

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (U 338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038
Emergency Application of Pacific Gas and Electric Company (U 39 E) to Adopt a Rate Stabilization Plan.	Application 00-11-056
Petition of The Utility Reform Network for Modification of Resolution E-3527.	Application 00-10-028

**ASSIGNED COMMISSIONER'S RULING REGARDING  
THE DRAFT RATE AGREEMENT BETWEEN THE COMMISSION  
AND THE CALIFORNIA DEPARTMENT OF WATER RESOURCES**

This ruling seeks comment on a draft Rate Agreement between the California Department of Water Resources (Department) and the Public Utilities Commission (Commission). The Rate Agreement is appended to this ruling as Attachment A. This draft Rate Agreement may constitute the agreement between the Department and the Commission as provided for in § 80110 and § 80130 of the Water Code.<sup>1</sup> Once the Rate Agreement is executed, it will have the effect of an irrevocable financing order.

<sup>1</sup> California Water Code § 80110 and § 80130 were enacted as part of Assembly Bill No. 1 from the First Extraordinary Session (Ch. 4, First Extraordinary Session 2001). The full text of these code sections is provided in Attachment B.

As drafted, the Rate Agreement is designed both to “establish a mechanism to ensure that the bonds will be sold at investment grade ratings and repaid on a timely basis” (Water Code, § 80130), and to support the power purchase program of the Department. It is anticipated that the sale of the bonds will allow the Department to repay the General Fund of the State for monies that have been expended on power purchases.

A copy of the draft Rate Agreement is attached to this ruling as Attachment A. This draft Rate Agreement contains a mechanism that will provide for the payment of revenue to the Department in order to satisfy the revenue requirements delivered to the Commission from time to time. Several notable elements of the agreement are:

- A “Rate Covenant,” contained in Article V, under which the Commission would make an enforceable promise to meet the Department’s revenue requirement.
- Two specific mechanisms requiring the Commission to comply with the Rate Covenant by establishing rates that meet the Department’s revenue requirements in either 30 or 90 days. The 30-day mechanism is triggered by the events listed on Exhibit A of the Rate Agreement.
- The definition of the Department’s “Retail Revenue Requirements,” in Article I, to include both Bond Related Costs and 13 enumerated elements of the Department’s operating expenses, relating, among other things, to the Department’s power purchase program, load curtailment programs and operating costs.
- Enforcement provisions in Article VI that allow a “Trustee” to assume the rights of the Department under the Rate Agreement under certain specified conditions. The draft Rate Agreement allows the Department, or the Trustee, if necessary, to take legal action to compel the Commission to meet its obligations.

- Termination provisions, in Article VII, that provide the Rate Agreement will terminate at the end of the bond transaction. The definition of “Bonds” and “Financing Documents” in Article I indicate the scope of the transaction.<sup>2</sup> Since an interim loan has been made, the Rate Agreement will go into effect even if no long-term bonds are issued. Further termination language provides that the Department will consider altering its programs if certain events occur so that the Rate Agreement does not become, in and of itself, an obstacle to changes in the Department’s program or its financing transactions.

Parties are asked to comment on these and the other provisions of the Rate Agreement. Because the Commission has discussed the contents of the Rate Agreement with the Department and is fully aware of the Rate Agreement’s content and structure, parties need not summarize or describe the Rate Agreement in their comments. Parties are requested to evaluate the effects of the Rate Agreement and to indicate what they believe the consequences of the adoption of the Rate Agreement would be.

A copy of a memorandum outlining the time-frame in which Commission action must occur if the Department is to sell bonds on schedule is attached as Attachment C. Under this timetable, the Commission must be in a position to consider the adoption of a Rate Agreement by the middle of August. In order to meet this schedule, and to allow parties adequate time to comment on the draft Rate Agreement prior to the publication of the proposed decision, parties must file and serve their comments on the draft Rate Agreement no later than August 1, 2001. When the proposed decision is mailed, it will indicate the time that parties will have to comment on the proposed decision.

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<sup>2</sup> The documents supporting this transaction are currently being prepared. The Commission has not received copies of these documents except for an early draft of the Indenture.

Due to the compressed comment schedule, parties should serve their comments via e-mail, in accordance with the protocols previously established in this proceeding. Parties shall also serve the Chief ALJ, Lynn Carew, by e-mail at [lrc@cpuc.ca.gov](mailto:lrc@cpuc.ca.gov) and Geoffrey Dryvynsyde at [gbd@cpuc.ca.gov](mailto:gbd@cpuc.ca.gov). Hard copies of all comments must be filed with the Commission's Docket Office as provided for in the Commission's Rules of Practice and Procedure.

The Commission will also consider submissions from non-parties who have a direct interest in the Rate Agreement. For example, as the Department will rely on the Rate Agreement as the issuer of bonds, it would be appropriate to include in the record of this proceeding the Department's views. Letters from non-parties received by the Chief ALJ and the Assigned Commissioner on or before August 1, that have also been transmitted to the service list of this proceeding following the protocols in the preceding paragraph will be entered into the formal record of this proceeding.

**IT IS RULED** that:

1. Parties may file and serve comments by August 1, 2001, regarding the draft Rate Agreement attached to this ruling.
2. Non-parties with a direct interest in the Rate Agreement may transmit letters containing their views to the Chief ALJ and the Assigned Commissioner, with copies transmitted to the service list of this proceeding, by August 1, 2001. Those letters shall be entered into the record of this proceeding.

