Decision **PROPOSED DECISION OF ALJ BARNETT** **(Mailed 10/15/2001)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U 902 –E) in The Third Annual Transition Cost Proceeding Addressing (1) the Transition Cost Balancing Account (TCBA), and (2) the Reasonableness of San Diego Gas & Electric Company's Energy Procurement Practices.	Application 00-10-008 (Filed October 2, 2000)

DECISION ADOPTING SETTLEMENT AGREEMENT

Introduction

Pursuant to Rule 51 of the Commission's Rules of Practice and Procedure, San Diego Gas & Electric Company (SDG&E) and the Office of Ratepayer Advocates (ORA) (Settling Parties) move for adoption of the Settlement Agreement (Attachment 1) entered into by the Settling Parties in this proceeding. The Settling Parties assert that the Settlement Agreement disposes of all issues raised in this proceeding in connection with the reasonableness of SDG&E's electric procurement practices during the period from July 1, 1999 through February 7, 2001. The Settling Parties believe the Settlement Agreement is "reasonable in light of the whole record, consistent with law, and in the public interest" as required by Rule 51.1(e). Accordingly, the Settling Parties request that the Commission adopt the Settlement Agreement without modification.

Background

SDG&E filed this application in conformance with Assembly Bill (AB) 265 (Public Utilities Code Section 332.1(g))[1] and Decision (D.) 00-09-040. The application contained, among other things, prepared direct testimony supporting the reasonableness of SDG&E's electricity procurement operations and expenses during the period July 1, 1999 through August 31, 2000. ORA initiated and participated in discovery. ORA staff members propounded, and SDG&E responded to, voluminous and substantial data requests. ORA's discovery occurred over a period exceeding four months. ORA issued its report dated April 5, 2001, which was supported by five witnesses.

On February 7, 2001, approximately two months prior to the submittal of ORA's report, the California Department of Water Resources (DWR) initiated procurement of SDG&E's "net short"[2] electric power requirements thereby obviating the need for SDG&E, after that date, to procure energy for its bundled customers in excess of its utility-retained generation. During the course of ORA's discovery, ORA requested and received information on SDG&E's electric

---

[1] Public Utilities Code Section 332.1(g) states: "The commission shall institute a proceeding to examine the prudence and reasonableness of the San Diego Gas and Electric Company in the procurement of wholesale energy on behalf of its customers, for a period beginning at the latest on June 1, 2000. If the commission finds that San Diego Gas and Electric Company acted imprudently or unreasonably, the commission shall issue orders that it determines to be appropriate affecting the retail rates of San Diego Gas and Electric Company customers including, but not limited to, refunds.

[2] The "net short" is the amount of power that the ISO must purchase on the spot market to make up the difference between the demand scheduled and procured in the day-ahead market (either through trades, from the utility's own retained generation, or from Qualifying Facilities contract capacity).

procurement activities for the period September 1, 2000 to February 7, 2001. ORA also reviewed various filings SDG&E made with the Commission providing updates on SDG&E's procurement activities during that period.

On March 26 and 27, 2001, two days of hearings were conducted before Administrative Law Judge (ALJ) Barnett. During those hearings, SDG&E's witnesses presented SDG&E's direct testimony and responded to cross-examination. Hearings on ORA's report and SDG&E's rebuttal to that report were continued until late April 2001. In preparation for its rebuttal testimony, in mid-April, 2001, SDG&E took the depositions of ORA's witnesses. Shortly thereafter settlement discussions commenced between SDG&E and ORA pertaining to the disallowances and penalties ORA recommended in its report. No other party was active in this proceeding; therefore, no other parties were included in the settlement discussions.

SDG&E and ORA, on June 15, 2001, entered into a Memorandum of Understanding (the "ORA MOU") which proposed a tentative agreement on a stipulation and settlement of SDG&E's electric procurement practices for the period July 1, 1999 through February 7, 2001. Subsequently, on July 26, 2001, SDG&E and ORA convened a settlement conference to discuss the terms of the ORA MOU and the proposed settlement agreement with all interested parties. Pursuant to Rule 51.1(b) prior notice with an opportunity to participate in the settlement conference was provided to all parties. On August 30, 2001, SDG&E and ORA executed the Settlement Agreement. The Settlement Agreement was filed with the Commission and served on all parties August 31, 2001. Pursuant to Rule 51.4 parties have 30 days in which to file comments contesting all or part of the Settlement. No party has filed comments.

