the input data used by SCE to establish the monthly credit.

CLECA also contends that direct access customers generally received no benefit from the application of this billing methodology. It points out that among the SCE large commercial and industrial direct access customers in

December 2000, the vast bulk of the accounts were using the ESP consolidated billing option. Under this arrangement, SCE sent its bill for transmission and distribution services directly to the ESP and looked entirely to the ESP for payment. When the amount of the direct access credit exceeded the frozen tariff rate, SCE provided a net credit. Until January 5, 2001, SCE would write a check for the accumulated credit balance to the ESP. CLECA believes that under this billing option, the net credit went to the ESP; it did not go to the customer.

The witness for CLECA testified that DA customers did not benefit from the higher DA credits. She said "I am somewhat familiar with DA contacts, and I am generally familiar with the nature of some of the pricing arrangements agreed to by DA customers during the relevant period. In many of these cases, the customer was quite careful to protect itself against the possibility that energy prices might increase and that the sum of the charges under a DA transaction might exceed the otherwise applicable frozen tariff rate. They did so by choosing pricing that involved a small discount from the otherwise applicable frozen tariff rate (OAT minus), rather than a discount from the PX prices." She said the effect of "OAT minus" pricing effectively shifted the risk of increasing market prices for power away from the customer and on to the ESP. The ESP was committed to supply power to the customer at the customer's frozen tariff rate less a percentage discount, typically in the 1% to 3% range. Because the pricing under the contract was not tied to PX prices, the customer was insulated from the possibility that a sudden natural gas price increase or other factors might drive up the PX prices to levels that exceeded its frozen OAT rate. As between the DA customer and the ESP, the DA credit was irrelevant; the pricing was strictly OAT minus a discount, and any DA credits actually paid were kept by the ESP. She said "under the ESP consolidated billing feature, the ESP assumed all of the

customer's payment obligations to SCE, and SCE rendered the bill to the ESP and looked to that entity for payment." She concluded, therefore, "if SCE is seeking to recover procurement costs in excess of the average generation costs embedded in the frozen rates, it should look to the parties to whom it paid or will pay the PX or DA credit. If DA customers did not receive these credits directly from SCE, there is no reason to require customers to pay the HPC."

CLECA's presentation is not persuasive. Rather than supporting the proposition that DA customers did not benefit from the DA credit, it proves the contrary. The DA customer entered into an agreement by which the ESP priced its electricity at a discount to the applicable frozen tariff rates. In exchange, the DA customer gave its right to receive the DA credit to the ESP. Whether directly or indirectly DA customers on consolidated billing benefited from the DA credit.[3] However, as discussed above, DA customers did not cause SCE's procurement liabilities in the same way or in equivalent amounts as did bundled customers.

B. The Settlement Agreement

The Settlement Agreement between SCE and the Commission, approved by the Federal District Court on October 5, 2001, specifically identified SCE's procurement related liabilities. The unpaid credit bills which resulted from market energy prices in excess of SCE's generation rate are reflected in Schedule 1.1 of the Settlement Agreement as a procurement related liability to the DA customers' ESPs. The amounts SCE borrowed to pay the credit bills prior

[3] We have addressed the DA customer benefit issue because CLECA raised it and many parties support CLECA's position. However, we wish to emphasize that in setting rates, past benefit is only one consideration of many. Taken to its logical conclusion, no customer who first took service from SCE after August 2001 (e.g., residential customers) would have to pay the PROACT portion of their electric bill.

to January 5, 2001 or to purchase energy for current DA customers while they received bundled service are reflected in other line items of Schedule 1.1. The Settlement Agreement specifically identifies a starting balance for the PROACT that SCE is entitled to recover. The PROACT balance of $3.577 billion as of August 31, 2001 was verified by the Commission's Energy Division on November 2, 2001.

The pertinent portions of the Settlement Agreement and Stipulated Judgment which pertain to this proceeding are:

A. Settlement Agreement

ARTICLE 2
RATE STABILIZATION AND COST RECOVERY

Section 2.1 Procurement Related Obligations Account (PROACT).

