

Decision 09-08-028 August 20, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison
Company (U338-E) To Establish Marginal Costs,
Allocate Revenues, And Design Rates.

Application 08-03-002
(Filed March 4, 2008)

In the Matter of the Application of Southern
California Edison Company (U338-E) for
Authority to Make Various Electric Rate Design
Changes.

Application 07-12-020
(Filed December 21, 2007)

(See Appendix A for a List of Appearances.)

**DECISION ADOPTING SETTLEMENTS
ON MARGINAL COST, REVENUE ALLOCATION, AND RATE DESIGN**

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DECISION ADOPTING SETTLEMENTS ON MARGINAL COST, REVENUE ALLOCATION, AND RATE DESIGN

1. Summary

This decision addresses the applications of Southern California Edison Company (SCE) to (1) establish marginal costs, allocate revenues, and design rates for service provided to its customers for service in 2009 – 2012 and (2) establish a Conservation Incentive Adjustment and modify an existing Low Emission Vehicle rate schedule. The following settlement agreements are approved without further modification:

1. Revenue Allocation Settlement Agreement,
2. Street Light Rate Group Settlement Agreement, and
3. Commercial Submetering Settlement Agreement.

The Residential and Small Commercial Rate Design Settlement Agreement, the Medium and Large Power Rate Group Rate Design Settlement Agreement and the Agriculture and Pumping Rate Group Rate Design Settlement Agreement are modified to ensure that the provisions concerning participation in more than one demand response program are consistent with the policies ultimately adopted in the Commission's demand response proceeding (Application (A.) 08-06-001 et al.). These settlement agreements, as modified, are approved.

Unless otherwise provided in this decision, the revised rates will become effective October 1, 2009 and will allow SCE to collect the revenue requirement determined in Phase 1 of its 2009 General Rate Case.

This decision also finds that SCE should file an application proposing additional dynamic pricing rates for its customers by September 1, 2010. The application shall propose default and/or mandatory time of use and time of

use/critical peak pricing rates as specified in this decision. These rates shall be proposed to be effective on January 1, 2012.

Finally, this decision denies a request by Citrus Packers to revise SCE's agricultural criteria and a motion filed by Transphase Company to disqualify President Michael R. Peevey from serving as the assigned Commissioner in the proceeding or from voting on the decision. SCE's motion to update the settlement agreements to reflect updated revenue requirements and proposed rates is granted. This proceeding is closed.

2. Procedural History

On December 21, 2007, Southern California Edison Company (SCE) filed Application (A.) 07-12-020 to make certain changes to its rate design. In that application, SCE requested authority to modify its current residential rate design to establish a Conservation Incentive Adjustment (CIA) and to modify an existing Low Emission Vehicle (LEV) rate, Schedule TOU-EV-1. The proposed CIA would restructure SCE's residential rates by flattening the generation component of residential rates and shifting the tier rate differentials to the delivery component.¹ SCE's proposed modification to Schedule TOU-EV-1 would provide a greater price differential between on-peak and off-peak rates and is designed to encourage adoption of emerging LEV technologies.

Protests to A.07-12-020 were timely filed by the Division of Ratepayer Advocates (DRA), the Alliance for Retail Energy Markets (AReM) and San Joaquin Valley Power Authority (SJVPA). The Utility Reform Network (TURN) also filed comments on the application.

¹ The delivery component includes transmission, distribution and public purpose program charges.

On March 4, 2008, SCE filed A.08-03-002 to establish marginal costs, allocate revenues, and design rates for service provided to its customers in connection with its revenue requirements for service for 2009 – 2012. This cost allocation and rate design proceeding is commonly referred to as “Phase 2” of a utility’s General Rate Case (GRC).²

Protests to A.08-03-002 were timely filed by DRA, TURN, Building Owners and Managers Association of California (BOMA), Western Riverside Council of Governments (WRCOG), and the Energy Producers and Users Coalition (EPUC). SCE filed two separate replies to the protests – one addressed the protest filed by BOMA and the other addressed the protests filed by DRA, TURN, WRCOG, and EPUC.

On March 26, 2008, the assigned Administrative Law Judge (ALJ) issued a ruling consolidating A.07-12-020 and A.08-03-002 for hearing and decision. A prehearing conference (PHC) was held on May 1, 2008.

An Assigned Commissioner and Administrative Law Judge’s Scoping Memo and Ruling (Scoping Memo) was issued on May 14, 2008. The Scoping Memo confirmed the categorization of the proceeding and need for evidentiary hearings, defined the issues, established a schedule, and included time for parties to endeavor to settle disputed issues. The Scoping Memo also included four public participation hearings (PPHs). The PPHs were held in Compton, San Clemente, Riverside, and Palmdale.³ Additionally, letters and electronic

² SCE’s Phase 1 GRC application, primarily addressing revenue requirements, was addressed in A.07-11-011.

³ The Compton and San Clemente PPHs addressed both the Phase 1 and Phase 2 applications.

mail messages representing the views of SCE's ratepayers were received by the Commission.

Between November 2008 and January 2009, SCE and the active parties engaged in a series of settlement discussions. In light of these discussions, parties requested, and were granted, changes to the procedural schedule. Ultimately, the following six separate settlement agreements and supporting motions were filed with the Commission:

1. Revenue Allocation Settlement Agreement, filed January 9, 2009, by SCE, TURN, DRA, California Farm Bureau Federation (CFBF), Agricultural Energy Consumers Association (AECA), Federal Executive Agencies (FEA), California Manufacturers and Technology Association (CMTA), California Large Energy Consumers Association (CLECA), Energy Users Forum (EUF), Indicated Commercial Parties (ICP), California City-County Street Light Association (CAL-SLA), BOMA, EPUC, and Solar Alliance.
2. Street Light Rate Group Settlement Agreement, filed January 20, 2009, by SCE, CAL-SLA, and Pleasant Valley Recreation and Park District (PVRPD).
3. Commercial Submetering Settlement Agreement, filed January 20, 2009, by SCE, Simon Property Group, and BOMA.
4. Residential and Small Commercial Rate Design Settlement Agreement, filed January 26, 2009, by SCE, DRA, TURN, Solar Alliance, and the Western Manufactured Housing Community Association (WMA).
5. Medium and Large Power Rate Group Rate Design Settlement Agreement, filed February 5, 2009, by SCE, FEA, CMTA, CLECA, EUF, Solar Alliance, BOMA, Debenham Energy, and EPUC.
6. Agriculture and Pumping Rate Group Rate Design Settlement Agreement, filed February 5, 2009, by SCE, AECA, and CFBF.

The settlement agreements are attached as Attachments B - G of this decision.

Evidentiary hearings were held on February 2-3, 2009 to address the following disputed issues:

1. Issues raised by Transphase Company (Transphase) relating to marginal cost, revenue allocation, and rate design for the large power rate groups and its questions related to the Revenue Allocation settlement agreement.
2. The request by Paramount Citrus Company, LoBue Bros., Inc, and Limoniera Company (collectively, Citrus Packers) to extend the availability of agricultural rate schedules to all customers who operate packing facilities.

An evidentiary hearing was held on February 9, 2009 to review the reasonableness of the settlement agreements and to schedule the remaining events for this proceeding. On March 4, 2009, the assigned Commissioner issued a ruling seeking comments on a schedule to design and adopt dynamic pricing rates for SCE. Phase 2 of the GRC was submitted on April 6, 2009.

3. Standard of Review

The Commission has long favored the settlement of disputes. However, pursuant to Rule 12.1(d) of the Commission's Rules of Practice and Procedure, the Commission will not approve a settlement, whether contested or uncontested, unless it is found to be reasonable in light of the whole record, consistent with law, and in the public interest. Further, where a settlement agreement is contested, it will be subject to more scrutiny than an all-party settlement agreement. In this instance, the revenue allocation settlement agreement and the medium and large power rate group rate design settlement agreement were contested by Transphase and the residential and small commercial rate design settlement agreement was contested by SJVPA.

As discussed below, we find that the record supports a finding that the settlement agreements, as modified herein, including those that were contested,

are reasonable, consistent with law, and in the public interest. SCE was represented by its staff and counsel in the proceeding. Parties representing all customer groups prepared and served exhibits on marginal costs, revenue allocation, and rate design issues. The record shows that the settlement agreements were reached after significant give-and-take between the parties, which occurred over a period of time.

4. Settlement Agreements

4.1. Revenue Allocation Settlement Agreement

In its application, SCE proposed basing marginal customer costs on the real economic carrying charge (RECC) method. DRA and TURN proposed that marginal customer costs be based on the “new customer only” (NCO) method. As a result of reaching agreement on the allocation of SCE’s total revenue requirement among the rate groups, the Settling Parties state that the need to litigate and resolve the differences regarding the various proposed marginal cost methodologies was rendered moot.⁴ Table 1 below compares marginal customer costs presented by SCE, DRA, and TURN with the marginal costs adopted in the revenue allocation (RA) settlement agreement:

⁴ The Revenue Allocation settlement agreement may be found as Attachment B of this decision.

TABLE 1 Marginal Customer Costs (\$/customer-year)				
	SCE RECC⁵	DRA NCO⁶	TURN NCO⁷	SETTLEMENT⁸
Domestic	\$139.66	\$96.19	\$65.06	\$117.96
GS-1	\$249.52	\$204.15	\$124.79	\$226.80
TC-1	\$228.24	\$134.03	\$90.37	\$181.08
GS-2	\$1,870.97	\$1,520.04	\$739.30	\$1,691.52
GS-3	\$4,298.57	\$3,659.11	\$2,320.04	\$3,978.84
TOU-8-Sec	\$5,252.25	\$2,846.39	\$2,405.06	\$4,049.28
TOU-8-Pri	\$2,819.46	\$1,787.90	\$1,424.20	\$2,303.64
TOU-8-Sub	\$20,620.22	\$7,356.79	\$5,235.05	\$14,488.56
PA-1	\$853.29	\$510.64	\$260.08	\$681.96
PA-2	\$1,369.91	\$813.91	\$1,019.39	\$1,087.92
TOU-PA-5	\$2,343.76	\$1,611.98	\$1,102.02	\$1,771.44
AG-TOU	\$2,056.97	\$1,404.38	\$1,092.82	\$2,013.72
Street Lights	\$175.38	\$102.59	\$88.17	\$189.00

The settlement agreement also includes generation marginal energy and capacity costs, and marginal distribution capacity costs.

The primary areas of dispute with respect to revenue allocation concerned whether there should be a cap or limit on the amount of SCE's revenue requirement that was allocated to any rate group and the allocation of certain

⁵ Exhibit 3, p. 4.

⁶ Exhibit 9, p. 2-2, Table 2-1.

⁷ Exhibit 11, p. B-2.