Description of the Settlement

The Settlement Agreement addresses the stipulation between the Settling Parties on the reasonableness and prudence of SDG&E's electric procurement activities during the period from July 1, 1999 through February 7, 2001. SDG&E's initial showing in its application only addressed its procurement practices during the period July 1, 1999 through August 31, 2000. However, for purposes of this stipulation and settlement both SDG&E and ORA agree that it is reasonable and in the interests of SDG&E's customers to expand the period of time addressed in the Settlement Agreement to February 7, 2001. This agreement is based upon: (1) the opportunity presented to, and exercised by, ORA while this case was pending to evaluate and assess SDG&E's electric procurement activities during the period from September 1, 2000, through February 7, 2001; (2) the fact that after February 7, 2001, the DWR took full responsibility for procuring, on behalf of SDG&E's bundled customers, SDG&E's "net-short" requirements thereby curtailing SDG&E'S obligation to procure electric power in excess of its utility retained generation; (3) the statutory language of Pub. Util. Code § 332.1(g) that requires no more than one proceeding to examine the prudence and reasonableness of SDG&E's procurement activities for the period beginning at the latest on June 1, 2000.

The Settlement Agreement specifically requires that, if approved, the Commission will make the following orders:

(1) The record period for the portion of this proceeding addressing SDG&E's electric procurement practices will be July 1, 1999 through February 7, 2001;

(2) SDG&E shall reduce the undercollection balance in its Energy Rate Ceiling Revenue Shortfall Account (ERCRSA) by the sum of $100 million dollars as a full, complete, and final resolution of all

issues associated with SDG&E electric procurement practices over the period of time between July 1, 1999 and February 7, 2001.

(3) The portion of Application (A.) 00-10-008 addressing SDG&E's electric procurement practices, as expanded to include the period of time through February 7, 2001, is fully and finally resolved, and all ORA proposals for disallowances, audits, and other penalties are denied with prejudice;

(4) The Commission's decision approving the Settlement Agreement is a final and binding resolution as to the reasonableness and prudence of SDG&E's electric procurement practices from July 1, 1999 through February 7, 2001 for the purpose of any future year Annual Transition Cost Proceeding (ATCP) or other Commission proceedings pertaining to SDG&E's electric procurement activities.

The Settling Parties refer us to the full text of the Settlement Agreement for all of its provisions and details. In particular, the Settling Parties refer us to Section E, entitled "Indivisibility," stating that the stipulations expressed in the Settlement Agreement embody compromises of the Settling Parties' positions such that no individual term or agreement in the Settlement Agreement is assented to by either of the Settling Parties except in consideration of the Settling Parties' agreements to all other terms. Thus, the Settlement Agreement is indivisible and each part is interdependent upon the Commission's adoption of all parts.

Reasonableness of the Settlement Agreement

In this proceeding, SDG&E and ORA were the only active parties who conducted discovery and sponsored testimony. SDG&E and ORA fairly reflect all affected interests. SDG&E represents the interests of both its shareholders and customers. ORA represents the interests of all SDG&E's customers.

The Settlement Agreement meets all standards for approval as identified in Rule 51.1(e). That rule states:

> The Commission will not approve stipulation or settlements, whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

The Settlement is Consistent with Law and Prior Commission Decisions.

The Settling Parties assert that the Settlement Agreement is fully consistent with law and prior Commission decisions. We agree. Nothing in the Settlement Agreement contravenes statute or prior Commission decisions. In fact, our approval of the Settlement Agreement will allow us to comply with Section 332.1(g) which requires, in pertinent part, that the "…commission shall institute a proceeding to examine the prudence and reasonableness of the San Diego Gas & Electric Company in the procurement of wholesale energy on behalf of its customers, for a period beginning at the latest on June 1, 2000." By addressing SDG&E's electric procurement practices for the period from July 1, 1999 through February 7, 2001, our adoption of the Settlement Agreement will provide in one decision the complete disposition of the issues relating to SDG&E's electric procurement practices up to the time DWR began procuring SDG&E's "net-short" electric supplies. The reasonableness review required by Section 332.1(g) requires no more than one "proceeding" to determine the prudence and reasonableness of SDG&E's procurement activities after June 1, 2000. Additionally, the Settlement Agreement is consistent with D.00-09-040, which was issued to implement Section 332.1(g).