(a) The CPUC will establish the Procurement Related Obligations Account (PROACT) by order. The opening balance thereof will be the excess of SCE's Procurement Related Liabilities as of August 31, 2001 over SCE's cash and cash equivalents on hand as of such date, *less* the sum of $300 million. . . . The Parties estimate that the balance of the PROACT as of the date hereof is approximately $3.3 billion.

(b) SCE will apply all accrued Surplus[4] to the PROACT on a monthly basis or such periodic basis as may be established by the CPUC, . . .

[4] "*Surplus*" means the difference, positive, or negative, if any, of SCE's revenues from retail electric rates (including surcharges) during the Recovery Period over SCE's Recoverable Costs for the same period. (Emphasis added.)

. . .

(d) During the Recovery Period from and after September 1, 2001, all Surplus shall be applied to the PROACT. . . .

Section 2.2 Recovery of Procurement Related Obligations. The Parties hereby agree that during the Recovery Period SCE shall recover in retail electric rates its Procurement Related Obligations recorded in the PROACT. The Parties acknowledge that they each currently project that the maintenance of Settlement Rates will likely result in sufficient Surplus for SCE to recover substantially all of its unrecovered Procurement Related Obligations prior to the end of 2003. . . . (Emphasis added.)

Section 2.9 Intended Effects. The CPUC shall adopt such decisions or orders as it deems necessary to implement and carry out the provisions of this Agreement, it being understood that this Agreement and the Stipulated Judgment contemplated hereby shall be binding and irrevocable upon the Parties, notwithstanding such future decisions and orders of the CPUC. It is the intent of the Parties that SCE actually recover Procurement Related Obligations recorded in the PROACT, without offset, as rapidly as possible during the Rate Repayment Period consistent with the terms hereof, and in any event during the Recovery Period. (Emphasis added.)

B. The Stipulated Judgment

. . .

3. As a party to the Agreement, the Commission (as distinct from the individual Defendants) joins in and agrees to be bound by all of the terms of this stipulated judgment. The CPUC agrees to waive any defense it may have to the Court's jurisdiction

based upon the Eleventh Amendment, or other defense, for purposes of this case only.

. . .

E. Future Effect

1. The Agreement that is incorporated herein provides for SCE to recover certain costs in retail rates over time. An essential element of this stipulated judgment is to provide certainty that SCE will be able to recover such costs in accordance with the Agreement. SCE and the CPUC contemplate that third parties will rely on such certainty in extending credit to SCE. Accordingly, enforcement of this stipulated judgment and the Agreement are essential in order to restore SCE's creditworthiness, which is in the interest both of SCE and of the CPUC. (Emphasis added.)

2. The parties and their respective successors and assigns agree to be bound by the terms of this stipulated judgment and agree not to contest its validity in any subsequent proceeding. Defendants recognize that market prices may fluctuate, that state or federal law may be modified, and that other circumstances may change, and nevertheless intend that this stipulated judgment be binding and enforceable in the future in accordance with its terms. (Emphasis added.)

3. The Court enters this stipulated judgment and Agreement as its judgment, and retains jurisdiction to enforce the judgment in the future, as may be necessary.

Kroger and Sempra contend that the HPC proposal should be denied because the Settlement Agreement does not refer to or authorize the HPC. 7-Eleven states that the PROACT is only to be recovered from retail, or bundled

customers. Those contentions have no merit. The PROACT balance includes SCE's liabilities and undercollections caused by the DA credit. The Settlement Agreement authorizes the recovery of the PROACT balance from retail customers through retail rates. DA customers are retail customers and pay retail rates. The HPC is merely the method of paying the PROACT balance for these customers. It results from the Settlement Agreement.

Kroger claims that the HPC violates Public Utilities Code Section 368(a), which prohibits the post rate-freeze recovery of undercollections incurred during the rate-freeze period. This claim is irrelevant. The Settlement Agreement between SCE and the Commission mooted any argument that SCE's undercollections should not be recovered through retail rates. The Settlement Agreement specifically permits SCE to recover the PROACT balance from customers through retail rates. As we said, DA customers are retail customers and pay retail rates.