⁸ Attachment B, ¶ 5.ii. The settlement agreement presents marginal cost on a \$/customer-month basis. These numbers were converted to \$/customer-year by multiplying by 12.

revenue requirements among the rate groups. The RA settlement agreement caps revenue to each rate group so that no rate group shall receive an increase of more than 2.75% above the system average percentage change (SAPC), based on SCE's adjusted consolidated revenue requirement. The nonallocated revenues assigned to the Street Light rate group are further capped so that they shall not increase by more than 4.8% per year from the December 2008 level during the 2009 – 2011 GRC cycle. The settlement agreement also addresses the allocation of SCE's authorized revenue requirements among customer groups. Finally, the settlement agreement provides that any future changes to SCE's consolidated revenue requirement occurring after this decision is issued and before SCE's 2012 GRC Phase 2 application is implemented shall be allocated according to the functional character of the revenue requirement change on an SAPC basis.

The settlement agreement is based on SCE's December 2008 forecast estimated system revenue requirement of \$12.234 billion, with a bundled-service system average increase of 13.4%. Based on this estimate, the proposed rates and percentage change over December 2008 average rates are as follows:

TABLE 2 ⁹			
	Dec. 2008 Avg. Rates (¢/kWh)	Proposed Avg. Rates (¢/kWh)	Percentage Change
Residential	14.91	17.32	16.1%
GS-1	16.93	18.72	10.6%
TC-1	15.14	17.58	16.1%
GS-2	14.51	16.85	16.1%
TOU-GS-2	13.22	14.35	8.6%
Total LSMP¹⁰	14.56	16.48	13.2%
TOU-8-Sec	12.37	13.62	10.1%
TOU-8-Pri	11.70	12.51	6.8%
TOU-8-Sub	7.63	8.86	16.1%
Total Large Power	10.79	11.87	10.1%
PA-1	18.60	19.88	6.9%
PA-2	13.01	14.80	13.8%
AG-TOU	9.71	11.27	16.1%
TOU-PA-5	9.51	11.04	16.1%
Total Ag.&Pump.	11.19	12.68	13.3%
Total Street Lights	18.63	20.66	10.9%
SYSTEM	13.73	15.57	13.4%

⁹ Attachment B, Revenue Allocation Settlement Agreement, Appendix B. Numbers in this table are based on a December 2008 forecast of SCE's revenue requirement. On June 6, 2009, SCE filed a motion to update its revenue allocation and proposed rates to reflect more recent information regarding revenue requirement changes. The updated revenue requirement results in increases that are lower than the increases forecasted in December 2008. This motion, which is attached as Attachment I of this decision, includes a revised Appendix B which estimates that the system average rate increase for bundled-service customers over December 2008 rates is now projected to be 7.93%.

¹⁰ Lighting, Small and Medium Power.

Transphase filed comments contesting adoption of the RA settlement agreement on numerous grounds. However, as discussed below, these arguments are without merit and fail to support Transphase's assertion that the RA settlement agreement should be rejected.

Transphase first contends that there is insufficient evidence to support approval of the proposed settlement agreement. Among other things, Transphase maintains that there is no evidence to support a flat and non-time differentiated Department of Water Resources (DWR) power charge nor the methodology for the blending of utility retained generation (URG) and the DWR power charge to achieve the on-peak and off-peak ratio. These arguments are without merit. This proceeding does not establish the DWR power charge. Rather, the DWR power charge is determined when the Commission adopts DWR's revenue requirement and allocates this revenue requirement among the three utilities and this allocation is a flat cents/kWh rate.¹¹ Further, the record supports the blended rates proposed in the settlement agreement. SCE witness Garwacki explains the rationale behind the blending of the DWR and URG rates.¹² Moreover, Exhibit 104 illustrates the blending of the two rates, while Appendix B of the RA settlement agreement shows the URG and DWR generation revenues allocated by rate group. Additionally, Exhibit 108 shows the URG and DWR generation revenues allocated to bundled service and direct

¹¹ DWR's most recent revenue was allocated in D.08-12-006. In that decision, SCE's allocation was 8.451 ¢/kWh.

¹² Exhibit 100, p. 19.

access customers.¹³ Accordingly, the blended rates are adequately supported by the record.

Transphase also asserts that the marginal energy costs contained in the RA settlement agreement are not supported in the record since SCE failed to include the necessary data inputs or computer models in the evidentiary record. Transphase maintains that by failing to do so, SCE has violated Pub. Util. Code § 1822 and Commission Rule 10.3. While Pub. Util. Code § 1822 and Commission Rule 10.3 require that computer models and databases be made available to parties, they do not require that these models and databases be made part of the record.¹⁴ Even though these models and databases are not part of the record in this proceeding, the record does provide sufficient evidence to determine the reasonableness of the marginal energy cost proposed in the RA settlement agreement. For example, SCE's testimony includes discussion of the assumptions used in its marginal energy cost forecast.¹⁵ Additionally, both DRA and TURN filed testimony commenting on SCE's proposal and proposed adjustments to this cost.¹⁶

Transphase further argues that the settlement agreement amounts to price fixing among the Settling Parties due to a lack of regulatory oversight. We are

¹³ Generation revenues allocated to direct access customers are recovered through the Cost Responsibility Surcharge.

¹⁴ Transphase states that it had specifically requested SCE's database and models but that SCE did not provide them. However, Transphase's data requests entered into the record (Exhibits 219, 222 & 225) do not include a specific request for the database and models. At most, the record indicates that Transphase had requested that SCE discuss the "production cost model approach," which SCE did. (See Exhibit 225, Question 22.)

¹⁵ Exhibit 3, pp. 22 - 24 & Appendix D.

¹⁶ See, Exhibit 9, pp. 2-16 - 2-17; Exhibit 11, pp. 24 - 27.

unsure of the basis for this argument. The Settling Parties are not competitors and the settlement concerns allocation of SCE's revenue requirement among customer groups. The allocation is a zero-sum game, as any "benefit" obtained by one customer group will result in a "detriment" to another customer group. Furthermore, pursuant to our Rules of Practice and Procedure, a settlement agreement, even if uncontested, will not be approved unless it is found to be reasonable in light of the whole record, consistent with the law, and in the public interest. In this instance, the Commission has fully considered the record and the settlement agreement. Further, the ALJ not only conducted evidentiary hearings on the contested issues, but also held a hearing to consider the proposed settlement agreements. This included questions concerning various terms contained in the RA settlement agreement.¹⁷ Therefore, it is difficult to understand why Transphase would contend that there was a lack of active regulatory supervision in approving this settlement.

The record of this proceeding, consisting of prepared testimony, evidence presented in the course of hearings, and opening and closing briefs, supports a finding that the RA settlement agreement fairly resolves identified issues and is reasonable. The Settling Parties recognized that, based on the revenue requirement proposed in SCE's GRC Phase 1 application, all rate groups on average would receive substantial revenue increases when rates in this proceeding are implemented, as compared to the rates in effect as of December 2008. The RA settlement agreement avoids further litigation and mitigates potential adverse impacts on any particular rate group and moves towards cost

¹⁷ See 7 RT, pp. 551 – 559.

based rates. This move is consistent with the goal of the State's Energy Action Plan (EAP)¹⁸ to "create more transparency in consumer electricity rates," and to "adopt rates based on clear cost-causation principles."¹⁹

We also find the RA settlement agreement is consistent with law. The process for conducting this settlement was in accordance with Article 12 of the Rules of Practice and Procedure. Further, as discussed above, Transphase has failed to demonstrate that the settlement agreement is contrary to the Public Utilities Code, prior Commission decisions or other applicable laws.

Finally, the settlement agreement represents a reasonable compromise of Settling Parties' respective litigation positions and is in the public interest. The settlement is in the public interest because it avoids the cost of further litigation, and conserves scarce resources of parties and the Commission. Further, the agreed-upon revenue allocation moves revenue responsibility closer to the cost of service while moderating adverse bill impacts on customers.

4.2. Residential and Small Commercial Rate Design Settlement Agreement

The residential and small commercial (RSC) rate design settlement agreement²⁰ describes the manner in which rates for the customer class will be designed and includes the following provisions:

- The Basic Charges for residential service to single-family or multi-family residences that was effective as of December 2008 shall remain in effect.

¹⁸ The EAP was approved by the Commission and by the Energy Commission on May 8, 2003, and the subsequent EAP II was approved on September 21, 2005.

¹⁹ EAP II, p. 9.

²⁰ See Attachment C.

- Energy rates for Schedule D, and other comparably-structured Residential Rate Group schedules, shall reflect five tiers of consumption. Pursuant to the residential rate protections enacted in Assembly Bill No. 1 during the First Extraordinary Session of 2001-2002 (AB 1X),²¹ total bundled rates for usage up to 130% of baseline (Tier 1 and Tier 2) will not be changed except to the extent recovery of the California Solar Initiative revenues were authorized for recovery by Resolution E-4167.²² There will be a differential of five cents per kilowatt hour (kWh) between the rates for Schedule D Tier 3 and Tier 5. However, if legislation modifying the AB 1X rate protection is enacted which allows at least a 3% annual increase in Schedule D Tier 1 and Tier 2 rates, SCE shall propose rates at the next regularly-scheduled rate change (Rate Design Window or GRC) so that there is a seven cents per kWh differential between the rates for Tier 3 and Tier 5.²³

²¹ Stats. 2001 (1st Ex. Sess.), ch. 4. Relevant to this proceeding, AB 1X provides that “[i]n 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% 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 [Division 27 of the Water Code].” (Water Code, § 80110, subd. (e).)

²² Pub. Util. Code § 2851(d)(2) authorizes the Commission to impose additional charges on customers subject to the AB 1X rate protections to fund the California Solar Initiative.

²³ There are two bills currently before the California State Legislature that propose to eliminate the 130% baseline rate protection in AB 1X – Senate Bill 695 (Kehoe) and Assembly Bill 413 (Fuentes). As currently proposed, both bills would limit any rate increases to residential customers with energy usage up to 130% of baseline to the annual percentage change in the Consumer Price Index from the prior year plus 1%, but not less than 3% and not more than 5% per year.

- Total bundled residential California Alternate Rates for Energy (CARE) rates will remain unchanged for usage up to 130% of baseline allocation (Tier 1 and Tier 2). The Schedule D-CARE Tier 3 rate shall provide a discount of 20% from the Schedule D Tier 3 rate, subject to a ceiling of 20 cents/kWh.
- SCE's baseline allowances shall be updated to reflect current usage levels and the baseline allocation percentages for each baseline zone shall be reduced to 50% of the average aggregate customer usage.²⁴ However, if legislation modifying the AB 1X rate protection is enacted which allows at least a 3% annual increase in Schedule D Tier 1 and Tier 2 rates, the allocation percentages for each baseline zone shall be set at 55% of the average aggregate customer usage of then-current baseline usage levels.
- SCE's six baseline zones shall be revised to align with the nine climate zones established by the California Energy Commission.²⁵ Customers currently residing in SCE's existing baseline zone 15 shall retain their currently designated baseline zone.
- The following demand response rates proposed by SCE will be available options for this customer class: Summer Discount Plan (SDP), Peak Time Rebate (PTR), Programmable Communicating Thermostat (PCT) and Critical Peak Pricing (CPP). The technology-enabled incentive for the PTR and PCT programs will be \$1.25/kWh. Customers enrolled in CPP will not be eligible to participate in SDP or PTR.