The Settlement Agreement is Reasonable in Light of the Record as a Whole

SDG&E served its original testimony on October 2, 2000 and had it admitted into evidence. ORA issued its report in this proceeding on April 5,

2001; that report has been admitted into evidence. On April 24, 2001, SDG&E served its prepared rebuttal testimony; that rebuttal testimony has been admitted into evidence. Concurrent with the filing of this motion, and attached as Attachment 2, ORA submits the declaration of its witness, Mr. Steve Linsey, addressing ORA's evaluation and recommendations for SDG&E's electric procurement practices for the period September 1, 2000 through February 7, 2001.

ORA stated in its prepared testimony that it conservatively recommended that the Commission disallow a total of $98 million in costs in the period July 1, 1999 through August 31, 2000. ORA took the position that for the period July 1, 1999 through August 31, 2000, SDG&E incurred $61 million of excess costs due to its failure to exercise its existing authority from the Commission to purchase in the Block Forward Market. ORA also took the position that an additional $37 to $78 million in costs were incurred as a result of SDG&E's failure to request from the Commission additional block forward market (BFM) authority and then to act on that authority.

ORA's analysis of SDG&E's electric procurement activities from August 31, 200 to February 7, 2001 disclosed that SDG&E was actively monitoring the forward market during this period of time, which in ORA's view, constituted a significant change in its procurement practices from that which existed during the prior year. In addition, because this time period was not during summer months, ORA's prior contentions on the issue of forseeability are not applicable to this period of time. Finally, SDG&E did, in fact, enter into bilateral contracts based upon its active monitoring of the forward market during this period of time.

ORA witness Linsey stated in his declaration submitted with the Settlement Agreement that there were significant developments after August 2000 that created substantial uncertainties as to how compelling a case for disallowance ORA could make for the period from September 1, 2000 through February 7, 2001. Mr. Linsey stated that SDG&E attempted to participate in the BFM beginning toward the end of July/August 2000, that the Commission granted authority for SDG&E to enter into bilateral contracts to purchase power in October 2000, and that SDG&E exercised this authority.

Conducting a separate or further proceeding focused solely on the additional five month period from September 1, 2000 to February 7, 2001 would unnecessarily consume valuable resources of the Commission, SDG&E and other parties and would delay, and possibly prevent, the realization of the benefits identified above pertaining to reduction of the ERCRSA undercollection.

The immediate impact of our approval of the Settlement Agreement is to reduce the undercollection in SDG&E's ERCRSA by $100 million. As demonstrated by the testimony and rebuttal testimony of SDG&E and the ORA report and the Linsey declaration, there is a significant contestable discrepancy between SDG&E and ORA as to the degree and extent of the reasonableness of SDG&E's electric procurement practices from July 1, 1999 through February 7, 2001. We must evaluate the Settlement Agreement in light of the risk, expense, complexity, and duration of continuing litigation in deciding whether the Settlement Agreement is reasonable in light of the whole record. While SDG&E, through its testimony, believes that it presented a strong case that its electric procurement activities were reasonable and prudent, ORA believes just as strongly that it presented a convincing case that SDG&E was not prudent in its electric procurement activities and therefore should be subject to disallowance.

The Settlement Agreement is in the Public Interest.

The Settlement Agreement results in a reduction to SDG&E's ERCRSA undercollection by $100 million. This is a significant sum of substantial benefit to SDG&E's customers. The $750 million undercollection in the ERCRSA has been generated, primarily, from the deferral by SDG&E customers since June 1, 2000 of their energy commodity costs in excess of 6.5 cents per kWh. To the extent these deferred obligation are reduced, SDG&E's customers are no longer obligated to reimburse SDG&E for them. By virtue of this settlement, more than 13% of the ERCRSA undercollection will be eliminated. This concession by SDG&E is reasonable.