Dated July 18, 2001, at San Francisco, California.

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Loretta M. Lynch  
Assigned Commissioner

**RATE AGREEMENT**

**By and Between**

**STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES**

**and**

**STATE OF CALIFORNIA PUBLIC UTILITIES COMMISSION**

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**Dated as of August \_\_, 2001**

## TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS .....	1
Section 1.1    Definitions. ....	1
ARTICLE II REPRESENTATIONS AND WARRANTIES.....	5
Section 2.1    Representations and Warranties of Department. ....	5
Section 2.2    Representations and Warranties of Commission. ....	5
ARTICLE III AGREEMENTS FOR BOND ISSUANCE; ASSIGNMENT.....	5
Section 3.1    Agreement for Bond Issuance. ....	5
Section 3.2    Agreement of State. ....	5
Section 3.3    No Indebtedness. ....	6
Section 3.4    No Pecuniary Liability of Commission.....	6
ARTICLE IV RETAIL REVENUE REQUIREMENTS; JUST AND REASONABLE COSTS .....	6
Section 4.1    Retail Revenue Requirements(a) .....	6
Section 4.2    Just and Reasonable Costs. ....	7
ARTICLE V COVENANTS .....	7
Section 5.1    Rate Covenant .....	7
Section 5.2    Electrical Corporations .....	8
Section 5.3    Compliance with Agreement .....	9
Section 5.4    Liens. ....	10
Section 5.5    Enforcement of Rules and Regulations .....	10

ARTICLE VI EVENTS OF DEFAULT AND REMEDIES.....	10
Section 6.1    Events of Default. ....	10
Section 6.2    Remedies .....	10
Section 6.3    Consent to Assignment(a).....	10
ARTICLE VII TERMINATION .....	11
Section 7.1    Termination. ....	11
Section 7.2    Termination of Purchase of Power by the Department. ....	11
ARTICLE VIII AMENDMENTS.....	14
Section 8.1    Amendments to Agreement. ....	14
ARTICLE IX MISCELLANEOUS .....	14
Section 9.1    No Waiver. ....	14
Section 9.2    Notices. ....	14
Section 9.3    Severability. ....	15
Section 9.4    Headings. ....	15
Section 9.5    Governing Law. ....	15
Section 9.6    Counterparts. ....	15
Section 9.7    Date of Agreement. ....	15
Section 9.8    Successors. ....	15

EXHIBIT A Department Certificate for Expedited Adjustment of Department Charges  
under Section 5.1(d).



## RATE AGREEMENT

**RATE AGREEMENT**, dated as of August \_\_, 2001 by and between **STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES** and **STATE OF CALIFORNIA PUBLIC UTILITIES COMMISSION**.

The parties mutually agree as follows:

### **ARTICLE I DEFINITIONS**

Section 1.1 Definitions. The terms set forth in this Section shall have the meanings ascribed to them herein for all purposes of this Agreement unless the context clearly requires otherwise. Words in the singular shall include the plural and words in the plural shall include the singular where the context so requires.

**“Act”** shall mean Chapter 4 of the Statutes of 2001 (AB 1 of the First 2001-02 Extraordinary Session) of the State, as amended from time to time.

**“Agreement”** shall mean this Rate Agreement, as from time to time hereafter amended or supplemented in accordance with the provisions hereof.

**“Bonds”** shall mean State California Department of Water Resources evidences of indebtedness issued pursuant to Section 80130 of the Act and the Executive Order of the Governor of the State of California, dated June 18, 2001, in an aggregate principal amount up to \$13,423,000,000; provided, however, that (i) Bonds shall include notes issued in anticipation of the issuance of bonds and retired from the proceeds of those bonds, but such notes shall not be counted against said dollar limitation, and (ii) Bonds shall include indebtedness issued to refund prior Bonds, but such refunding indebtedness shall not be counted against said dollar limitation.

**“Bond Related Costs”** shall mean payments of, or deposits or other provision to be made by the Department under the Financing Documents or the Act for the following:

- (i) principal of, premium, if any, and interest on Bonds;
- (ii) payments required to be made under agreements with issuers of credit and liquidity facilities, including but not limited to, letters of credit, bond insurance, guarantees, debt service reserve fund surety bonds, lines of credit and standby bond purchase agreements, and under agreements relating to hedges, including but not limited to, interest rate swaps, caps, options and forward purchase agreements, and under agreements relating to other financial instruments entered into in connection with the Bonds;
- (iii) repayments to the General Fund of amounts appropriated to the Fund including interest thereon at the pooled money investment rate;

(iv) debt service coverage determined in accordance with the Financing Documents; and

(v) deposits to debt service reserves established under the Financing Documents.

**“Commission”** shall mean the State of California Public Utilities Commission and any board, commission, department, corporation, authority or officer succeeding to the functions thereof, or to whom the powers conferred on the Commission by the Act shall be given by law.

**“Department”** shall mean the State of California Department of Water Resources and any board, commission, department, corporation, authority or officer succeeding to the functions thereof, or to whom the powers conferred on the Department by the Act shall be given by law.

**“Department Charges”** means the charges imposed upon Retail End Use Customers established by the Commission, in connection with Power made available to Retail End Use Customers by the Department for Power currently being supplied by the Department or as otherwise agreed to by the Department and the Commission.