²⁴ SCE has testified that, pursuant to the limitations in AB 1X, any reductions in baseline quantities for Tier 1 and Tier 2 residential customers shall not be below the baseline quantities in effect on February 1, 2001, as mandated under Water Code § 80110(e).

(7 RT, p. 539:14-20 (SCE/Garwacki).)

²⁵ The settlement agreement provides that "[t]he baseline kilowatt-hour allowance for each revised baseline zone based on the CEC climate zones shall not be less than the allowance in effect in the baseline zones that existed on February 1, 2001." This limitation is consistent with the provisions of Water Code § 80110(e).

- Schedules TOU-D-1 and TOU-D-2 will be closed to new customers and replaced with Schedule TOU-D-T. Schedule TOU-D-T is a 2-tiered time of use (TOU) rate structure with the same TOU periods as the current TOU schedules. Customers currently receiving service under Schedules TOU-D-1 and TOU-D-2 will be grandfathered on these rate schedules for the term of SCE's 2009 GRC cycle.
- Customers who provide submetered electric service and who are serviced on Schedule DMS-2 shall receive a net discount of 14.8 cents per space per day.
- There will be three electric vehicle (EV) rate schedules. Schedule TOU-TEV is a new rate option for customers who prefer single meter service for a primary residence with an electric vehicle load and has on-peak, off-peak and super-off peak TOU periods. Existing Schedules TOU-EV-1 (for low emissions vehicles) and TOU-EV-3 (for commercial electric vehicles) shall be modified to provide discounted off-peak charging rates subject to a price floor. On-peak energy charges for Schedule TOU-EV-3 shall be set in the same manner as TOU-GS-1 on-peak energy charges. Schedule TOU-EV-1 is to be effective immediately upon approval of the settlement, while Schedule TOU-TEV and modified Schedule TOU-EV-3 shall be effective no sooner than October 1, 2009.
- A CIA is adopted. The CIA restructures residential rates to reflect the rate differentials between tiers in the delivery component of those rates instead of the generation component.
- TURN's proposal for monthly and annual reports of residential arrearages and shutoffs is adopted.
- Customer charges for the GS-1 and TOU-GS-1 rate groups shall not increase from their then-current levels on October 1, 2009. Changes to the customer charges for these rate groups after that date shall be based on Functional SAPC Allocation of distribution revenue changes.

WRCOG filed comments in support of the revisions to the six baseline zones. It notes that it was not a party to the settlement agreement because the

settlement concerned many issues outside of baseline, the only issue of interest to WRCOG.

SJVPA filed comments contesting adoption of the CIA as part of the RSC settlement agreement. SJVPA states that with respect to the CIA, the settlement agreement did not represent a reasonable compromise of the parties' positions because none of the Settling Parties had opposed the CIA proposal. It notes that the two parties which had opposed the CIA proposal, SJVPA and AReM, were not parties to the settlement agreement and that the settlement agreement did not address or remedy the concerns raised by these two parties. SJVPA claims that by shifting costs from generation to delivery rates, the CIA shifts delivery costs significantly among communities within SCE's service territory. According to SJVPA, this shift in costs among communities is discriminatory, as the delivery revenue in higher-usage communities will be artificially higher than in lower-usage communities.

SCE states that under its current rate design, only bundled-service customers receive conservation signals, since the rate differentials between tiers are reflected in the generation component of rates. It maintains that if the rate differentials between tiers were reflected in the distribution component of rates, then all residential customers, including those receiving electric service from direct access (DA) and Community Choice Aggregation (CCA) providers, would have an incentive to conserve. It refutes SJVPA's claim that there is a shift in cost among communities by stating that overall residential rates for bundled-service customers would be exactly the same, with or without the CIA.

We agree with SCE that adoption of the CIA is revenue neutral for residential customers. . Under SCE's proposal, implementation of the CIA does not change the overall allocation of generation and delivery revenues to be

recovered from residential customers.²⁶ Instead, the CIA will shift the allocation of delivery revenues to be collected from the different tiers. While this shift will impact the amount to be collected from different tiers of CCA customers, CCA customers as a group will still be paying the same total for delivery.

Further, the CIA is consistent with State policy. Pursuant to the EAP, energy conservation is one of the specific identified actions to eliminate energy outages and excessive price spikes in electricity or natural gas. Thus, signals to encourage conservation should be provided to all customers, regardless of their energy provider. As SCE notes, the purpose for the CIA is “to send a conservation signal and proper generation signal to all [] load-serving entities.”²⁷ TURN echoes this purpose and states:

TURN felt that it was important to have the differential in the distribution rate because if it’s in the generation rate, it creates perverse incentives for certain customers to adopt direct access or community choice aggregation solely because of the rate design.

So a customer that was high usage—if the tier differential was in the generation rate, they could switch away from bundled service solely to get a lower rate, and at the same time the low-usage customer would never want to leave bundled service because they would get a rate increase just by doing so.

So it really makes the rate design competitively neutral to the extent that there are alternatives like CCA out there for residential customers.²⁸

²⁶ See, Exhibit 1, Appendix B.

²⁷ 7 RT, p. 544:16-18.

²⁸ 7 RT, pp. 544:25 – 545:12.

In comments to the ALJ's proposed decision, SCE requests that the CIA be implemented for residential customers concurrently with other rate adjustments it makes on an annual basis in its Energy Resource Recovery Account (ERRA) forecast proceeding. SCE states "It would be administratively convenient to consolidate any rate adjustment associated with over- or undercollections related to the CIA rate component when fuel and purchased power balancing accounts are reconciled in the annual ERRA forecast proceeding."²⁹ Further, it notes that none of the settling parties to the RSC settlement agreement oppose this proposed change. We find this request to be reasonable. Therefore, the settlement agreement shall be modified to incorporate this requested change.

The settlement agreement prohibits ratepayers who elect to enroll in CPP from also participating in SDP and PTR. However, this provision is potentially inconsistent with the proposed policy in a pending proposed decision in the Commission's Demand Response proceeding (A.08-06-001 et al.). Unlike the RSC settlement agreement, the pending proposed decision in A.08-06-001 would allow customers enrolled in SDP and PTR to also be eligible for service on CPP rates. We believe that the rate designs for the individual utilities should be consistent with the goals and overall policies ultimately adopted in the Demand Response Proceeding. Therefore, paragraph 4.b.viii of the RSC settlement agreement shall be modified to state that eligibility to participate in more than one demand response program shall be consistent with the decision ultimately adopted in A.08-06-001.³⁰ To the extent the decision ultimately adopted in

²⁹ SCE Opening Comments on Proposed Decision, p. 3.

³⁰ In response to an ALJ Ruling issued on July 31, 2009, SCE stated that it had contacted the settling parties concerning a modification to the RSC settlement agreement to allow

Footnote continued on next page

A.08-06-001 will require rate design changes to avoid duplicate payments or negative demand charges, SCE shall file a 2009 Rate Design Window Application proposing these changes.

We find that with the modifications discussed above, the RSC settlement agreement should be approved. The settlement, as modified, is reasonable in light of the record. Parties' testimonies demonstrate that there were numerous disputed issues and the settlement represents a reasonable compromise of these issues. The fact that SJVPA and AReM had filed protests to SCE's initial application, but did not enter into the settlement agreement, does not provide sufficient grounds to reject any portion of the settlement. As discussed above, the proposed CIA is reasonable and consistent with State policy.

We also find the RSC settlement agreement, as modified, is consistent with law. The process for conducting this settlement was in accordance with Article 12 of the Rules of Practice and Procedure. Further, the settlement agreement is not inconsistent in any way with Public Utilities Code Sections, Commission decisions, or the law in general. Additionally, the modification to the RSC settlement agreement ensures that SCE's eligibility criteria for participation in more than one demand response program is consistent with the decision ultimately adopted in A.08-06-001.

Finally, we find that the settlement agreement, as modified, is a reasonable compromise of Settling Parties' respective litigation positions. The settlement is also in the public interest because it avoids the cost of further litigation, and conserves scarce resources of parties and the Commission.

customers who participate in CPP to also be eligible for SDP or PTR. SCE stated that each settling party who responded has agreed to the modification.

4.3. Medium and Large Power Rate Group Rate Design Settlement Agreement

The medium and large power (MLP) rate group rate design settlement agreement³¹ describes the manner in which rates for the customer class will be designed and includes the following provisions:

- Certain common pricing criteria are adopted for the GS-2, TOU-GS-3 and TOU-8 rate groups. These include setting customer charges at the full equal percent of marginal cost (EPMC) level for customers with demands of 20 kilowatts (kW) or more who are served on TOU rate schedules, setting SCE's CPP tariff to allow no more than 15 but no less than 9 events a year, and providing bill protection during the first 12 months that a customer is taking service under the CPP tariff.
- The default tariff for commercial and industrial customers with demands greater than 500 kW shall be Schedule TOU-8 with the associated CPP components. Alternatively, these customers may elect to take service under Schedule TOU-8, Option A, if they employ Cold Ironing or Permanent Load Shift technologies, or Schedule TOU-8, Option B, if they opt out of the CPP overlay tariff.
- An experimental rate shall be offered as an optional rate schedule for customers with demands greater than 20 kW but not exceeding 4 megawatts (MW) and who employ Renewable Distributed Generation Technologies. Participation in Schedules TOU-8-R, GS-2-R and TOU-GS-3-R shall be limited to a cumulative installed distributed generation output capacity of 150 MW.
- The default tariff for customers with peak demands of 20 kW to 199 kW shall be the applicable non-TOU rate schedule, with eligibility to participate in a CPP tariff. These customers may also take service on a TOU rate schedule.

³¹ See Attachment D. Attachment D reflects changes made to settlement agreement during evidentiary hearings. (See 7 RT, pp. 549:21-551:1.)

- The default tariffs for customers with peak demands of 200 kW to 499 kW shall be Schedule TOU-GS-3, with a CPP overlay. Customers may opt out of the default CPP tariff.
- An electric vehicle tariff, Schedule TOU-EV-4, will provide discounted off-peak charging rates, subject to a floor price.

The MLP settlement agreement states that customers enrolled in BIP and APS shall not be eligible for service on CPP rates. As with the RSC settlement agreement, there is a potential inconsistency between this provision and the pending proposed decision in A.08-06-001. Therefore, paragraph 4.a.8 of the MLP settlement agreement shall be modified to state that eligibility to participate in more than one demand response program shall be consistent with the decision ultimately adopted in A.08-06-001.³² To the extent the decision ultimately adopted in A.08-06-001 will require rate design changes to avoid duplicate payments or negative demand charges, SCE shall file a 2009Rate Design Window Application proposing these changes.

Transphase contests the MLP settlement agreement. It maintains that the settlement agreement should be rejected because the rate design is “irrational, arbitrary and unsubstantiated.” Transphase’s challenges focus primarily on the proposed energy and demand charges in Schedule TOU-8 and an alleged declining differential between on-peak and off-peak rates. We do not find any of these arguments to be persuasive or grounds to reject the settlement agreement. The proposed TOU-8 rates fairly represent a compromise of the Settling Parties’

³² In response to an ALJ Ruling issued on July 31, 2009, SCE stated that it had contacted the settling parties concerning a modification to the MLP settlement agreement to allow customers who participate in CPP to also be eligible for BIP or APS. SCE stated that each settling party who responded has agreed to the modification.

litigation positions. Moreover, Transphase urges the Commission to adopt the “rate design in effect as of February, 2006, along with a further modification to establish a time-differentiated DWR energy rate”³³ but fails to explain why that rate design is reasonable and should be adopted.