Finally, the Settlement Agreement is in the public interest because it will avoid a potentially long and expensive litigation of issues pertaining to SDG&E's electric procurement activities for the period September 1, 2001 through February 7, 2001. It is appropriate that the settlement pertain to the period of time up to DWR's undertaking the obligation to procure SDG&E's "net-short" energy needs because ORA was able to assess and evaluate SDG&E's electric procurement activities to that point. Conducting a separate or further proceeding focused solely on the additional five-month period after September 1, 2000 would consume valuable resources of the Commission.

Comments on Proposed Decision

Section 311(d) provides that there must be a 30-day review and comment period on proposed decisions, unless there is an unforeseen emergency situation, the parties to this proceeding so stipulate, or otherwise provided by law. In this case, SDG&E and ORA, the active parties to this phase of the proceeding, have stipulated to reduce the review and comment period. We therefore shorten the

time for comments. Opening comments will be due on October 29 and reply comments will be due on November 5 by noon. Parties shall expedite service of comments and all comments shall be served electronically and by regular mail service. In addition, all other parties will be deemed to have stipulated to a shortening of time unless they so indicate in their opening comments.

Findings of Fact

1. The Settlement Agreement is the product of extensive discussions between the parties. Both ORA and SDG&E entered into these discussions (1) after conducting thorough discovery of each other's positions; (2) after a complete review of that discovery and the filed testimony; and (3) after cross-examination of SDG&E's witnesses during hearings.

2. On February 7, 2001, approximately two months prior to the submittal of ORA's report, DWR initiated procurement of SDG&E's "net short" electric power requirements thereby obviating the current need for SDG&E to procure energy for its bundled customers in excess of its utility-retained generation. SDG&E continues to have the obligation to serve its customers.

3. SDG&E and ORA fairly reflect all affected interests. ORA represents the interests of all SDG&E's customers. SDG&E represents the interests of both its shareholders and customers.

4. As demonstrated by the testimony and rebuttal testimony of SDG&E and the ORA report and the Linsey Declaration, there is a significant contestable discrepancy between SDG&E and ORA as to the degree and extent of the reasonableness of SDG&E's electric procurement practices from July 1, 1999 through February 7, 2001.

5. The Settlement Agreement results in a reduction of SDG&E's $750 million ERCRSA undercollection by $100 million. This is a significant sum of substantial benefit to SDG&E's customers.

6. To the extent these deferred obligations are reduced, SDG&E's customers are no longer obligated to reimburse SDG&E for them. By virtue of this settlement, more than 13% of the ERCRSA undercollection will be eliminated.

7. Conducting a separate or further proceeding focused solely on the additional five month period from September 1, 2000 to February 7, 2001 would unnecessarily consume valuable resources of the Commission, SDG&E and other parties and would delay, and possibly prevent, the realization of the benefits identified above pertaining to reduction of the ERCRSA undercollection.

8. The disallowance provided for in the Settlement Agreement is $100 million for the period from July 1, 1999 through February 7, 2001. This sum is a large percentage of the disallowance that might have been adopted in this proceeding for the period July 1, 1999 through February 7, 2001, if the Commission had adopted all of ORA's analysis.

Conclusions of Law

1. For purposes of compliance with the statutory requirements implemented by AB 265, the reasonableness review required by Section 332.1(g) requires no more than one "proceeding" to determine the prudence and reasonableness of SDG&E's procurement activities after June 1, 2000.

2. The Settlement Agreement fully resolves all issues associated with the reasonableness of SDG&E's electric procurement activities for the period from July 1, 1999 through February 7, 2001.

3. Approval of the Settlement Agreement complies with Section 332.1(g) of the California Public Utilities Code.

4. Approval of the Settlement Agreement is consistent with D.00-09-040 (September 7, 2000). That decision was issued to implement various provisions of AB 265, including California Public Utilities Code section 332.1(g).

5. A disallowance of $100 million for the period July 1, 1999 to February 7, 2001, is within the range of outcomes the Commission could have found was reasonable based on record evidence had this matter not been settled.

6. The Settlement Agreement is reasonable in light of the strength of each party's litigation position, the risk, expense, and complexity of litigation, and the settlement amount upon which the parties agreed.