**“Department Program”** shall mean collectively, Bond Related Costs and Operating Expenses.

**“Electrical Corporation”** shall have the meaning ascribed thereto in Section 218 of the Public Utilities Code, including any successor and assign thereof.

**“Financing Documents”** shall mean any resolution, indenture, trust agreement, loan agreement, revolving credit agreement, reimbursement agreement, standby purchase agreement or other agreement or instrument adopted or entered into by the Department authorizing, securing or enhancing the Bonds, as from time to time amended or supplemented in accordance therewith, copies of which shall be provided to the Commission.

**“Fiscal Year”** shall mean the fiscal year of the State, which currently commences on July 1 of each year.

**“Fund”** shall mean the Department of Water Resources Electric Power Fund established by the Act.

**“Operating Expenses”** shall mean the following costs and expenses of the Department:

(i) costs incurred for the purchase of Power and the delivery of such Power including, but not limited to, amounts payable under short-term and long term Power Purchase Contracts, termination and liquidation damage payments thereunder, payments thereunder relating

to emission costs and emission opportunity costs, amounts payable in respect of balance of month Power, hour ahead Power and real time balancing Power, including in-market and out of market purchases, and costs incurred for transmission, distribution, scheduling, dispatch and other expenses incurred by the Department in connection with the delivery of its Power;

(ii) costs incurred for or in connection with fuel to be used in the production of Power purchased by the Department, whether payable as a charge under a Power Purchase Contract or a separate contract for the purchase, transportation or storage of fuel for use in the generation of Power, including but not limited to termination and liquidated damage payments under fuel purchase agreements, payments under options or other fuel or electricity instruments, and payments under financial instruments relating to fuel costs or costs related to fuel costs;

(iii) costs incurred to avoid or minimize the amount of Power required to be purchased for retail end use customers pursuant to the Act, as follows: the 20/20 conservation program, the California Independent System Operator demand relief program and the demand bidding program jointly developed by the California Independent System Operator, the Commission and the three investor owned utilities implemented through the filings with the Commission.

(iv) payments under any security agreements executed in connection with Power Purchase Contracts or in connection with contracts for the purchase, transportation and storage of fuel or any other agreement relating to the purchase of Power;

(v) reasonable administrative, general and overhead expenses and payments for employee benefits, including but not limited to payments to savings, pension, retirement, health and hospitalization funds; provided all such expenses and payments shall be as appropriated or approved by the Legislature;

(vi) insurance premiums;

(vii) legal and engineering expenses;

(viii) expenses for consulting and technical services;

(ix) charges payable by the Department pursuant to any licenses, orders or mandates from any agency or regulatory body having lawful jurisdiction;

(x) any taxes, governmental charges, and any other costs and expenses required to be paid by the Department;

(xi) expenses, liabilities and compensation of the trustees or other fiduciaries required to be paid under the Financing Documents or pursuant to the Act, including charges and expenses payable during the continuance of an event of default thereunder;

(xii) costs with complying with any arbitrage restrictions or rebate requirements relating to the Bonds under Section 148 of the Internal Revenue Code of 1986 as amended, or a successor statute, and applicable regulations thereunder;

(xiii) deposits to fund or replenish operating reserves established under the Financing Documents.

**“Power”** shall have the meaning ascribed thereto in Section 80010 of the Act.

**“Power Purchase Contract”** shall mean those contracts entered by the Department for the purchase of Power by the Department for sale to Retail End Use Customers pursuant to the Act and in accordance with this Agreement.

**“Retail End Use Customer”** shall mean each customer within the Service Area of an Electrical Corporation that has purchased Power from the Department under the Act.

**“Retail Revenue Requirements”** shall mean the revenues required to be generated from the imposition of Department Charges as communicated by the Department to the Commission from time to time in order to pay Bond Related Costs and Operating Expenses.

**“Revenues”** shall mean and include all revenues, income, charges, receipts, profits and other moneys or monetary benefits derived by the Department directly or indirectly from whatever source as a result of the purchase, sale, exchange, transfer or other disposition of Power pursuant to the Act.

**“Service Area”** shall mean the geographic area in which an Electrical Corporation distributes electricity.

**“Servicing Agreements”** shall mean any agreement between an Electrical Corporation and the Department relating to the billing, collection, segregation and enforcement of Department Charges and the delivery of Power to Retail End Use Customers by the Electrical Corporation, as agent of the Department or an order of the Commission having the effect of such an agreement.

**“State”** shall mean the State of California.

**“Trustee”** shall mean any bank or trust company, or the State Treasurer, appointed as trustee, co-trustee or collateral agent in connection with the Bonds or bond related obligations pursuant to the Financing Documents and its successors and assigns.

**ARTICLE II**  
**REPRESENTATIONS AND WARRANTIES**

Section 2.1 Representations and Warranties of Department. The Department makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) It is a department within the Resources Agency of the State, validly existing under the Constitution and laws of the State, and has full power and authority to execute, deliver and perform and observe all of the terms and provisions of this Agreement.

(b) The execution, delivery and performance of this Agreement have been duly authorized by all necessary action on the part of the Department.

Section 2.2 Representations and Warranties of Commission. The Commission makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) It is a commission of the State, validly existing under the Constitution and laws of the State, and has full power and authority to execute, deliver and perform and observe all of the terms and provisions of this Agreement.