Kroger also contends that the HPC would constitute retroactive ratemaking because SCE seeks to adjust DA customers' rates to make up for past unreasonable rates. EPUC claims that the PROACT is defective because it was created only after SCE incurred its undercollections. Both arguments are irrelevant. This proceeding is to implement a settlement approved by the federal court. We are not here to rehash past positions.

C. Securitization

Some parties have suggested that the PROACT balance be securitized and recovered over a longer time period. The Settlement Agreement does make an allowance for the Commission to approve securitization of all or a part of the PROACT balance "in order to reduce the retail rate impact" (Settlement Agreement, Section 2.2 (c)). In any case, to reduce the associated financing costs

and assure the repayment of bonds necessary for securitizing the PROACT balance, SCE believes that some form of legislation will be required. Given the lead time required for passage of legislation and issuance of bonds, the administrative costs of issuing the bonds, and the short expected time for recovery of the PROACT balance from bundled service customers, SCE does not support the securitization option for DA customers.

If it is determined that direct access customers are to be held liable for repayment of a portion of the undercollection amount, CLECA recommends securitization of the entire $3.577 billion (or the amount remaining unrecovered at the time of this decision). It says securitization has several advantages over the SCE proposal. First, it is contemplated in the Settlement Agreement. Second, it would provide immediate funds to pay off SCE's creditors and would restore the utility to financial health at an earlier date. Third, if the period were five years, it would permit an immediate rate reduction of perhaps 1.25¢ to 1.5¢ per kWh for all customers, bundled and direct access.

We will not adopt a securitization methodology, if this is understood to involve a specific issuance of debt, such as through bonds, to finance a longer term of recovery. However, as discussed below, we will consider a similar concept of a longer amortization period for recovery of relevant costs from DA customers.

V. HPC Proposal

A. Calculation of HPC

SCE proposes to establish an HPC for use in determination of the DA credit, based on the starting PROACT balance as verified by the Commission's Energy Division. As described above, DA customers contributed to, the PROACT balance, but not in the same manner as or in equal proportion to

bundled service customers. Currently (since June 3, 2001) only bundled service customers are making payments towards the recovery of PROACT balance. The proposed HPC will recover what SCE believes is the DA customers' share of SCE's procurement related obligations over a two-year period. This is consistent with the expected end of the recovery period for the balance of the PROACT from bundled service customers.

Under SCE's methodology, to calculate the HPC, the PROACT balance is first amortized, with interest, over two years. This annual revenue requirement for the HPC is then allocated to individual rate groups based on each group's contribution to SCE's procurement related liabilities. For most of the period from June 2000 to September of 2001, SCE's procurement costs, and the DA credit, exceeded revenues recovered through the generation component of retail rates. The net effects of this for both bundled service and DA customers were negative, although different, CTC contributions (as reflected in the negative Transition Revenue Account, or TRA, balance) and increased liabilities for SCE. The contribution of each rate group to these negative monthly TRA balances are summed over 2000 and 2001 for each of SCE's 13 rate groups. The ratio of each rate group's total to SCE's system total is used to allocate the annual revenue requirement of the amortized PROACT balance among rate groups. Each rate group's allocation of the total HPC revenue requirement is then divided by the 2002 sales forecast for that rate group to calculate the HPC. These allocation factors and resulting rates are shown in Table 1 below.