We find that with the modification discussed above, the MLP settlement agreement should be approved. Based on the evidentiary record of this proceeding, principally prepared testimonies, we find that the MLP settlement agreement fairly resolves identified issues and, as modified, is reasonable. As discussed above, Transphase has not presented any persuasive reasons the terms of the settlement agreement are unreasonable.

We also find the MLP settlement agreement is consistent with law. The process for conducting this settlement was in accordance with Article 12 of the Rules of Practice and Procedure. Further, the settlement agreement, as modified, is not inconsistent in any way with the Public Utilities Code, Commission decisions, or the law in general. Finally, we reject Transphase’s contention that the proposed settlement agreement is contrary to California’s energy policy objectives or discourages permanent load shifting (PLS). The settlement agreement adopts a default TOU schedule with CPP overlay for the customers with demands greater than 500 kW (Schedule TOU-8). This rate schedule is consistent with California’s overall goals to encourage customers to reduce peak energy consumption by setting different rates during pre-defined time periods. The settlement agreement also adopts an alternative tariff specifically for customers with demands greater than 500 kW who employ cold ironing and

³³ Transphase Opening Brief, p. 32.

PLS technologies (Schedule TOU-8, Option A). We believe this schedule provides adequate incentive for the installation of PLS technology.³⁴

Finally, we find that the settlement agreement is a reasonable compromise of Settling Parties' respective litigation positions. Because the settlement avoids the cost of further litigation and conserves scarce resources of parties and the Commission, it is in the public interest.

4.4. Agriculture and Pumping Rate Group Rate Design Settlement Agreement

The agriculture and pumping (AP) rate group rate design settlement agreement³⁵ describes the manner in which rates for the customer class will be designed and includes the following provisions:

- Current rate structures will be retained for the PA-1, PA-2, TOU-PA, and TOU-PA-5 rate groups, except that Schedule PA-2 will now include a summer time-related demand charge. Customer charges will increase by a maximum of 20 percent above current levels, but shall not exceed the full EPMC level of Customer Charge based on SCE's RECC method.
- Customers with peak demand up to 199 kW will take service on a default basis on a non-TOU rate schedule. Customers with peak demand 200 kW or greater will take service on a default TOU rate schedule. Super off-peak and real-time pricing schedules shall remain available as options for customers who meet the eligibility criteria.

³⁴ Transphase argues, in part, that adoption of the settlement agreement would reduce the monthly savings of a customer with a thermal energy storage (TES) PLS system and alleges that SCE is attempting to make TES uneconomical. In designing a rate to provide incentives for PLS, however, the focus is on the entire customer group, not specific PLS technology. The fact that Schedule TOU-8, Option A may result in lower monthly savings for TES customers is not sufficient grounds to find that the settlement agreement is unreasonable or discourages PLS technologies.

³⁵ See Attachment E.

- CPP will be an optional rate for customers in this rate group, unless they are otherwise ineligible due to participation in other programs. The number of CPP events shall be no less than nine and no more than fifteen per year and may only occur during the time period from 2 p.m. to 6 p.m. Customers subject to the CPP tariff shall be provided one year bill protection.
- AECA's proposal to aggregate customer accounts will not be permitted. Instead, SCE will offer customers an hourly pricing schedule similar to the current PA-RTP schedule and work with AECA and other interested parties to identify energy cost management tools.
- SCE will meet with representatives of AECA and CFBF to review revenue allocation and rate design issues raised in protests and discuss potential joint studies to assist in addressing these issues. By starting this analysis well in advance of SCE's 2012 GRC Phase 2 application, the Settling Parties believe issues may be resolved prior to the next GRC filing.
- SCE will conduct a one-time review for TOU-PA-A, TOU-PA-B, and TOU-PA-SOP customer's annual bills to determine whether a customer on one of these rate schedules would achieve significant annual percentage bill savings by changing to an alternative rate schedule.

The AP settlement agreement provides that rate structures and rate designs for this customer rate group shall be consistent with SCE's proposals in SCE-04 (Exhibit 5). These proposals, however, would not allow customers participating in the TOU-BIP, agricultural and pumping interruptible (AP-I) or SDP programs from also participating in CPP. To ensure consistency with the decision ultimately adopted in A.08-06-001, paragraph 4.a.5 of the AP settlement agreement shall be modified to state that eligibility to participate in more than one demand response program shall be consistent with the decision ultimately

adopted in A.08-06-001.³⁶ To the extent the decision ultimately adopted in A.08-06-001 will require rate design changes to avoid duplicate payments or negative demand charges, SCE shall file a 2009 Rate Design Window Application proposing these changes.

We find that with the modification discussed above, the AP settlement agreement should be approved. Based on the evidentiary record of this proceeding, principally prepared testimonies, and the all-party status of the settlement, we find that the AP settlement agreement fairly resolves identified issues and is reasonable.

We also find the AP settlement agreement is consistent with law. The process for conducting this settlement was in accordance with Article 12 of the Rules of Practice and Procedure. Further, the settlement agreement, as modified, is not inconsistent in any way with the Public Utilities Code, Commission decisions, or the law in general.

Finally, we find that the settlement agreement is a reasonable compromise of Settling Parties' respective litigation positions. The settlement is also in the public interest because it avoids the cost of further litigation, and conserves scarce resources of parties and the Commission.

³⁶ In response to an ALJ Ruling issued on July 31, 2009, SCE stated that it had contacted the settling parties concerning a modification to the AP settlement agreement to allow customers who participate in current demand response programs (i.e., TOU-BIP, AP-I and SDP) to also be eligible for CPP. SCE stated that each settling party who responded has agreed to the modification.

4.5. Street Light Rate Group Settlement Agreement

The street light (SL) rate group settlement agreement³⁷ describes the manner in which rates for street light customers will be designed and includes the following provisions:

- Street light facilities charges shall increase by a targeted annual percentage of 4.8 percent for each street light rate schedule in 2009, 2010, 2011, and 2012.
- SCE and CAL-SLA shall work together on a joint study prior to SCE's 2012 GRC application to better understand the costs to construct, install, own, and maintain street light facilities and to identify the sources of revenues for recovery of these costs.
- Schedule AL-2, which is applicable to outdoor lighting loads other than street lights, shall be modified to include two options. Schedule AL-2, Option A, retains the same limits on incidental load and rate structure as Schedule AL-2. Schedule AL-2, Option B, will allow incidental load up to 15 percent of the maximum monthly peak demand, to occur in the daytime or nighttime. The incidental daytime load under Option B may not exceed 20 kW and the tariff shall include on-peak and off-peak energy charges as well as a customer charge.

Based on the evidentiary record of this proceeding, principally prepared testimonies, and the all-party status of the settlement, we find that the SL settlement agreement fairly resolves identified issues and is reasonable.

We also find the SL settlement agreement is consistent with law. The process for conducting this settlement was in accordance with Article 12 of the Rules of Practice and Procedure. Further, the settlement agreement is not

³⁷ See Attachment F.

inconsistent in any way with the Public Utilities Code, Commission decisions, or the law in general.

Finally, we find that the settlement agreement is a reasonable compromise of Settling Parties' respective litigation positions. The settlement is also in the public interest because it avoids the cost of further litigation, and conserves scarce resources of parties and the Commission.

4.6. Commercial Submetering Settlement Agreement

On April 18, 2008, SCE filed Advice Letter (AL) 2234-E to amend Rules 1 and 18 of its tariffs to allow master-metered customers to submeter commercial tenants located on the same premises as the master meter.³⁸ AL 2234-E was protested by Simon Properties, which opposed SCE's limitation of commercial submetering to high-rise buildings. The Scoping Memo in this proceeding subsequently determined that SCE's proposed revisions to Rules 1 and 18 would be considered in this proceeding.

The Commercial Submetering settlement agreement³⁹ describes the proposed revisions to current Rule 18 and contains the following provisions:

- Commercial submetering will be allowed with no building height limitations. Customers who submeter will be allowed to recover their costs of metering, billing and information services according to the terms jointly agreed to by their tenants and as specified in leases.
- Rule 18.E.2 is revised to include consumer protection provisions similar to the ones approved by the Commission for Pacific Gas and Electric Company's (PG&E) customers in D.07-09-004.

³⁸ SCE filed an amended AL 2234-E on April 25, 2008.

³⁹ See Attachment G.

- SCE will report on the impact of submetering on the usage of commercial tenants as part of its 2012 GRC application.
- The settlement agreement will be implemented prior to October 1, 2009.

WMA filed comments on the Commercial Submetering settlement agreement. WMA did not oppose the agreement, but noted that the settlement raises concerns about equitable treatment between master-metered customers who submeter their tenants and master-metered customers who submeter their residents. In particular, WMA points to revisions in Rule 18.E.2.f., which provides for the reconciliation of billing differences for each commercial master-metered customer. Therefore, WMA proposes to work with SCE during its next GRC cycle to bring more consistency among the two submetered customer groups. WMA may raise its concerns about consistency as part of SCE's next GRC cycle.

Based on the evidentiary record of this proceeding, principally prepared testimonies, and the all-party status of the settlement, we find that the Commercial Submetering settlement agreement fairly resolves identified issues and is reasonable.

We also find the Commercial Submetering settlement agreement is consistent with law. The process for conducting this settlement was in accordance with Article 12 of the Rules of Practice and Procedure. Further, the settlement agreement is consistent with the commercial submetering provisions adopted for PG&E's customers in D.07-09-004.

We further find that the settlement agreement is a reasonable compromise of Settling Parties' respective litigation positions. The settlement protects the interests of owners of commercial buildings and their tenants and provides incentives to tenants to manage their electric usage. Moreover, the settlement is

also in the public interest because it avoids the cost of further litigation, and conserves scarce resources of parties and the Commission.

5. Other Issues

5.1. Revision of SCE's Agricultural Criteria

Under SCE's current agricultural criteria, some, but not all, packing facilities are eligible to receive service under the agricultural rate schedules.⁴⁰ Citrus Packers assert that SCE's criteria are outdated, inaccurate and arbitrary, and inconsistent with the agricultural definition adopted by PG&E. They further assert that SCE's current criteria are contrary to Pub. Util. Code §§ 740.11 and 744. Finally, they contend that SCE's agricultural criteria have not been applied consistently in practice. Accordingly, they request that SCE's agricultural criteria be revised so that all packing facilities are eligible to receive service under the agricultural rate schedules. Specifically, they request that the definition of agricultural power service under Tariff Rule 1 be modified to include packing facilities and that the applicability of SCE's agricultural rate schedules be revised to remove the maximum monthly demand of 500 kW.