(b) The execution, delivery and performance of this Agreement, have been duly authorized by all necessary action on the part of the Commission.

**ARTICLE III**  
**AGREEMENTS FOR BOND ISSUANCE; ASSIGNMENT**

Section 3.1 Agreement for Bond Issuance. Subject in all respects to the provisions of Articles VI and VIII hereof, the Department and the Commission agree that this Agreement is executed to facilitate the issuance of Bonds and the execution of additional agreements by the Department in connection with the Bonds.

Section 3.2 Agreement of State. As authorized by Section 80200(e) of the Act, the Department includes in this Agreement the following pledge of the State:

While any obligations of the Department incurred under the Act remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of the Department and the Commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of or parties to such obligations.

Section 3.3 No Indebtedness. Nothing contained in the Agreement, or in the Financing Documents or any other document or instrument executed and delivered in connection with any of them, shall be deemed to create or constitute a debt or liability of the State or of any political subdivision thereof, or a pledge of the full faith and credit or taxing power of the State or of any such political subdivision.

Section 3.4 No Pecuniary Liability of Commission. Nothing in this Agreement shall be deemed to create any pecuniary liability of the Commission, its officers, directors, employees or agents to any person, the sole remedy for any default by the Commission hereunder being the exercise of remedies specifically afforded hereunder and under the Act.

#### **ARTICLE IV**

#### **RETAIL REVENUE REQUIREMENTS; JUST AND REASONABLE COSTS**

Section 4.1 Retail Revenue Requirements. (a) Generally. The Department shall, at least annually, and more frequently as deemed reasonably necessary or appropriate by the Department review, determine and revise its Retail Revenue Requirements. The Commission agrees to cooperate with and assist the Department in any such review at the request of the Department. The Department shall promptly notify the Commission following any determination or revision of the Retail Revenue Requirements, including the amount of the Retail Revenue Requirements required to be collected from Retail End Use Customers in each Service Area. If any such annual or more frequent review indicates that the Department Charges are, or will be, insufficient to meet the requirements of Section 5.1, and the Department so notifies the Commission, the Commission shall take necessary action to cure or avoid any such deficiency, including adjustment of existing, and the calculation and imposition of additional, Department Charges within the time frames provided in subsections (c) and (d) of Section 5.1.

(b) Additional Information. In any determination of the Retail Revenue Requirements, the Department shall include the amount required to be recovered in the applicable period and may set forth amounts required to be collected during subsequent periods. The Retail Revenue Requirements for any period shall take into account any deficiency in amounts recovered in earlier periods. The Department's notification of its Retail Revenue Requirements pursuant to Section 4.1(a) shall also specify the amount of Power the Department expects to deliver to Retail End Use Customers during the applicable periods. In addition, the Department's notification to the Commission of the Retail Revenue Requirements shall include a statement containing the Department's projections (with reasonable detail) of the following information for each month during the period covered by the Retail Revenue Requirements:

- (i) the beginning balance of funds on deposit in the Fund;

(ii) the amounts necessary to pay or provide for the principal of, premium, if any, and interest on all Bonds and all other Bond Related Costs under the Financing Documents as and when the same shall become due;

(iii) the amounts necessary to pay or provide for each Operating Expense included in the Department Program; and

(iv) the amount of its Retail Revenue Requirement for that month.

The Department shall provide to the Commission when available a copy of any audit conducted pursuant to Section 80270 of the Act.

Section 4.2 Just and Reasonable Costs. The Commission acknowledges Section 80110 of the Act and agrees to be bound by it. The Department agrees that prior to including any cost in the Bond Revenue Requirements communicated to the Commission in accordance with Section 4.1(a), the Department will determine that such cost is just and reasonable within the meaning of Section 451 of the California Public Utilities Code.

## **ARTICLE V COVENANTS**

### Section 5.1 Rate Covenant.

(a) The Commission acknowledges that the Department is entitled under this Agreement to recover, as a Retail Revenue Requirement, such amounts at such times as shall be sufficient, together with any moneys and securities on deposit in the Fund, to provide for payment of the Bond Related Costs and Operating Expenses.

The Commission agrees that it shall accept each determination by the Department of the Retail Revenue Requirements pursuant to Section 4.1 hereof, absent arithmetic error or the inclusion of costs and expenses other than Bond Related Costs or Operating Expenses. In the event that the Commission believes that a Retail Revenue Requirement as submitted to the Commission contains an error as specified in the preceding sentence it will so advise the Department and request a correction.

(b) The Commission hereby covenants and agrees to calculate, revise and impose, from time to time, Department Charges for Power sold by the Department to Retail End Use Customers sufficient to provide moneys in the amounts and at the times necessary to satisfy the Retail Revenue Requirements as specified by the Department. Department Charges shall be established without regard to the levels or amounts of any particular rates or charges

authorized by the Commission to be charged by any Electrical Corporation for power sold by such Electrical Corporations.

(c) The Commission agrees that it shall calculate and impose Department Charges for Department Power sold, to be sold or deemed to be sold to Retail End Use Customers no later than 90 days following the delivery to the Commission by the Department of a statement of new or revised Retail Revenue Requirements in accordance with this Section 5.1, unless the Department shall specify an earlier date pursuant to sub-section (d) below or a later date for such calculation and imposition at the time that it shall convey such new or revised Retail Revenue Requirements to the Commission.