Table 1
Historical Procurement Charge

Rate Group	2002 Forecast (GWh)	Rate Group HPC Allocator	PROACT Revenue Requirement (000's)	Allocated PROACT Revenue (000's)	Interim HPC (c/kWh)
Domestic	24,456.2	30.04%		$582.1	2.380
GS-1	4,166.0	5.19%		100.5	2.412
TC-1	173.9	0.25%		4.8	2.740
GS-2	21,996.2	29.64%		574.5	2.612
TOU-GS	523.9	0.68%		13.1	2.509
LSMP	26,860.0	35.75%		$692.9	2.580
TOU-8-Sec	8,955.8	11.91%		230.8	2.577
TOU-8-Pri	6,997.8	8.73%		169.2	2.418
TOU-8-Sub	7,931.9	9.45%		183.1	2.308
Large Power	23,885.5	30.09%		$583.2	2.441
PA-1	621.7	0.64%		12.4	2.001
PA-2	592.4	0.65%		12.6	2.123
AG-TOU	884.9	1.16%		22.5	2.542
TOU-PA-5	718.0	0.87%		16.9	2.359
Ag. & Pump	2,817.0	3.33%		$64.4	2.288
Street Lights	561.3	0.79%		15.4	2.738
System	78,580.0	100.00%	$1,937.9	$1,937.9	2.466

B. Modification to the Energy Credit

DA customers are currently credited the generation rate component of their OAT. This credit includes all surcharges adopted by the Commission since January 2001, in excess of 4¢ / kWh. As a result, DA customers make no contribution to SCE's procurement related obligations, unlike bundled service customers. SCE proposes to modify the currently effective credit calculation by subtracting the HPC from the generation rate of the DA customers' OAT before it is credited to them. The HPC would have the effect of lowering the credit paid

to DA customers and contributing to the recovery of the PROACT balance.[5] This lower credit is consistent with SCE's current weighted average energy cost, as evidenced by the surplus being contributed by the bundled service customers toward the recovery of the PROACT balance and still represents a system average DA credit of about 8.5¢/kWh. Upon authorization, SCE would modify its tariffs to include the HPC, by rate schedule.

Given that SCE has actually paid $148 million of such credits and owes, by its own calculation, another $243 million (per Schedule 1.1 of the Settlement), [6]CLECA submits that SCE should not be permitted to collect an average of 2.466¢ per kWh for 24 months from direct access load that is roughly 14% of SCE's total load. The charge, as proposed by SCE, is expected to generate more than $540 million over the 24-month period, $150 million more than SCE asserts it will provide in credits and $394 million more than it has paid to date. It appears to CLECA that direct access customers are being asked to pay more than their fair share.

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[5] Under the settlement, total revenues minus authorized costs ("Surplus") are booked to the PROACT account. Since the HPC reduces the DA credit, it will increase the revenues and the amount booked to the PROACT.. However, SCE would not receive all revenues associated with the PROACT until DA customers pay off their full obligation, which may not occur until after bundled customers' PROACT obligation ends.

[6] Schedule 1.1 also shows $30 million of "other" SCE Procurement-related liabilities. It is possible that this figure includes amounts SCE paid in negative bills to utility consolidated billing and dual billing DA customers. However, no such amounts are specified in the record.

Overall, the revenue retained by SCE from the HPC should equal the amount SCE paid and is obligated to pay for negative credits. This ensures that bundled customers are fully compensated by DA customers for PROACT obligations, consistent with our policy in D.02-03-055 (referring to DA cost responsibility surcharges for DWR purchases). The HPC we adopt should match actual revenues to undercollection costs associated with DA customers. This amount equals $391 million.

A 2-year charge of about 1.8¢/kWh would generate $391 million in revenue from DA customers, based on the record. [7] In practice, this charge (or, more accurately, credit reduction) will generate a certain amount of money depending upon actual usage. The amount should be tracked to ensure there is an overall collection of $391 million from DA customers, with a corresponding decrease of $391 million required to be collected from bundled customers.

We are mindful of the likelihood that DA customers will also be subject to cost responsibility surcharges relating to DWR power purchases and potentially other costs, in R.02-01-011. The "pancaking"[8] of surcharges in that proceeding and this one may lead to DA contracts becoming uneconomic. While we are committed to ensuring that bundled customers do not pay more than their fair share of costs, we also do not wish to eliminate the DA market through

[7] If a 2.466¢/kWh charge generates $540 million, a 1.786¢/kWh surcharge generates $391 million.