7. The Settlement Agreement is reasonable in light of the whole record, consistent with law, consistent with prior Commission decisions, and in the public interest.

8. As provided in Rule 51.8 of the Commission's Rules of Practice and Procedure, and consistent with the terms of the Settlement Agreement itself, the adoption of the Settlement Agreement is binding on all parties but does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.

9. The decision should be effective today so that the settlement may be implemented expeditiously.

O R D E R

IT IS ORDERED that:

1. The August 31, 2001 motion of San Diego Gas & Electric Company (SDG&E) and the Office of Ratepayer Advocates (ORA) for approval of the Settlement Agreement dated August 30, 2001, is granted and that Settlement Agreement is approved without modification.

2. The record period for the portion of this proceeding addressing SDG&E's electric procurement practices is July 1, 1999 through February 7, 2001.

3. SDG&E shall reduce the undercollection balance in the Energy Rate Ceiling Revenue Shortfall Account by the sum of $100 million dollars as a full, complete, and final resolution of all issues associated with SDG&E's electric procurement practices over the period of time between July 1, 1999 and February 7, 2001.

4. The portion of Application 00-10-008 addressing SDG&E's electric procurement practices, as expanded to include the period of time through February 7, 2001, is fully and finally resolved, and all ORA proposals for disallowances, audits, and other penalties are denied with prejudice.

5. This decision approving the Settlement Agreement is a final and binding resolution as to the reasonableness and prudence of SDG&E's electric procurement practices from July 1, 1999 through February 7, 2001 for the purpose of any future year Annual Transition Cost Proceeding or other Commission proceedings pertaining to SDG&E's electric procurement activities.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT 1

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U 902-E) in The Third Annual Transition Cost Proceeding Addressing (1) the Transition Cost Balancing Account (TCBA) and (2) the Reasonableness of San Diego Gas & Electric Company's Energy Procurement Practices	Application No. 00-10-008 (Filed October 2, 2000)

SETTLEMENT AGREEMENT

Darwin Farrar
Staff Counsel
Office of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
(415) 703-1599
(415) 703-2262 (fax)
edf@cpuc.ca.gov

Keith W. Melville
Jeffrey M. Parrott
Attorney for San Diego Gas & Electric Company
101 Ash Street
San Diego, CA 92112
(619) 699-5039
(619) 699-5027 (fax)
kmelville@sempra.com
jparrott@sempra.com

August 29, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U 902-E) in The Third Annual Transition Cost Proceeding Addressing (1) the Transition Cost Balancing Account (TCBA) and (2) the Reasonableness of San Diego Gas & Electric Company's Energy Procurement Practices	)	Application No. 00-10-008 (Filed October 2, 2000)

SETTLEMENT AGREEMENT

I. PARTIES

The parties to this Settlement Agreement are the California Public Utilities Commission's ("Commission") Office of Ratepayer Advocates ("ORA"), and San Diego Gas & Electric Company ("SDG&E") (hereinafter referred to individually as a "Party" and collectively as the "Settling Parties").

II. RECITALS

A. SCOPE OF THE AGREEMENT

On October 2, 2000, SDG&E filed Application 00-10-008 in the Third Annual Transition Cost Proceeding. In response to Assembly Bill ("AB") 265 and Commission Decision 00-09-040, this Application contained, among other things, prepared direct testimony supporting the reasonableness of SDG&E's electricity procurement operations and expenses during the Record Period of July 1, 1999 through August 31, 2000. On February 7, 2001 the California Department of Water Resources ("CDWR") initiated procurement of SDG&E's "net short" electric power

requirements thereby obviating the need for SDG&E, after that date, to procure energy for its bundled customers in excess of its utility retained generation. During the course of ORA's discovery in this proceeding, ORA reviewed the electric procurement practices of SDG&E through February 7, 2001. The purpose and scope of this Settlement Agreement is to resolve and settle all issues relating to the reasonableness of SDG&E's electric procurement practices from July 1, 1999, through February 7, 2001. This Settlement Agreement effectuates the Memorandum of Understanding executed between SDG&E and ORA on June 15, 2001, and is the "ORA Settlement Agreement" described and referenced in a Memorandum of Understanding dated June 18, 2001 by and among the CDWR, SDG&E, and, as to certain sections therein, Sempra Energy (referred to herein as the "DWR/SDG&E MOU").