(d) The Commission shall calculate and impose adjusted Department Charges within 30 days or such longer period as the Department may in its sole discretion specify, of receipt of a Department certificate in the form attached hereto as Exhibit A, requesting such expedited adjustment of Department Charges. If such adjustment of Department Charges is required, in whole or in part, by a revision of the Department's previously applicable Retail Revenue Requirement, such certificate shall be accompanied by a revised Retail Revenue Requirement covering the remainder of the period for which Department Charges were previously adopted. In recognition of the expedited procedure of the Commission set forth in this sub-section (d), the Commission may make such revised Department Charges subject to adjustment for rate spreading and impose revised rate spreading within 90 days of the entry of a Commission order responding to the Department's certificate for such expedited adjustment.

(e) As authorized by Section 80110 of the Act by reference to Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the California Public Utilities Code, this Agreement has the force and effect of a "financing order" adopted thereunder and shall be irrevocable except to the extent amended in accordance with the terms hereof.

## Section 5.2 Electrical Corporations.

(a) The Commission has ordered and agrees, as may be requested from time to time by the Department, to continue to order all Electrical Corporations to deliver all Power made available by the Department to Retail End Use Customers within their respective Service Areas. The Department shall at all times maintain ownership of Power purchased by it until such Power is delivered and sold to such Retail End Use Customers. With respect to the delivery and sale of such Power, the Electrical Corporation shall function solely as agent for the Department, and shall have no ownership interest in the Power purchased and sold by the Department whatsoever or rights to or interest in any rates, charges and payments relating thereto.



(b) The Department has entered into, or has requested, Servicing Agreements with Electrical Corporations to transmit or provide for the transmission of, and distribute the Power and provide billing, collection, and other related services, as agent of the Department, on terms and conditions that reasonably compensate the Electrical Corporations for their services. The Servicing Agreements will include the provision by the Electrical Corporations of information concerning sales of Power and Power consumption by Retail End Use Customers by class of service, in such detail as is reasonably requested by the Department to implement the matters described herein. As permitted by the Act, if an Electrical Corporation fails to perform such services as agent of the Department, the Commission agrees at the request of the Department to issue orders and enforce the same or afford other appropriate relief to require such Electrical Corporation to do so.

(c) The Commission agrees at the request of the Department to issue rules regulating the enforcement of the above-described agency function as described in the Act and the Servicing Agreements, including the provision of information to the Department.

All money collected with respect to any Power acquired by the Department pursuant to the Act and the Governor's Emergency Proclamation dated January 17, 2001, and all money paid directly or indirectly to or for the account of the Department with respect to any sale, exchange, transfer, or disposition of Power acquired by the Department pursuant to the Act and the Governor's Emergency Proclamation dated January 17, 2001, shall constitute property of the Department. To the extent any moneys are received by an Electrical Corporation pursuant to the Act in the process of collection, pending their transfer to the Department, such moneys shall be segregated by the Electrical Corporation on terms and conditions established by the Department and shall be held in trust for the benefit of the Department. The Commission agrees to issue orders or afford other appropriate relief to enforce the foregoing requirements.

### Section 5.3 Compliance with Agreement.

(a) The Commission hereby covenants with the Department that the Commission shall take all such actions or refrain from taking all such actions, as the case may be, so as to comply with the terms and provisions of the Act and this Agreement.

(b) The Commission hereby covenants that, so long as any Bonds shall be outstanding, it will not take any action, or fail to take any action, which, if taken or not taken, as the case may be, would adversely affect the tax-exempt status of the interest payable on Bonds then outstanding, the interest on which, at the time of issuance thereof, was exempt from Federal income taxation or not includable in gross income for purposes of Federal income taxation. In furtherance of the foregoing, the Commission agrees to act at the direction of the Department with respect to those matters within its control that could adversely affect the exclusion of interest on Bonds from gross income for purposes of federal income taxation.

Section 5.4 Liens. Until the Bonds have been paid in full or provision has been made therefor in accordance with the Financing Documents, the Commission, to the extent it has the power to do so, shall not permit to be created any purported lien upon or pledge of the Department Charges except any lien and pledge thereon created by or pursuant to the Act as security for the enforcement of the Department's obligations entered into pursuant thereto.

Section 5.5 Enforcement of Rules and Regulations. In accordance with the Act, unless otherwise approved by the Department, the Commission shall enforce and cause the Electrical Corporations to enforce the rules and regulations, as they may be amended from time to time, providing for discontinuance of or disconnection from the supply of Power for nonpayment of rates or other charges established by the Commission with respect to Power sold by the Electrical Corporation or the Department to Retail End Use Customers.

## **ARTICLE VI EVENTS OF DEFAULT AND REMEDIES**

Section 6.1 Events of Default. An "event of default" or a "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

- (a) failure of the Commission to calculate and impose Department Charges in accordance with Section 5.1;
- (b) failure of the Commission to observe any other covenant, term or condition of this Agreement, provided, however, that such failure shall have continued for a period of twenty (20) days after written notice, specifying such failure and requesting that it be remedied, is given to the Commission by the Department, unless the Department shall agree in writing to an extension of such time prior to its expiration, and provided further, that if the failure stated in the notice cannot be remedied within the applicable period, the Department shall not unreasonably withhold its consent to an extension of such time if corrective action has been instituted by the Commission within such period and is being diligently pursued.