[8] "Pancaking" refers to the layering of one surcharge on top of another on top of another similar to a stack of pancakes. Rather than impose surcharges in a vertical fashion, it is the intent of this decision to impose surcharges in a horizontal fashion.

injudicious imposition of charges. Therefore, we will use this opportunity to design charges that meet both objectives.

As stated above, DA customers should pay the full $391 million of undercollection responsibility through reductions in credits, thus relieving bundled customers of this obligation. However, we will design the charge to collect more money upfront while no surcharges from R. 02-01-011 are in place, and less from that point on. This will allow DA customers to face a lower overall surcharge burden during the period when both surcharges are in effect.

Until a cost responsibility surcharge from R.02-01-011 is in effect, the HPC shall be 2.7¢/kWh for all DA customers. From that date on, the charge shall be 1.0¢/kWh until the $391 million is fully collected. We will reserve the right to revisit this 1.0¢/kWh charge once a surcharge decision is issued in R.02-01-011, (or, as appropriate in that decision), as we will then be able to consider both questions together.

C. Total Surcharge Cap

We will take this opportunity to note that DA customers may be subject to other surcharges beyond the HPC, including the cost responsibility surcharge being considered in R.02-01-011, the bond charge being considered in A.00-11-038, et al., and the "tail CTC" associated with P.U. Code § 367. Further, the PX credit issues being considered in another phase of A.98-07-003 may have similar impact to imposition of a surcharge by potentially decreasing the PX credit to DA customers.

Therefore, we will state at this time that there should be a cap on the total surcharge levels imposed on DA customers (including the impact of any changes to the PX credits). We will not and cannot prejudge the outcome of any proceedings beyond the instant case. However, there is a need for such an

overall surcharge cap because the greater the total surcharge amount, the more DA contracts that will become uneconomic. We have stated our policy in D.02-03-055 that there is value in maintaining DA; failure to consider an overall cap would be inconsistent with this policy.

At this time, we will not set a specific overall cap, in deference to ongoing proceedings. However, a cap of 2.7¢ / kWh - the initial level of the HPC we set today – may be a reasonable level. We direct the Assigned Commissioners and ALJs in the other proceedings with surcharge implications (R.02-01-011, A.00-11-038, et al., and A.98-07-003) to solicit comments from parties in those proceedings on this question.

VI. Comments on Proposed Decision

The ALJ in this proceeding was Robert Barnett, and Carl Wood was the Assigned Commissioner. The alternate proposed decision of Commissioners Brown and Peevey in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

Findings of Fact

1. SCE has credited DA customers with the generation rate of their OAT since June 3, 2001. This has resulted in DA customers avoiding surcharges adopted by the Commission in year 2001 on a prospective basis and DA customers making no contribution to SCE's Procurement Related Obligations, unlike bundled service customers who are currently paying these obligations.

2. As a result of the DA credit method, DA customers have contributed to SCE's Procurement Related Liabilities but not in the same manner or at equivalent levels as bundled service customers.

3. Since September 1, 2001, SCE has received positive revenues from bundled service customers toward reducing the PROACT balance, while DA customers have contributed nothing to the recovery of the liabilities to which they contributed.

4. SCE's payments and debts relating to PX credits equal $391 million.

5. A HPC designed to recover $391 million requires DA customers pay a fair amount of SCE's past procurement costs.

6. SCE reached a Settlement Agreement with the Commission in Federal District Court Case No. 00-12056-RSWL (Mcx) that allows SCE to recover its past procurement cost undercollections as measured by the starting balance in the PROACT.

7. The Settlement Agreement specifically identifies a starting balance for the PROACT that SCE is entitled to recover. The Commission approved the PROACT balance of $3.578 billion as of August 31, 2001 in Resolution E-3765.

8. Section 2.2 of the Settlement Agreement states that "SCE shall recover in retail electric rates its Procurement Related Obligations recorded in the PROACT."

9. HPC will recover the DA customers' share of SCE's Procurement Related Obligations through current and future rates by applying the HPC to the electricity use of DA customers in SCE's territority beginning 10 days after the effective date of this decision.