B. SDG&E's POSITION AND PRESENTATION

SDG&E's electric energy procurement activities from July 1, 1999 through August 31, 2000, including the policies supporting them, are addressed in the written prepared direct testimony of witness William Reed, Wayne Sakarias, Dr. Stephen C. Pirrong and Matt Harris (served with SDG&E's application) and the prepared rebuttal testimony of each of these witnesses (served on April 26, 2001). Additional information on SDG&E's electric energy procurement practices and policies after August 31, 2000 through February 7, 2001 were provided in various filings made with the Commission and in responses to numerous data requests.

C. ORA'S POSITION AND PRESENTATION

ORA is the staff component of the Commission responsible for representing the perspective of utility customers in Commission proceedings. In that capacity ORA staff members conducted a thorough review of SDG&E's electric energy procurement activities. In a report dated April 5, 2001, ORA witnesses Steve Linsey, Douglas C. Smith, Louis Irwin, Littlejon Jan Reid and Scott Logan addressed SDG&E's electric procurement activities from

July 1, 1999 to August 31, 2000. In a declaration to be filed as an attachment to the motion to adopt this Settlement Agreement, ORA witness Steve Linsey will address ORA's review of SDG&E's electric procurement practices between September 1, 2000 through February 7, 2001. For the entire period, ORA and its experts conducted extensive inquiry concerning SDG&E's activities and policies. ORA propounded to SDG&E numerous questions and requests for information and documentary support. ORA is the only party that conducted discovery relative to SDG&E's electric procurement practices and is the only intervenor that filed testimony in this proceeding.

D. SETTLEMENT NEGOTIATION PROCESS

After the service of ORA's Report in A.00-10-008, two days of hearings were held before Administrative Law Judge (ALJ) Barnett on March 26 and 27, 2001. During these hearings SDG&E's witnesses presented SDG&E's direct testimony and responded to cross-examination. Hearings on ORA's testimony and rebuttal were set for late April, 2001. In mid-April, 2001 SDG&E took the depositions of each of ORA's witnesses, except for Doug Smith who responded to detailed data requests.

Following the initial hearings and SDG&E's depositions of ORA's witnesses, settlement discussions commenced regarding a resolution of ORA's recommended disallowances and penalties. These discussions expanded to include other issues pertaining to the electric crisis in California, such as the undercollection incurred by SDG&E in its Energy Rate Ceiling Revenue Shortfall Account ("ERCRSA") as a result of AB 265. In negotiations with SDG&E, ORA agreed that expanding the scope of its review and recommendations through February 7, 2001 was appropriate given ORA's analysis of these activities and SDG&E's discontinuance of its non-URG electric procurement activities as of that date.

III.
AGREEMENT

A. TERMS

A genuine dispute exists between SDG&E and ORA regarding the prudence of SDG&E's electric energy procurement practices, expenses, and operations. Accordingly, the Settling Parties agree to resolve all issues of which each of them is aware pertaining to SDG&E's power purchases for the period July 1, 1999 through February 7, 2001. The Settling Parties regard this Settlement Agreement as a whole, the resolution of which reflects substantial compromise among the parties. The resolved issues are interrelated and consolidated, no issue or term of this Settlement Agreement should be evaluated in isolation.

Each Party urges the Commission to approve this Settlement Agreement and the various compromises that produce it as a fair and reasonable resolution of the issues and a mutually acceptable outcome without the need to resolve material issues. Each Party hereby declares and represents that it has reached this determination, and is executing this Settlement Agreement, after consultation with its own legal counsel. The settled outcome is as follows:

1. The record period for this proceeding covers the period between July 1, 1999 and February 7, 2001.
2. SDG&E agrees to reduce the ERCRSA, which is a subaccount within the Transition Cost Balancing Account (TCBA), by the sum of $100 million as a full, complete, and final resolution of any and all issues associated with SDG&E's electric procurement practices for the period of time between July 1, 1999 and February 7, 2001. This adjustment will be made upon receipt of a final Commission decision approving this settlement.
3. The portion of A.00-10-008 addressing SDG&E's electric procurement practices, as expanded to included the period of time through February 7, 2001, shall be fully and finally resolved by the Commission decision approving this Settlement Agreement, and all ORA proposals for disallowances, audits and other recommendations are denied with prejudice.