Section 6.2 Remedies. Whenever any event of default shall have occurred and be continuing, and written notice of the default shall have been given to the Commission by the Department and the default shall not have been cured within any period provided therefor, the Department may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the Commission under the Agreement.

Section 6.3 Consent to Assignment. (a) The Commission consents to the collateral assignment by the Department to the Trustee identified in the Financing Documents of the covenants of the Commission contained in Section 5.1 and 5.2 hereof; provided, however, that

any rights so granted to the Trustee shall not be greater than the rights of the Department under such Sections of this Agreement, and such right on the part of the Trustee to enforce such covenants shall only commence after the Department has both defaulted under its obligations contained in the Financing Documents and has failed to enforce such covenants in accordance with the terms of this Agreement. Prior to exercising any rights granted to the Trustee in accordance with this Section 6.3, the Trustee shall be required to (i) give prior written notice within the time period required in Section 6.3(b) below, (ii) certify to the Commission that an event of default has occurred under the Financing Documents and (iii) comply or cause the Department to comply with the provisions of this Agreement relating to the Department's rights, duties and obligations hereunder, including, without limitation, the requirement to provide the documentation specified in Section 4.1(b) hereof.

(b) In addition to the requirements of Section 6.3(a) for exercising its rights hereunder, the Trustee shall give the Commission 30 days prior written notice of the exercise by the Trustee of any of the Department's rights under Section 5.1 hereof.

## **ARTICLE VII TERMINATION**

Section 7.1 Termination. The Agreement shall terminate, and the covenants and other obligations contained in the Agreement shall be discharged and satisfied, when payment of the Bonds and all other amounts required to be paid by the Department under the Financing Documents have been made or provided for in accordance with the Financing Documents.

Section 7.2 Termination of Purchase of Power by the Department. Circumstances may occur during the term of this Agreement which result in changes to the Department Program. Each party recognizes that these changes in circumstances may result in a reduction of the Retail Revenue Requirements. Any change in the Department Program shall be expeditiously reflected in an appropriate adjustment to the Retail Revenue Requirement filed as set forth in Section 4.1 of this Agreement. Certain changes in circumstances as described below may occur which shall be described as "Transition Events" for purposes of this section.

Legislative Transition Events. Without limiting the generality of the foregoing, "Transition Events" may include changes in state law which have the direct or indirect result of changing the character or scope of the Department Program (a "Legislative Transition Event"). The Department covenants that, upon the occurrence of a Legislative Transition Event, it shall promptly provide to the Commission a description of any resulting changes to the Department Program (including, but not limited to, changes in the categories under the terms "Bond Related Costs" and "Operating Expenses" hereunder), as well as file with the Commission appropriately adjusted Retail Revenue Requirements pursuant to Section 4.1 of this Agreement.

Residual Net Short Transition Events. A “Transition Event” shall also occur on (i) the date one hundred twenty (120) days preceding the last date (the “Sunset Date”) upon which the Department is permitted to execute new agreements for the purchase of Power under the Act or (ii) the date on which the Department is advised in writing by the Commission that (A) an Electrical Corporation is then rated at least investment grade by at least two rating agencies, or the Commission has determined that an Electrical Corporation has sufficient financial resources to purchase sufficient power in the market to meet the residual net short load (i.e. the portion of the net short load not provided for by Power Purchase Contracts in effect as of the Transition Date, as such term is defined below) attributable to Retail End Use Customers within such Electrical Corporation's Service Area, and (B) either (x) such Electrical Corporation has advised the Commission in writing (with a copy to the Department) that it is prepared to purchase the residual net short or (y) the Commission has entered an order directing such Electrical Corporation to purchase such residual net short load, which order has become final. In the event the Commission delivers the written advice referred to in clause (ii) above (hereinafter referred to as a “Transition Notice”), the transition date shall, unless otherwise agreed by the Department, be one hundred twenty (120) days (the “Transition Date”) following the date of receipt of the written advice referred to in clause (ii) above (the date of receipt of such Transition Notice being referred to herein as the “Transition Notice Date”). The Department covenants that on or prior to the Transition Date, it shall provide to the Commission a description of any resulting changes to the Department Program to reflect the Transition Event, as well as file with the Commission appropriately adjusted Retail Revenue Requirements pursuant to Section 4.1 of this Agreement.

Prior to the Transition Date, the Commission and the Department shall, together with the applicable Electrical Corporation, develop a transition plan which shall set forth and provide for the effectuation of the purchase of the residual net short load by the applicable Electrical Corporation and shall include at least the following:

- (a) the sharing of necessary information to permit (i) the applicable Electrical Corporation to purchase the residual net short load for its Service Area on and after the Transition Date and (ii) the Department to continue to administer existing Power Purchase Contracts;
- (b) identification and provision by the applicable Electrical Corporation of staffing and other resource needs to permit such Electrical Corporation to resume purchase of the residual net short load on and after the Transition Date;
- (c) coordination of activities and responsibilities between such Electrical Corporation and the Department, as appropriate; and
- (d) purchase of the residual net short load by the Electrical Corporation on and after the Transition Date.

Following receipt of the Transition Notice, the Commission and the Department agree that the Department will not solicit additional contracts for the purchase of Power having a term longer than one year which are intended to be the source of Power for retail end use customers within a Service Area of such Electrical Corporation, except to the extent that the Department determines is necessary to fulfill its responsibilities under the Act, taking into account the ability of the Electrical Corporation to meet the residual net short load in such Electrical Corporation's Service Area.