5.1.1. SCE's Agricultural Criteria

SCE's agriculture and pumping rate group consists of customers with demands 500 kW or less who receive service under Schedules PA-1, PA-2, TOU-PA, TOU-PA-5, TOU-PA-SOP, and PA-RTP. A customer may receive service under these tariffs if

SCE determines that 70% or more of the customer's electrical usage is for general agricultural purposes or for general water or sewerage

⁴⁰ The "agricultural rate schedules" referred to in this decision are Schedules PA-1, PA-2, TOU-PA, TOU-PA-5, TOU-PA-SOP, and PA-RTP.

pumping and none of any remaining electrical usage is for purposes for which a domestic schedule is applicable. The customer whose monthly Maximum Demand, in the opinion of SCE, is expected to exceed 500 kW or has exceeded 500 kW for any three months during the preceding 12 months is ineligible for service under this Schedule. Effective with the date of ineligibility, the customer's account shall be transferred to Schedule TOU-8. However, in accordance with Schedule TOU-8, a large individual water agency or other large water pumping account with 70% or more of the water pumped used for agricultural purposes must take service on an agricultural class rate schedule. This Schedule is subject to meter availability.

Tariff Rule 1 defines "Agricultural Power Service" as:

that portion of electric energy and service used by a person in connection with the production, harvesting, and preparation for market of agricultural and horticultural products, including poultry and livestock, on land owned and/or operated by such person for the production of agricultural products, but does not apply to processing of products raised by others.

5.1.2. Citrus Packers' Position

Citrus Packers present various reasons why SCE's agricultural criteria need to be revised. First, they maintain that SCE's definition in Tariff Rule 1 has been in place for over 50 years and does not reflect changes in the agricultural industry, including mechanized packing facilities. They discuss the various economic, social, demographic, technological and political factors that have contributed to the consolidation of the packing function.⁴¹ Citrus Packers note that while the fundamental objective of packing remains the same, the move from packing of agricultural products on the farm to packing of these same products at a highly mechanized, large, centralized facility has resulted in

⁴¹ See Exhibit 12, pp. 2-6.

modern packing facilities failing to meet the eligibility criteria for agricultural rates.⁴² Citrus Packers state that under SCE's existing definition, modern packing facilities fail to meet all but one of the criteria necessary to be eligible to receive agricultural rates.⁴³

Citrus Packers next assert that SCE's definition does not define "agriculture" accurately because they believe packing facilities are integral to farm operations. They maintain that packing is an extension of the harvesting process, even if someone other than the farmer performs this function. Further, they note that the existing definition places limitations on the location of the activity (on-the-farm vs. off-the-farm) and the owner of the product, rather than the activity itself. Citrus Packers argue that it is arbitrary and unfair to use these distinctions to define agriculture, when these distinctions no longer reflect modern agriculture business.⁴⁴

Additionally, Citrus Packers contend that continued use of the existing criteria perpetuates the intra-state inconsistency with PG&E's agricultural definition. Citrus Packers state that since the SCE-PG&E service territories cut across regions of the state with high concentrations of agricultural production, inconsistent treatment of packing facilities between the two utilities would create a situation where neighboring, competing packing facilities will pay disparate electricity rates. They further note that this disparity in rates is harmful to

⁴² Citrus Packers Opening Brief, p. 8.

⁴³ Citrus Packers Opening Brief, pp. 9-12 (citing testimony in Exhibits 12 and 13). Citrus Packers state that modern packing facilities would only meet the requirement that the energy is used in connection with preparing the product for market.

⁴⁴ Citrus Packers Opening Brief, p. 18.

competition, as well as agricultural producers and consumers.⁴⁵ Finally, Citrus Packers state that the Commission had previously expressed its desire for intra-state consistency in agricultural rate design and that the evidence they have provided supports revising SCE's agricultural criteria so that they are consistent with PG&E's agricultural definition.⁴⁶

Based on these reasons, Citrus Packers request that the definition of "agricultural power service" in Tariff Rule 1 be modified to include the following sentence:

Notwithstanding the foregoing, agricultural power service include electric energy and service used by a person in connection with the packing, grading, sorting, washing or storage of whole, fresh agricultural or horticultural products.

Citrus Packers additionally argue that the 500 kW limitation is outdated. They contend that this limitation was originally imposed when Schedule TOU-8 was the only available TOU rate and the Commission wanted to extend the applicability of mandatory TOU rates to more customers.⁴⁷ Citrus Packers believe that since SCE now has TOU rates available for all customer classes including large agricultural users, it is no longer necessary to have this limitation in the agricultural rate schedules. They further contend that this limitation was not intended to define the term "agriculture." As such, they maintain that the 500 kW limitation should be eliminated and that large agricultural customers should be allowed to select an appropriate agricultural TOU schedule.

⁴⁵ Citrus Packers Opening Brief, p. 22 (citing Exhibit 12, pp. 9-10).

⁴⁶ Citrus Packers Opening Brief, p. 20 (citing D.88-04-026 at *19-20).

⁴⁷ Citrus Packers Opening Brief, p. 13.

Further, Citrus Packers contend that SCE's current agricultural criteria are contrary to Pub. Util. Code §§ 744 and 740.11 because they do not distinguish between agricultural production and agricultural processing and force packers to choose between sound business and lower agricultural rates.⁴⁸ Citrus Packers point to prior Commission decisions which had determined that dairy producers and almond hullers should receive lower agricultural rates, rather than seek less viable markets for their products.⁴⁹

5.1.3. SCE's Response

SCE opposes both the proposed modification to Tariff Rule 1 and the elimination of the 500 kW limitation. Among other things, SCE states that the term "packer" is ambiguous and would result in litigation over the meaning of the phrase. Further, it believes that the modifications could allow all commercial intermediaries between the farmer and the retailer, not just packers, on the agricultural rate schedules. Additionally, SCE points out that Citrus Packers' proposal to remove the 500 kW limitation has not been clearly articulated and could result in including entities other than packers in receiving agricultural service. SCE believes that the on-the-farm requirement in its existing definition of "agricultural power service" creates an unambiguous, bright line indicating

⁴⁸ Section 740.11 directs the Commission to "consider providing the option to all agricultural commodity processing customers to be included in the definition of customers eligible to be served under agricultural tariffs" to the extent it does not result in cost-shifting. Section 744 directs the investor-owned utilities (IOUs) to provide optional alternative interruptible and off-peak demand service to agricultural producers where economically and technologically feasible.

⁴⁹ Citrus Packers Opening Brief, pp. 24-25 (citing D.05-05-048; D.97-09-043).

which customers would qualify for agricultural service.⁵⁰ It further believes that the 500 kW limitation should not be eliminated.

SCE further asserts that Citrus Packers' proposal would violate Pub. Util. Code § 453(c), since only certain off-the-farm commercial entities that touch agricultural products would be allowed to obtain agricultural service.⁵¹ In particular, SCE states that Citrus Packers fail to provide any reason why off-the-farm commercial entities who cut, chop, crush, cook, peel, process or possibly dry farm products and certain customers whose demands exceed 500 kW should not be allowed to receive (or continue to receive) service under the agricultural rate schedules. SCE further points out that packers are classified as commercial entities under the California Energy Commission's Regulations and the North American Industry Classification System.⁵² Thus, SCE contends that including packers, but excluding other commercial entities under the same classification, results in discriminatory treatment of similarly-situated customers.

Finally, SCE states that Citrus Packers' proposal would increase rates to customers presently in the agricultural class in the long term. As support, it points to the increase in Schedule TOU-GS-2 rates as a result of migration of customers formerly on GS-2 to TOU-GS-2. SCE further notes that since Citrus Packers have loads greater than 500 kW, their load profiles are more like commercial customers than agricultural customers.

⁵⁰ SCE Opening Brief, pp. 8-9.

⁵¹ Pub. Util. Code § 453(c) states "No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service."

⁵² SCE Opening Brief, p. 11.

5.1.4. Discussion

The issue at hand is whether the applicability of SCE's agricultural tariffs should be extended to all packers. We agree with Citrus Packers that our determination of this issue should not focus on the suggested modifications to the tariff language, but rather on the merits of the request.

Under SCE's current tariffs, a customer must meet specific criteria in order to receive service under the agricultural tariffs. As a result, some, but not all, packers could receive service under the tariffs. However, this situation is true for all customers. For example, customers who use up to 500 kW to produce, harvest and prepare agricultural products for market are eligible, while customers performing the same activities, but using over 500 kW, are not.

Citrus Packers justify their request to modify SCE's agricultural criteria to allow all packers to be eligible for service on agricultural rate schedules on numerous grounds. First, they contend that the current criteria are outdated and do not take into consideration the economic and market changes in the agricultural industry that have led to the modernization of packing facilities. Next, they maintain that packing facilities are integral to farm operations and part of the harvesting process. However, these arguments could similarly be used to justify modifying SCE's tariffs to allow customers who process agricultural products on land other than where the products were grown or raised or producers of agricultural products who use more than 500 kW to receive service under agricultural tariffs. Yet Citrus Packers' proposed changes to Tariff Rule 1 would only apply to packers.

Citrus Packers further argue that the 500 kW limitation has nothing to do with determining whether a customer is "agricultural" and should be eliminated. We disagree. As an initial matter, the load limitation is not part of the Tariff

Rule 1, which defines “agricultural power service,” but rather a limitation on the customer who may take service under the pumping and agricultural tariffs. This limitation would apply equally to customers who are defined as “agricultural” customers and as “general water and sewerage pumping” customers. Moreover, it is not unusual for SCE’s tariffs to contain load limitations (see, e.g., Schedule GS-2). In this instance, SCE has set the load limitation for agricultural and pumping customers at 500 kW.

SCE’s criteria draw a line as to when customers would be eligible for pumping and agricultural rates. The criteria have also been applied in a consistent and non-discriminatory manner. As long as a customer meets the criteria specified in Tariff Rule 1 and the pumping and agricultural tariffs, it is eligible to receive service under the pumping and agricultural tariffs. This is true regardless of whether the customer is a producer, packer or processor of agricultural products. While application of the criteria has resulted in certain customers involved in agricultural operations, such as the large packers at issue here, not receiving the pumping and agricultural rates, this result is neither unlawful nor unreasonable.

On the other hand, Citrus Packers’ requested change would allow all packers to be eligible to receive service under the pumping and agricultural tariffs by eliminating the on-the-farm and kW limitations. We are unpersuaded that the existing agricultural criteria should be modified to allow only this particular category of customers to always be eligible for agricultural rates. We find no grounds to conclude that this particular group of customers should always qualify for agricultural rates while preventing other customers in agricultural production that do not meet the on-the-farm, ownership or kW limitations of SCE’s agricultural criteria from receiving agricultural rates.

Adopting Citrus Packers' request would be an unreasonable distinction among customers.