4. The Commission's decision approving this Settlement Agreement shall be a final and binding resolution as to the reasonableness or prudence of SDG&E's electric procurement practices from July 1, 1999 through February 7, 2001 for purposes of future years Annual Transition Cost Proceedings or other Commission proceedings pertaining to SDG&E electric procurement activities.

B. OBLIGATION TO PROMOTE APPROVAL

The Settling Parties agree to use their best efforts to propose, support and advocate adoption of this Settlement Agreement by the Commission. The Settling Parties agree to perform diligently, and in good faith, all actions required or implied hereunder, including, but not necessarily limited to, the execution of any other documents required to effectuate the terms of this Settlement Agreement, and the preparation of declarations and exhibits for, and presentation of witnesses at, any required hearings to obtain the approval and adoption of this Settlement Agreement by the Commission. No Party to this Settlement Agreement will contest any aspect of this Settlement Agreement in any proceeding or in any other forum, by contact or communication, whether written or oral (including ex parte communications whether or not reportable under the Commission's Rule of Practice and Procedure) or in any other manner before this Commission.

The Settling Parties further agree that they will use reasonable efforts to provide notice to the other Settling Party that they intend to enter into ex parte discussions with any Commission decision-maker regarding the recommendations contained in this Settlement Agreement, whether reportable under the Commission's Rules of Practice and Procedure, or not. Moreover, the Settling Parties agree to actively and mutually defend this settlement if any other party to the proceeding opposes its adoption. The Settling Parties understand and acknowledge that time is of essence in obtaining the Commission's approval of this Settlement Agreement and that each will extend its best efforts to ensure the expeditious adoption of this Settlement Agreement.

C. PUBLIC INTEREST

The Settling Parties agree jointly by executing and submitting this Settlement Agreement that the relief and final resolution requested herein is just, fair and reasonable, and in the public interest. Each Settling Party presented extensive substantiation of its positions during the negotiations and participated in an informed, expert manner. Approval of this Settlement Agreement will, at a minimum, have the following benefits:

1) Will reduce the ERCRSA undercollection which was to be recovered from SDG&E's customers;
2) Will not result in an increase to SDG&E's rates in order to recover the ERCRSA undercollection;
3) Will help restore the credit and energy markets' confidence in SDG&E's financial health; and
4) Will avoid a potentially long and expensive litigation of issues pertaining to SDG&E electric procurement activities both this year and next, which would consume valuable resources of the Commission and SDG&E and would delay, and possibly prevent, the realization of the benefits listed above.

D. NON-PRECEDENTIAL EFFECT

This Settlement Agreement is not intended by the Settling Parties to be a binding precedent for any future proceeding except to the extent such future proceedings address the issues that have been specifically resolved herein. The Settling Parties have assented to the terms of this Settlement Agreement only for the purpose of arriving at the various compromises embodied in this Settlement Agreement. Each Party expressly reserves its right to advocate, in current and future proceedings, positions, principles, assumptions, arguments and methodologies which may be different than those underlying this Settlement Agreement and the Settling Parties expressly declare that, as provided in Rule 51 of the Commission's Rules of Practice and Procedure, this Settlement Agreement should be not be considered as a precedent for or against them.

E. INDIVISIBILITY

The Settling Parties acknowledge that the positions expressed in this Settlement Agreement were reached after consideration of all positions advanced in the prepared testimony of SDG&E and ORA, as well as a full consideration of procurement activities by SDG&E from September 1, 2000 through February 7, 2001 and numerous proposals offered during the settlement negotiations. This Settlement Agreement embodies compromises of the Settling Parties' positions. No individual term of this Settlement Agreement is assented to by any Party except in consideration of the Settling Parties' assents to all other terms. Thus, the Settlement Agreement is indivisible and each part is interdependent on each and all other parts.