Nothing in this Section shall be deemed to (a) affect the ability, right or obligation of the Department to perform its obligations, or its right to purchase Power, under any agreements entered into prior to the Transition Date (including agreements in principle the termination of which may in the judgment of the Department expose the Department to liability) or its right, power and obligation to otherwise perform its obligations under the Act, the Financing Documents and any Power Purchase Contracts, or (b) affect the right, ability or obligation of the Commission to perform its obligations under this Agreement.

Assignment of Power Purchase Contracts. In addition, if requested by the Commission prior to the Transition Date, subject to the next succeeding paragraph, the Department agrees to consider the assignment of some or all of those Power Purchase Contracts that may legally be assigned to the applicable Electrical Corporation, have a term longer than one year, and are the source of Power being provided to retail end use customers within the Service Area of the applicable Electrical Corporation. To the extent that the transition plan includes the assignment of Power Purchase Contracts it shall include at least the following:

- (1) the sharing of necessary information with the Commission regarding the terms of Power Purchase Contracts proposed to be assigned, including economic terms and provisions concerning assignment;
- (2) the Department's using its best efforts to obtain consent for the assignment of those Power Purchase Contracts which are not freely assignable;
- (3) identification and provision by the applicable Electrical Corporation of staffing and other resource needs to permit such Electrical Corporation to assume such Power Purchase Contracts;
- (4) coordination of activities and sharing of resources and responsibilities in connection with such assignments between such Electrical Corporation and the Department, as appropriate; and
- (5) assumption of those Power Purchase Contracts to be assigned by the Electrical Corporation on and after the Transition Date.

Nothing herein shall be deemed to require the Department to assign any of its Power Purchase Contracts to the extent that such assignment would adversely affect the tax

exemption of the Bonds, impose any material expense on the Department, adversely affect the rights of any party secured by the Financing Documents, adversely affect the ability of the Department to recover its existing Retail Revenue Requirements, adversely affect the security for the Bonds or cause the Department or the State to breach any covenant contained in, or otherwise be in default under the Financing Documents or any other agreement of the Department entered into as required by the Act.

Alternative Revenue Stream for Refinancing of Bonds. In the event the Department determines to pursue a refinancing of the Bonds, the Department agrees that it shall (i) consult with the Commission on the possibility of substituting the covenants of the Commission contained in Article 5 of this Agreement with a dedicated revenue stream for the repayment of the Bonds and if such alternate revenue stream is identified by the Commission, (ii) determine, in consultation with the Commission, the legality and practicality of such substitution, and (iii) if determined, in consultation with the Commission, to be legal, practical and in the public interest, use its best efforts to implement such substitution in a refinancing of the Bonds.

## **ARTICLE VIII AMENDMENTS**

Section 8.1 Amendments to Agreement. No amendment to the Agreement shall be effective unless it is in writing, signed by each of the parties hereto.

## **ARTICLE IX MISCELLANEOUS**

Section 9.1 No Waiver. No failure to exercise, and no delay in exercising by the parties hereto, any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law, including the Act.

Section 9.2 Notices. All notices, requests and other communications under this Agreement shall be deemed to have been duly given if in writing and delivered personally or by certified mail (a) to the Department at 1416 9<sup>th</sup> Street, 11<sup>th</sup> Floor, Sacramento, California 95814, attention: Director; (b) to the Commission at 505 Van Ness Avenue, San Francisco, California 94102, attention: Director, Energy Division and General Counsel; or such other address as the Department, or the Commission, as the case may be, shall hereafter designate by notice in writing to the other party.

Section 9.3 Severability. In the event that any one or more of the provisions contained in the Agreement is or are invalid, irregular or unenforceable in any respect, the validity, regularity and enforceability of the remaining provisions contained in this Agreement shall be in no way affected, prejudiced or disturbed thereby.

Section 9.4 Headings. The descriptive headings of the several articles of the Agreement are inserted in the Agreement for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions of the Agreement.

Section 9.5 Governing Law. The Agreement shall be governed by, and construed in accordance with, the Constitution and laws of the State of California.

Section 9.6 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.7 Date of Agreement. The date of this Agreement shall be for identification purposes only. This Agreement shall become effective immediately upon execution and delivery by the parties hereto.

Section 9.8 Successors. This agreement shall inure to the benefit of the parties hereto and their successors as provided by operation of law.

IN WITNESS WHEREOF, the Department has caused this Agreement to be executed in its name by the Director of Water Resources and the Commission by the affirmative vote of the Commission (Order No. \_\_\_\_\_) has caused this Agreement to be executed in its name by its President, all as of the date first above written.

**STATE OF CALIFORNIA DEPARTMENT OF  
WATER RESOURCES**

By: \_\_\_\_\_  
Director of Water Resources

**STATE OF CALIFORNIA PUBLIC UTILITIES  
COMMISSION**

By: \_\_\_\_\_  
Executive Director



## EXHIBIT A

[Department Certificate for Expedited Adjustment of Department Charges under Section 5.1(d)].

The undersigned hereby certifies on behalf of the Department that the condition(s) checked below exist(s). All terms defined herein have the meaning set forth in the Indenture.