We also do not find that SCE's agricultural criteria result in tariffs that are contrary to Pub. Util. Code § 740.11. Nothing in § 740.11 requires that an IOU's agricultural tariffs define agricultural production and agricultural processing. Rather, the statute requires the Commission to consider including agricultural commodity processing customers in an IOU's definition of customers eligible to be served under agricultural tariffs, provided there is no cost-shifting. In this instance, SCE's Tariff Rule 1 allows agricultural processing customers to receive service under the agricultural rate schedules. The agricultural tariffs limit these customers to those with loads up to 500 kW. As SCE notes, including customers with loads above 500 kW would result in "rate pollution and destabilize rate group definitions for revenue allocation purposes."⁵³ Thus, the 500 kW limitation in the agricultural criteria ensures that there is no cost-shifting. Accordingly, SCE has complied with Pub. Util. Code § 740.11, as its agricultural criteria include agricultural processing customers to the extent there is no cost-shifting.

Furthermore, we disagree with Citrus Packers' assertion that SCE's agricultural criteria cause packers to choose between sound business and lower agricultural rates in violation of Pub. Util. Code § 744. Citrus Packers rely on D.97-09-043 and D.05-05-048 to support their arguments. This reliance is misplaced. Both of these decisions focused on whether processing raw milk and hulling almonds constituted a "change in form" under PG&E's agricultural tariff.

⁵³ SCE Reply Brief, p. 28.

Our rationale for determining that there was no change in form was based, in part, on the fact that customers would have had to sell their products into a less viable market to benefit from PG&E's agricultural rates unless these activities were performed. In this instance, whether products are packed on-the-farm or off-the-farm does not affect their form, or make them more or less marketable. More importantly, SCE's current agricultural criteria are intended to allow farmers to be eligible for agricultural rates, even if they engage in some packing or processing on the farm. On the other hand, packing facilities are not farmers, but rather commercial entities operating in the agricultural industry. While some of these entities may be able to receive agricultural rates, we find no compelling reasons to extend agricultural rates to entities that are primarily commercial in nature, even though they are in the agricultural industry.

Finally, while we continue to believe that reasonable rate consistency between SCE's and PG&E's agricultural rate designs is desirable, we are not persuaded that the desired agricultural definition is the one adopted for PG&E in D.06-11-030. Indeed, that agricultural definition had been the result of a settlement, and should not be considered precedent for changing SCE's current criteria. More importantly, PG&E's determination to not adopt an on-the-farm definition was based on a determination that such a definition did not appear workable based on the diverse nature of the agricultural industry in PG&E's territory.⁵⁴

⁵⁴ See D.06-11-030 at pp. 16-17.

For these reasons, we deny Citrus Packers' request to modify SCE's agricultural criteria to allow all packers to be eligible to receive service under the agricultural rate schedule.

5.2. Assigned Commissioner's Ruling on Dynamic Pricing

On March 4, 2009, the assigned Commissioner issued a ruling seeking comments on a schedule to design and adopt dynamic pricing rates for SCE (March 4 ACR). The March 4 ACR pointed to the Commission's broad demand response objectives and sought comments on how to establish a plan to ensure that SCE has dynamic pricing proposals for all customer classes when it files its 2012 GRC Phase 2 application. As reference, the March 4 ACR looked at D.08-07-045, which adopted a timetable for PG&E to propose dynamic pricing rates. The March 4 ACR further asked whether the principles and rate design guidance adopted for PG&E in D.08-07-045 should be changed before they were applied to SCE. Comments responding to the March 4 ACR were filed by SCE, DRA, and WMA.

A subsequent ACR was issued on June 5, 2009, asking parties to comment on delaying SCE's 2009 Rate Design Window (RDW) application to September 1, 2010. Comments responding to the June 5 ACR were filed on June 16, 2009 by SCE and WMA.

5.2.1. Parties' Positions

SCE contends that, with few exceptions, the proposed settlement agreements already provide dynamic pricing options that will be available for most of its customers by October 1, 2009. These options are summarized below:

TABLE 3		
Customer Group	Default	Optional
Residential	Tiered, flat PTR for customers with advanced meters	CPP overlay for customers with advanced meters TOU for customers with solar roofs (TOU-D-T) and electric vehicles (TOU-TEV and TOU-EV-1)
Small Commercial (≤ 20 kW)	Seasonal, non-time-differentiated rate structure	TOU – TOU-GS-1 and TOU-EV-3 CPP overlay for customers with advanced meters
Medium Commercial (21 kW – 199 kW)	Existing non-TOU rate structure consisting of customer charge, seasonal energy charges and demand charges	TOU – GS-2 (TOU, Option A), GS-2 (TOU, Option B), GS-2 (TOU, Option R). CPP overlay for GS-2 and GS-2 (TOU Option B)
Large Commercial (> 200 kW)	Mandatory TOU Default TOU/CPP on TOU-GS-3 (Option B) and TOU-8.	TOU with no CPP overlay – TOU-8, Option A, Option B and Option R. Real Time Pricing (RTP) – Customers over 500 kW.
Small/Medium Agricultural (< 200 kW)	Non-TOU Schedules PA-1 and PA-2	TOU – TOU-PA CPP Overlay for all TOU and non-TOU schedules RTP – available to customers qualified for TOU-PA-B
Large Agricultural (> 200 kW)	TOU (TOU-PA-B)	TOU-PA (Rate A), TOU-PA-5, TOU-PA-SOP CPP overlay to all schedules RTP available provided customer qualifies for TOU-PA-B

SCE states that it will propose more dynamic pricing options to its customers as part of its 2012 GRC Phase 2 application. These will include:

- Default TOU/CPP and mandatory TOU for small and medium commercial customers with advanced meters.
- Mandatory TOU for small and medium agricultural customers with advanced meters, with optional CPP overlay.
- Default TOU/CPP for large agricultural customers with advanced meters.

In addition to these proposals, SCE states that it may also propose a real time pricing (RTP) option for customers on CPP/TOU tariffs, depending on its experience with the California Independent System Operator's Market Redesign and Technology Upgrade (MRTU) day-ahead market.

SCE notes that PG&E has been ordered to implement default dynamic pricing for its commercial and industrial customers above 200 kW and optional rates for all customers by May 2010 and default TOU/CPP rates for all customer classes by 2011.⁵⁵ SCE argues that proposing additional dynamic pricing options as part of its 2012 GRC Phase 2 application does not differ materially from PG&E's schedule, since its proposals would be filed in early 2011 and implemented in 2012. While SCE acknowledges that it could propose additional dynamic pricing proposals as part of an RDW application, it does not believe any additional dynamic pricing rate proposals should be filed prior to its 2012 GRC Phase 2 application. It notes that any mandatory price changes made prior to 2012 would be inconsistent with the intent of the settlement agreements and that

⁵⁵ This assumes that the AB 1X rate protection is no longer in place. If the AB 1X rate protection is still in place, TOU and CPP would be offered to residential customers on a voluntary basis.

waiting to file its proposals in 2011 would coincide with its schedule to install advanced meters for residential and small commercial customers.

SCE next notes that many of the principles and rate design guidance adopted in D.08-07-045 are currently reflected in the proposed settlement agreements or can be applied as part of its 2012 GRC Phase 2 application. SCE also highlights the following three areas that it believes should be given additional review as part of its 2012 GRC Phase 2 application:

1. the timing of CPP events;
2. the requirement that CPP rates should not have summer generation demand charges; and
3. the timing for implementation of new RTP options based on experience with MRTU.

DRA states that SCE should not offer additional dynamic pricing options until it has completed deployment of its advanced meters since dynamic pricing would require an advanced meter. Therefore, it recommends that SCE propose new dynamic pricing tariffs as part of its 2012 GRC Phase 2 application. DRA echoes SCE's comments that waiting until then would allow sufficient time for SCE to educate its customers on the new meters and to conduct bill impact studies.

WMA states that since residents in master-metered mobilehome parks are not directly served by the utility and owners of mobilehome parks do not have the resources to implement dynamic pricing, this group of customers would not be able to benefit from dynamic rates. It points out that PG&E specifically excluded residential master-metered parks in its rate design application concerning dynamic pricing (A.09-02-022). Therefore, it proposes that the Commission move towards allowing residents of mobilehome parks to be directly served by the IOU.

5.2.2. Discussion

Under the schedule adopted in D.08-07-045, PG&E will propose rates that, if adopted, would begin transitioning its customers to default TOU/CPP rates as it implements its advanced metering infrastructure program and would have default TOU/CPP rates for all customer groups by 2012. While SCE's comments state that default TOU rates will be available for all customer classes by 2012, we anticipate that there will be some transition period before these rates are fully implemented. Among other things, SCE will likely need some period of time to modify its current billing system to accommodate the TOU, CPP and RTP schedules adopted in such a decision. Even more time would be required so that SCE's customers would not be defaulted to TOU/CPP or TOU rates until after the customer has had an advanced meter for 12 months. Thus, if SCE were allowed to wait until its GRC Phase 2 application to propose the balance of its dynamic pricing options, its customers would likely not be able to take advantage of dynamic pricing rate schedules until after 2013. We feel that such a delay is unreasonable and unnecessary. Moreover, we are concerned that if new dynamic pricing proposals were included in SCE's 2012 GRC Phase 2 application, parties would not be able to fully consider the proposals in light of the other issues normally occurring in a GRC.

SCE's concerns about filing dynamic pricing proposals in a separate RDW application primarily focus on the timing of these filings and the implementation date for any rates adopted as a result of the application. However, in D.08-07-045, we modified the RDW filing schedule for PG&E to propose dynamic prices for various customer groups. This included delaying both the filing dates and the effective dates of the rates. In light of these comments, the assigned Commissioner issued a ruling on June 5 which sought additional comments on

whether SCE's 2009 RDW application should be delayed. SCE and WMA responded to the June 5 ruling. WMA did not object to having SCE file its 2009 RDW application on September 1, 2010. SCE also did not oppose an order directing it to file an application to implement additional dynamic pricing options on September 1, 2010. However, it noted that due to the scope and schedule of the proceeding, it should not be characterized as an RDW application. As an example of the controversy that could arise, SCE lists some of the issues currently under consideration in PG&E's current dynamic pricing proceeding, A.09-02-022.

The issues identified by SCE as being currently under consideration in A.09-02-022 highlight our concerns about including the additional dynamic pricing proposals as part of SCE's 2012 Phase 2 GRC application. Given the number of issues that could arise, we believe that the dynamic pricing proposals should be addressed in a separate application. Accordingly, SCE shall file an application proposing the following dynamic pricing rates no later than September 1, 2010:

- Optional CPP rates that include TOU rates during non-CPP periods for residential customers.⁵⁶
- One or more default TOU/CPP rates for commercial customers with maximum loads less than 200 kW that have had an advanced meter for 12 months or more; SCE's proposal shall not offer non-time-differentiated rates to customers with maximum load less than 200 kW that have had an advanced meter for 12 months or more.

⁵⁶ If the AB 1X rate protections have been removed or have been materially changed to allow default or mandatory time-variant rates at the time the application is filed, SCE shall propose default TOU and CPP for residential customers.

- Mandatory TOU, with optional CPP, for agricultural customers with maximum loads less than 200 kW that have had an advanced meter for 12 months or more.
- One or more default TOU/CPP rates for agricultural customers with maximum loads equal to or greater than 200 kW that have had an advanced meter for 12 months or more.
- Optional RTP rates for all customer classes.

The rates shall be proposed to be effective on January 1, 2012.