Any Party may withdraw from this Settlement Agreement if the Commission modifies, deletes from, or adds to the disposition of the matters stipulated herein. The Settling Parties agree, however, to negotiate in good faith with regard to any Commission-ordered changes in order to restore the balance of benefits and burdens and to exercise the right to withdraw only if such negotiations are unsuccessful.

F. LIABILITY

The Settling Parties further agree that no signatory to this Settlement Agreement, nor any member of the Staff of the Commission, assumes any personal liability as a result of this Settlement Agreement.

G. GOVERNING LAW

This Settlement Agreement shall be governed by the laws of the State of California (without regard to conflicts of law principles) as to all matters, including, but not limited to, matters of validity, construction, effect, performance and remedies.

H. INTERPRETATION

The section headings contained in this Settlement Agreement are solely for the purpose of reference, are not part of the agreement of the Settling Parties, and shall not in any way affect

the meaning or interpretation of this Settlement Agreement. All references in this Settlement Agreement to Sections are to Sections of this Settlement Agreement unless otherwise indicated. Each of the Settling Parties hereto and their respective counsel have contributed to the preparation of this Settlement Agreement. Accordingly, no provision of this Settlement Agreement shall be construed against any Party because that Party or its counsel drafted the provision.

I. NO WAIVER

It is understood and agreed that no failure or delay by any Party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege.

J. COUNTERPARTS

This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

K. EXECUTION

By: /s/ DARWIN FARRAR

Darwin Farrar
Staff Counsel
Office of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
(415) 703-1599
(415) 703-2262 (fax)
edf@cpuc.ca.gov

By: /s/ KEITH W. MELVILLE

Keith W. Melville
Jeffrey M. Parrott
Attorney for San Diego Gas & Electric Company
101 Ash Street
San Diego, CA 92112
(619) 699-5039
(619) 699-5027 (fax)
kmelville@sempra.com
jparrott@sempra.com

August 29, 2001

ATTACHMENT 2

DECLARATION OF STEVE LINSEY
IN SUPPORT OF SETTLEMENT AGREEMENT IN A.00-10-008

1. This declaration addresses ORA's review of SDG&E's electric procurement practices between September 1, 2000 through February 7, 2001. Except where specifically indicated, this declaration refers to that time period. ORA's review was based upon SDG&E data responses to ORA in A.00-10-008, ORA knowledge of SDG&E's bilateral contracting and issuance of an RFP [outside of A.00-10-008], and independent ORA analysis.

2. ORA's discovery in A.00-10-008 extended in several data requests beyond august 31, 2000. This discovery provided information considered by SDG&E management in the fulfillment of it procurement duties. This discovery information contributed significantly to the ability of ORA to sufficiently determine issues related to the period beyond August 2000.

3. ORA performed a simple quantification of the potential disallowance range under two scenarios: hedging 100% of SDG&E's net short position, and hedging the same percentage of net short as Southern California Edison. The scenario involving hedging 100%, which provided a maximum potential disallowance. ORA determined that the potential disallowance was substantial, and varied greatly between the two scenarios.

4. ORA also performed a conceptual review of the issues for a reasonableness review spanning the period from September 1, 2000 through February 7, 2001. ORA determined that while the general issues were similar, there were substantial differences in SDG&E's actual behavior, as well as Commission regulation. Consequently, ORA determined that the detailed rationale that would likely apply to the post-August 2000 period would have several differences. Therefore, ORA would need to make substantial effort to create a case as compelling as that for the period from July 1, 1999 through August 31, 2000.

5. Among the significant issues that would need to be addressed are the following. Only the month of September 2000 was a summer month, and much of ORA's analysis of the pending case was specific to the summer months. In October 2000, SDG&E instituted a comprehensive risk management framework. The absence of such a framework figured prominently in ORA's determination that earlier SDG&E procurement had been unreasonable. ORA had also determined that SDG&E had started more active market monitoring, and attempted to participate in the block forward market beginning toward the end of July/August. The analysis of the post-August 2000 period would also be substantially complicated by the fact that the Commission granted authority for SDG&E to enter into bilateral contracts in October 2000, and SDG&E did in fact do so. ORA determined that there were numerous uncertainties in addressing these issues.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ STEVE LINSEY **August 31, 2001**
Steve Linsey