- (1) The amount presently held in the Debt Service Reserve Account is less than the Debt Service Reserve Account Requirement.
- (2) The amount presently held in the General Reserve Account established under the Indenture is less than the Minimum General Reserve Account Balance.
- (3) Based upon the Department's projection of its revenues and expenses attached hereto and incorporated herein by his reference, unless Department Charges are adjusted on an expedited basis as set forth in Section 5.1 (d) of the Rate Agreement, there is a material risk that during the period covered by the currently applicable Retail Revenue Requirement (as such Retail Revenue Requirement may have been revised by the Department in accordance with Section 4.1 of the Rate Agreement) either (1) or (2) above will occur or the Department will be in default under a material financial covenant contained in the Bonds or the Financing Documents.

## ATTACHMENT B

Water Code Section 80110 (Emphasis Added): The department shall retain title to all power sold by it to the retail end use customers. The department shall be entitled to recover, as a revenue requirement, amounts and at the times necessary to enable it to comply with Section 80134, and shall advise the commission as the department determines to be appropriate. Such revenue requirements may also include any advances made to the department hereunder or hereafter for purposes of this division, or from the Department of Water Resources Electric Power Fund, and General Fund moneys expended by the department pursuant to the Governor's Emergency Proclamation dated January 17, 2001. For purposes of this division and except as otherwise provided in this section, the Public Utility Commission's authority as set forth in Section 451 of the Public Utilities Code shall apply, except any just and reasonable review under Section 451 shall be conducted and determined by the department. *The commission may enter into an agreement with the department with respect to charges under Section 451 for purposes of this division, and that agreement shall have the force and effect of a financing order adopted in accordance with Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, as determined by the commission.* In no case shall the commission increase the electricity charges in effect on the date that the act that adds this section becomes effective for residential customers for existing baseline quantities or usage by those customers of up to 130 percent of existing baseline quantities, until such time as the department has recovered the costs of power it has procured for the electrical corporation's retail end use customers as provided in this division. After the passage of such period of time after the effective date of this section as shall be determined by the commission, the right of retail end use customers

pursuant to Article 6 (commencing with Section 360) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code to acquire service from other providers shall be suspended until the department no longer supplies power hereunder. The department shall have the same rights with respect to the payment by retail end use customers for power sold by the department as do providers of power to such customers. (Emphasis added.)

Water Code Section 80130(Emphasis Added): The department may incur indebtedness and issue bonds as evidence thereof, provided that bonds may not be issued in an amount the debt service on which, to the extent payable from the fund, is expected by the department to exceed the amounts expected to be available in the fund for their payment. In no event shall the department authorize the issuance of bonds (excluding notes issued in anticipation of the issuance of bonds and retired from the proceeds of those bonds) in an aggregate amount greater than the amount calculated by multiplying by a factor of four the annual revenues generated by the California Procurement Adjustment, as determined by the commission pursuant to Section 360.5. *In addition, before the issuance of bonds, the department shall establish a mechanism to ensure that the bonds will be sold at investment grade ratings and repaid on a timely basis from pledged revenues. This mechanism may include, but is not limited to, an agreement between the department and the commission as described in Section 80110.*

**(END OF ATTACHMENT B)**

TO: Loretta Lynch, President  
California Public Utilities Commission

FROM: Tim Gage, Director  
Department of Finance

Thomas Hannigan, Director  
Department of Water Resources

Barbara Lloyd, Deputy Treasurer  
State Treasurer's Office

DATE: July 2, 2001

We write to advise you of our understanding of a revised timetable for certain actions to be taken by the Public Utilities Commission (PUC) in connection with the Department of Water Resources (DWR) Power Supply Revenue Bonds.

Over the last few days, the Governor's Office, Department of Finance, DWR, State Treasurer's Office, and PUC have determined a new timetable for these actions that will take advantage of the provisions of SBX1 31, allowing expedited resolution of any administrative and judicial appeals of relevant PUC actions.

Under the revised timetable, we request that the PUC actions required to complete the financing be scheduled for mid-August, immediately after the expedited appeal and review provisions take effect. These actions include:

- Servicing Agreements and Servicing Order, as applicable to each IOU
- Rate Agreement between the PUC and the DWR
- Rate Order for DWR
- San Diego Gas & Electric Rate Adjustment
- Suspension of Retail Choice

By re-scheduling these PUC actions to occur following the effective date of the new law, the State is better able to resolve in the most expeditious manner any challenges that might be filed. The revised schedule also will permit the PUC to publish its draft

decisions well in advance of the scheduled actions, thus providing all interested parties with ample opportunity for review and comment. It is our understanding from conversations with PUC staff and officials that publication of all necessary documents related to the above actions will occur on or about July 16, 2001. We presently are relying on this publication timetable in order to prepare materials for delivery to credit analysts as soon as one week later.

As we have discussed, any delays in publication would negatively affect the State's ability to obtain timely credit ratings and enhancement for this transaction. Likewise, any delays in action on these matters would negatively affect the State's ability to complete marketing and sale of the bonds on a timely basis.

Thank you for your continued assistance in bringing about a successful sale of the department's revenue bonds.

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Assigned Commissioner’s Ruling Regarding the Draft Rate Agreement Between the Commission and the California Department of Water Resources on all parties of record in this proceeding or their attorneys of record.

Dated July 18, 2001, at San Francisco, California.

\_\_\_\_\_  
Ke Huang

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission’s policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.