In D.08-07-045, we stated that we may require SCE and San Diego Gas & Electric Company to follow the rate design guidance adopted in that decision in their rate design proceedings.⁵⁷ We believe that SCE should follow this guidance, which is included as Attachment H of this decision. As noted in D.08-07-045, the rate design guidance should be read in the context of the overall decision. Further, SCE's proposal shall address the three areas it had identified as needing additional review.

As in D.08-07-045, SCE's proposed rates should provide that no customer is defaulted to a CPP or TOU rate until the customer has had access to 12 months of the customer's energy usage data from an advanced meter. In effect, customers who receive advanced meters and start getting access to their energy data by the beginning of 2011 would be defaulted to a CPP or TOU rate on January 1, 2012. However, customers that receive their advanced meters in 2011 or 2012 would not be defaulted until 2012 or 2013, respectively.

Additionally, we will require that SCE's proposed default dynamic pricing rates include one year of bill protection, as was required of PG&E. As described

⁵⁷ D.08-07-045 at p. 83.

in D.08-07-045, if a rate offers bill protection, a customer's bill would generally be calculated under both the new dynamic rate and the prior rate during the year. If the customer pays more during the year under the new dynamic rate than the customer would have paid under the old rate, then the customer receives a refund for the difference at the end of the year. If the customer pays less under the new dynamic rate then there is no refund at the end of the year. The experience during the year could help a customer who is not required to take TOU service determine whether to stay on the new dynamic rate or opt out to another rate.

We believe that the 12 months of data and one year bill protection serve as important consumer protection measures by giving customers an opportunity to understand how and when they use energy and how they can make adjustments in response to time-variant rates and save money. The timeline will also give SCE time to conduct thorough consumer education and outreach.

Although we recognize the practicality of not defaulting customers to TOU/CPP or TOU until the customer has had the advanced meter for a certain period of time and has been educated on the benefits of dynamic pricing, we also believe it is important for SCE to educate customers who currently have advanced meters and to inform them of the option to receive service under a TOU schedule. Therefore, SCE shall work with the appropriate community-based and consumer organizations to develop educational materials and programs for customers.

Finally, although providing dynamic pricing options to residents of mobilehome parks presents challenges, we agree with WMA that it is important to determine how these consumers could benefit from dynamic rates. Thus, we encourage SCE to work with WMA to determine whether and how residents of

mobilehome parks could be provided the option to receive service under a TOU tariff.

5.3. SCE Motion to Update Settlement Agreements

On June 30, 2009, SCE sent a letter to the assigned ALJ with a revised Appendix B of the RA settlement agreement, which reflects updated, estimated revenue requirements and average rates and revised proposed rates for all customer rate groups consistent with the updated revenue requirements. These updates, contained in Attachment I of this decision, consist of the following:

- Revised Appendix B to the RA settlement Agreement
- Attachment One – Revised Forecast of October 1, 2009 and Adjusted Consolidated Revenue Requirements
- Attachment Two – Revised Proposed Rates Effective October 1, 2009.

SCE requested that this information be incorporated into the record of the proceeding. On July 6, 2009, pursuant to directions from the assigned ALJ, SCE filed a motion to update the settlement agreements to reflect updated revenue requirements and proposed rates. SCE's motion states that the RA settlement agreement authorized SCE to provide changes in revenue requirements to the ALJ and that settling parties had reviewed and accepted the updated, illustrative allocated revenues and average provided in "Revised Appendix B to the Revenue Allocation Settlement Agreement."

Under the RA settlement agreement, SCE is authorized to provide updates of changes in its revenue requirements to the assigned ALJ in this proceeding and to the Commission if the changes occur prior to the issuance of a Commission decision adopting the RA settlement agreement. SCE's motion was received before this decision was adopted by the Commission. Since the updates

were submitted in accordance with the terms of the RA settlement agreement and the motion was unopposed, SCE's motion is granted. Attachment I shall be made a part of the record and the settlement agreements are updated to reflect changes contained in that attachment.

6. Transphase's Motion to Disqualify President Peevey

On March 6, 2009, Transphase filed a motion to disqualify President Peevey from further participation in this proceeding on due process grounds. It argues that President Peevey has demonstrated actual bias, prejudice, and gross partiality in addition to the probability of actual and apparent bias. In support of its allegations, Transphase points to the following language in the March 4 ACR:

While I applaud SCE's movement to provide dynamic pricing options for these customer groups, I feel that, consistent with the Commission's previously stated objectives, dynamic pricing options should be made available to all customers. Therefore I believe a plan should be established to ensure that SCE has dynamic pricing proposals for all customer classes when it files its 2012 General Rate Case Phase 2 Application.

In particular, Transphase argues that the statement regarding the 2012 GRC indicates that the President has prejudged the decision now pending as to whether to accept a settlement in the 2009 GRC that would require TOU for certain classes of customers. Transphase objects to the proposed MLP settlement on the grounds that it allegedly contains an inadequate rate differential between off-peak and on-peak rates. In actuality, President Peevey's statement in the ACR makes no mention whatsoever about what the rate-differential between off-peak and on-peak rates should be. At most, it signifies a commitment to having TOU rates available to additional classes of customers following the next GRC. Therefore, Transphase has made no showing of any prejudgment or bias whatsoever with regard to its position in this case.

Decisionmakers at administrative agencies are accorded a presumption of impartiality – as recently reiterated by the Supreme Court of California in the *Morongo* decision.⁵⁸ In ratesetting proceedings such as the instant case, a decisionmaker may be disqualified “only when there has been a clear and convincing showing that the agency member has an unalterably closed mind on matters critical to the disposition of the proceeding.”⁵⁹ A party seeking to disqualify a decisionmaker on this basis must meet the clear and convincing test in order to rebut the presumption of administrative regularity. As already discussed, Transphase does not even come close to meeting this standard. Transphase has failed to show any bias or prejudice on any issue, much less an unalterably closed mind on the part of President Peevey with regard to its positions.

Transphase also points to President Peevey’s past positions with SCE and Edison International, suggesting that his past association with these entities compromises his impartiality in the present proceeding. In certain instances, the mere appearance of bias may require disqualification. These situations include a financial or personal interest in the outcome of the proceeding.⁶⁰ Personal animosity toward a party or embroilment in the dispute also may create an impermissible appearance of bias requiring disqualification.⁶¹ Transphase has failed to show the appearance of bias or actual bias in this instance.

⁵⁸ *Morongo Band of Mission Indians v. State Water Resources Control Board* (2009) 45 Cal.4th 731, 737.

⁵⁹ *Association of National Advertisers, Inc. v. Federal Trade Commission* (D.C. Cir. 1979) 627 F.2d 1151, 1170.

⁶⁰ *Haas v. County of San Bernardino* (2007) 27 Cal.4th 1017.

⁶¹ *Stivers v. Pierce* (9th Cir. 1995) 71 F.3d 732.

President Peevey left Edison International and SCE approximately 15 years ago. Moreover, Public Utilities Commissioners are subject to Pub. Util. Code § 303 which prohibits Public Utilities Commissioners from holding “an official relation to” or having a “financial interest in, a person or corporation subject to regulation by the commission.”

For these reasons we are denying Transphase’s motion. Finally, Transphase has requested information concerning the financial interests of President Peevey and his family in Edison International and SCE so that it may further demonstrate bias. Legal Division has forwarded copies of the President’s Form 700 Statements of Economic Interests to Transphase.

7. Conclusion

For the reasons discussed above, we find the proposed settlement agreements to be reasonable in light of the whole record, consistent with law, and in the public interest. Accordingly, we shall grant the motions to adopt the following settlement agreements:

1. Revenue Allocation Settlement Agreement, filed January 9 2009, by SCE, TURN, DRA, CFBF, AECA, FEA, CMTA, CLECA, EUF, ICP, CAL-SLA, BOMA, EPUC, and Solar Alliance.
2. Street Light Rate Group Settlement Agreement, filed January 20, 2009, by SCE, CAL-SLA, and PVRPD.
3. Commercial Submetering Settlement Agreement, filed January 20, 2009, by SCE, Simon Property Group, and BOMA.

The Residential and Small Commercial Rate Design Settlement Agreement, the Medium and Large Power Rate Group Rate Design Settlement Agreement and the Agriculture and Pumping Rate Group Rate Design Settlement Agreement shall be modified to ensure that the provisions concerning participation in more than one demand response program are consistent with the

policies ultimately adopted in the Commission's demand response proceeding (Application (A.) 08-06-001 et al.). We shall grant the motions and adopt these settlement agreements, as modified. To the extent the decision ultimately adopted in A.08-06-001 will require rate design changes to avoid duplicate payments or negative demand charges, SCE shall file a 2009 Rate Design Window Application proposing these changes.

To the extent these settlement agreements have closed or eliminated existing rate schedules, SCE shall work with the appropriate industry and/or consumer groups to ensure that the affected customers are notified of this occurrence and, as necessary, moved to an appropriate alternate rate schedule. As requested by SCE, the rates adopted in this decision shall be effective no earlier than October 1, 2009 with the exception of Schedule TOU-EV-1, which shall become effective immediately and the CIA, which shall be implemented concurrently with other rate adjustments in SCE's 2010 Energy Resource Recovery Account forecast proceeding. Further, the commercial submetering settlement agreement shall become effective immediately.

Additionally, we find no merit in Citrus Packers' request to modify SCE's agricultural tariff to allow all packers to be served under the agricultural rate schedules. Therefore, Citrus Packers' request shall be denied.

This decision also finds that SCE should propose additional dynamic pricing rates for its customers in a separate application. This dynamic pricing rate design application shall be filed no later than September 1, 2010. In that filing, SCE shall propose default and/or mandatory TOU and TOU/CPP rates as discussed in this decision. These rates shall be proposed to be effective on January 1, 2012.

This decision further grants SCE's motion to update the settlement agreements to reflect updated revenue requirements and proposed rates. Attachment I of this decision shall be made a part of the administrative record.

Finally, this decision denies Transphase's motion to disqualify President Peevey from serving as the assigned Commissioner in this proceeding and from voting on this proposed decision. As discussed above, Transphase has failed to demonstrate any bias or prejudgment on any issue in this proceeding on the part of President Peevey.

8. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed by CLECA, Transphase, SCE and TURN. Reply comments were filed by CFBF and SCE. Additional comments were filed by SCE in response to the ALJ's July 31st Ruling. The final decision adopted by the Commission has been revised, as appropriate, to reflect these comments and reply comments.

9. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Amy Yip-Kikugawa is the assigned ALJ in this proceeding.

Findings of Fact

1. The street light rate group, commercial submetering, and agriculture and pumping rate group rate design settlement agreements are uncontested all-party settlements.

2. The settlement agreements were entered into by parties representing all impacted customer groups.

3. The settlement agreements were reached after significant give and take between the parties.

4. The revenue allocation, residential and small commercial rate design, and medium and large power rate group rate design settlement agreements are contested.

5. SCE's methodology for blending of the DWR power charge and utility retained generation is supported by the evidentiary record.