10. SCE will modify the currently effective DA credit calculation by subtracting the HPC as adopted from the generation rate of the DA customers' OAT before it is credited to them. The HPC will have the effect of reducing future DA credits.

11. The HPC must be effective until $391 million is collected The amount recovered through the HPC after the PROACT balance is recovered will be credited to the procurement cost account for bundled service customers.

12. The HPC should be set at an initial level of 2.7¢/kWh, decreasing to 1.0¢/kWh when a cost responsibility surcharge is adopted in R.02-01-011 and continuing at 1.0¢/kWh until $391 million is collected, or until adjusted by the Commission.

Conclusions of Law

1. The Settlement Agreement between SCE and the Commission approved by the Federal District Court is binding on the Commission.

2. The Settlement Agreement provides that the PROACT balance shall be recovered "in retail electric rates." This requirement cannot be modified.

3. Direct access customers of SCE pay retail electric rates and are obligated to pay a portion of the PROACT balance as described in this decision.

4. The HPC as described in this order and in Finding of Fact 12 is reasonable and is adopted.

5. The HPC is fully compensatory to bundled customers for DA customers' obligations with regard to SCE's procurement cost undercollections.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company (SCE) shall begin charging direct access customers the Historic Procurement Charge (HPC) authorized by this Order 10 days from today's date.

2. Within five days of today's date SCE shall file an advice letter to implement this Order. The advice letter shall be effective 10 days from today's

date subject to Energy Division determining that it is in compliance with this Order. Specifically the advice letter shall:

a. Update tariffs to modify Schedule PE and Schedule DA to show the HPC in this Order that are applicable to direct access customers in each rate schedule;

b. Provide sample bills for direct access customers in each rate group for which a specific HPC is assessed, and;

c. Establish the HPC Refund Account. If SCE fully recovers Commission approved procurement related obligations that are currently being booked in the PROACT account before the date SCE fully collects $391 million from the HPC, SCE shall record by customer group in the HPC Refund Account, revenues associated with the HPC authorized by this Order. SCE shall begin recording revenues in the HPC Refund Account beginning on the day after SCE's fully recovers the procurement related obligations. SCE shall stop recording revenues in the HPC Refund Account on the date on which SCE stops charging direct access customers the HPC. SCE shall credit interest on balances in the HPC Refund Account in the same manner as it credits interest in its Electric Deferred Refund Account. If SCE has not fully recovered its procurement related obligations on the date on which it stops charging the HPC, SCE shall eliminate the HPC Refund Account without recording any revenues in that account.

3. SCE shall file an advice letter 30 days after it stops recording revenues in the HPC Refund Account established pursuant to this Order. This advice letter shall set forth a plan to return revenues accumulated in the HPC Refund Account to SCE's bundled service customers. The plan to return revenues recorded in the HPC Refund Account shall be the same as the plan SCE uses to refund revenues accumulated in its Electric Deferred Refund Account, as authorized by Decision

(D.) 96-12-025 and Resolution E-3525, except that (a) SCE will carry out the HPC refund plan one time only, (b) the HPC refund plan shall apply to all bundled service customers, and (c) SCE shall allocate the HPC refund such that revenues recorded in the HPC Refund Account for a specific customer group are returned to bundled service customers in the same customer group. This advice letter shall become effective upon approval by the Commission. SCE shall include workpapers with this advice letter that show the monthly entries to the HPC Refund Account for each customer group, and how these entries were calculated. After the Commission has authorized SCE to return the balance in the HPC Refund Account to bundled service customers, SCE shall eliminate the HPC Refund Account.

4. Should the PROACT balance be recovered before the termination of the HPC period, the excess amounts paid by DA customers shall be credited to bundled customers, in the manner set forth in the order.

5. Should the frozen rates contemplated in the Settlement Agreement be removed prior to the expiration of the HPC period and there is no longer a generation credit to be given to DA customers, SCE shall convert the reduction to the credit to a charge on the DA customer's bill.

6. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

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