6. The revenue allocation settlement agreement is consistent with the State's EAP.

7. Adoption of the CIA shifts the amount of delivery revenues to be collected from each tier of residential customers, but does not change the overall amount to be collected.

8. Although the CIA shifts the amount of delivery revenues to be collected from different tiers of CCA customers, CCA customers as a group will still be paying the same total for delivery.

9. Tiered distribution charges will provide signals to encourage conservation to all customers.

10. SCE's request to implement the CIA concurrently with other rate adjustments it makes on an annual basis in its Energy Resource Recovery Account forecast proceeding is not opposed by any of the settling parties to the RSC settlement agreement.

11. There is a potential inconsistency between the residential and small commercial rate design, the medium and large power rate group rate design and the agriculture and pumping rate group rate design settlement agreements and a pending proposed decision in A.08-06-001 concerning eligibility to participate in multiple demand response programs.

12. The rate designs of the individual utilities should be consistent with the Commission's overall goals and policies.

13. SCE's Tariff Rule 1 definition and agricultural tariffs specify the criteria a customer must meet in order to receive service under the agricultural tariffs.

14. Under SCE's existing agricultural criteria, Citrus Packers are not eligible to receive service under the agricultural tariffs because they do not meet the on-the-farm requirement and 500 kW load limitation.

15. SCE's agricultural criteria apply to all customers in the agricultural industry, regardless of whether they are a producer, packer or processor.

16. It is not unusual for SCE tariffs to contain load limitations.

17. The 500 kW limitation in SCE's agricultural criteria ensures that there is no cost shifting.

18. PG&E's determination to not include an on-the-farm requirement in its agricultural definition was the product of a settlement and non-precedential.

19. Citrus Packers' proposed changes to SCE's agricultural criteria would eliminate the on-the-farm requirement and 500 kW load limitation for packers only.

20. Whether products are packed on-the-farm or off-the-farm does not affect their form or marketability.

21. Packing facilities are commercial entities operating in the agricultural industry.

22. D.08-07-045 adopted rate design guidance and a schedule for PG&E to implement dynamic pricing for its customers.

23. If SCE were allowed to wait until its GRC Phase 2 application to propose the balance of its dynamic pricing options, its customers would likely not be able to take advantage of dynamic pricing rate schedules until after 2013.

24. No parties oppose requiring SCE to file new dynamic pricing proposals prior to SCE's 2012 GRC Phase 2 application.

25. Given the number of issues that need to be addressed, SCE's dynamic pricing proposals should be considered in a separate application.

26. SCE should follow the rate design guidance adopted for PG&E in D.08-07-045.

27. SCE is authorized under the revenue allocation settlement agreement to provide updates of changes in its revenue requirements to the assigned ALJ in this proceeding and to the Commission if the changes occur prior to the issuance of a Commission decision adopting the agreement.

Conclusions of Law

1. The street light rate group, commercial submetering, and agriculture and pumping rate group rate design settlement agreements are each reasonable in light of the record, consistent with law, and in the public interest.

2. The revenue allocation settlement agreement is reasonable in light of the record, consistent with law, and in the public interest.

3. The residential and small commercial rate design settlement agreement is reasonable in light of the record, consistent with law, and in the public interest.

4. The revenue allocation, street light rate group and commercial submetering , settlement agreements should be approved.

5. The residential and small commercial rate design settlement agreement should be modified to ensure consistency with the policies for eligibility to participate in multiple demand response programs ultimately adopted in A.08-06-001 and to have the CIA implemented concurrently with other rate adjustments in SCE's 2010 Energy Resource Recovery Account forecast proceeding. The settlement agreement, as modified, should be approved.

6. The medium and large power rate group rate design settlement agreement should be modified to ensure consistency with the policies for eligibility to participate in multiple demand response programs ultimately adopted in A.08-06-001. The settlement agreement should be approved, as modified.

7. The agriculture and pumping rate group rate design settlement agreement should be modified to ensure consistency with the policies for eligibility to participate in multiple demand response programs ultimately adopted in A.08-06-001. The settlement agreement should be approved, as modified.

8. This order should be effective immediately so that SCE may prepare the necessary advice letters, parties may review and comment on the advice letters, and rates may be timely adjusted.

9. Pub. Util. Code § 1822 and Commission Rule 10.3 concern discovery of computer models and databases by parties in a proceeding, but do not require these models and databases be made part of the evidentiary record.

10. The proposed generation rates in the revenue allocation settlement agreement are reasonable in light of the evidentiary record.

11. The evidentiary record in this proceeding supports adoption of the revenue allocation settlement agreement.

12. All residential customers, regardless of whether they are bundled or departing load, will be subject to the same tiered distribution charges if a CIA is adopted.

13. Tiered distribution charges will provide signals to encourage conservation to all customers.

14. As long as a customer meets the criteria specified in SCE's Tariff Rule 1 and the pumping and agricultural tariffs, it is eligible to receive service under the pumping and agricultural tariffs.

15. Although application of SCE's agricultural criteria has resulted in certain customers involved in agricultural operations not receiving the pumping and agricultural rates, this result is neither unlawful nor unreasonable.

16. It would be unreasonable to allow packers to always be eligible for agricultural rates.

17. SCE's existing agricultural criteria do not violate Pub. Util. Code § 740.11 or § 744.

18. The agricultural definition adopted for Pacific Gas & Electric Company's agricultural rates was the result of a settlement agreement and should not be considered precedent for changing SCE's current agricultural criteria.

19. It would be reasonable to require SCE to follow the rate design guidance adopted in D.08-07-045 when developing its dynamic pricing proposals.

20. It is reasonable to require SCE to propose dynamic pricing rates in a separate application.

21. In ratesetting proceedings, a decisionmaker may be disqualified upon a "clear and convincing showing that the decisionmaker has an unalterably closed mind on matters critical to the disposition to the proceeding."

22. Transphase has failed to show any bias or prejudgment on any issue that would require President Peevey's disqualification from this proceeding.

O R D E R

IT IS ORDERED that:

1. The motion dated January 9, 2009 which requests adoption of the revenue allocation settlement agreement is granted. The settlement agreement in Attachment B is adopted.

2. The motion dated January 20, 2009 which requests adoption of the street light rate group settlement agreement is granted. The settlement agreement in Attachment F is adopted.

3. The motion dated January 20, 2009 which requests adoption of the commercial submetering settlement agreement is granted. The settlement agreement in Attachment G is adopted.

4. The motion dated January 26, 2009 which requests adoption of the residential and small commercial rate design settlement agreement is granted. The settlement agreement in Attachment C is adopted with the following modifications:

a. The first sentence of paragraph 4.b.viii is modified to read as follows:

“SCE’s demand response proposals set forth in Exhibit SCE-4 (updated) for the SDP, PTR, PCT, and CPP shall be adopted with the exception that the technology-enabled incentive for the PTR and PCT programs shall be \$1.25/kWh for the three-year cycle of SCE’s 2009 GRC. Eligibility to participate in more than one demand response program shall be consistent with the decision ultimately adopted in A.08-06-001.”

b. The following sentence is added to the end of paragraph 4.b.xii:

“SCE shall implement the CIA concurrently with other rate adjustments in SCE’s 2010 Energy Resource Recovery Account forecast proceeding.”

5. The motion dated February 5, 2009 which requests adoption of the medium and large power rate group rate design settlement agreement is granted. The settlement agreement in Attachment D is adopted with the following modification:

a. The last sentence in paragraph 4.b.8 is deleted and replaced with the following:

“Eligibility to participate in more than one demand response program shall be consistent with the decision ultimately adopted in A.08-06-001.”

6. The motion dated February 5, 2009 which requests adoption of the agriculture and pumping rate group rate design settlement agreement is granted. The settlement agreement in Attachment E is adopted with the following modification:

a. The following sentence is added to the end of Paragraph 4.a.5:

“However, eligibility to participate in more than one demand response program shall be consistent with the decision ultimately adopted in A.08-06-001.”

7. If the decision ultimately adopted in A.08-06-001 will require rate design changes to avoid duplicate payments or negative demand charges, SCE shall file a 2009 Rate Design Window Application proposing these changes.

8. Within 45 days of the date this order is mailed, Southern California Edison Company shall file an advice letter in compliance with General Order 96-B. The advice letter shall include revised tariff sheets to implement the revenue allocations and rate designs adopted in this order with the exception of Schedule TOU-EV-1 and the Conservation Incentive Adjustment. The tariff sheets shall become effective no earlier than October 1, 2009, subject to Energy Division determining that they are in compliance with this order. No additional customer notice need be provided pursuant to General Rule 4.2 of General Order 96-B for this advice letter filing.

9. Within 45 days of the date this order is mailed, Southern California Edison Company shall file an advice letter in compliance with General Order 96-B. The advice letter shall include revised tariff sheets to implement Schedule TOU-EV-1 adopted herein. The tariff sheets shall become effective on filing subject to Energy Division determining that they are in compliance with this order.

10. Within 45 days of the date this order is mailed, Southern California Edison Company shall file an advice letter in compliance with General Order 96-B. The advice letter shall include revised tariff sheets to implement the commercial submetering settlement agreement adopted in this order. The tariff sheets shall become effective on filing, subject to Energy Division determining that they are in compliance with this order. No additional customer notice need be provided pursuant to General Rule 4.2 of General Order 96-B for this advice letter filing.

11. The Conservation Incentive Adjustment component of residential rates shall be implemented concurrently with other rate adjustments in Southern California Edison Company's 2010 Energy Resource Recovery Account forecast proceeding.

12. Southern California Edison Company shall file an application proposing the following dynamic pricing rates no later than September 1, 2010. The effective date of these rates shall be proposed to be on or before January 1, 2012:

- Optional critical peak pricing (CPP) rates that include time of use (TOU) rates during non-CPP periods for residential customers.
- One or more default TOU/CPP rates for commercial and industrial customers with maximum loads less than 200 kilowatts (kW) that have had an advanced meter for 12 months or more; SCE's proposal shall not offer non-time-differentiated rates to customers with maximum load less than 200 kW that have had an advanced meter for 12 months or more.
- Mandatory TOU, with optional CPP, for agricultural customers with maximum loads less than 200 kW that have had an advanced meter for 12 months or more.
- One or more default TOU/CPP rates for agricultural customers with maximum loads equal to or greater than 200 kW that have had an advanced meter for 12 months or more.
- Optional real time pricing rates for all customer classes.

13. If the Assembly Bill 1X rate protections have been removed or have been materially changed to allow default or mandatory time-variant rates at the time Southern California Edison Company files the application identified in Ordering Paragraph 10, Southern California Edison Company shall propose default time of use and time of use/critical peak pricing rates for residential customers.

14. Southern California Edison Company's motion to update the revenue allocation and rate design settlement agreements to reflect updated revenue requirements and proposed rates is granted.

15. Citrus Packers' Proposal to modify Southern California Edison Company's pumping and agricultural tariffs is denied.

16. Transphase Company's motion to disqualify President Michael R. Peevey is denied.

17. Application (A.) 07-12-020 and A.08-03-002 are closed.

This order is effective today.

Dated August 20, 2009, at San Francisco, California.

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

[D0908028 Attachemnts A through I](#)