Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Order Approving Settlement Agreement Between Southern California Edison Company and Duke Energy Trading and Marketing, L.L.C.	Application 06-05-018 (Filed May 10, 2006)

OPINION APPROVING SETTLEMENT AGREEMENT BETWEEN SOUTHERN CALIFORNIA EDISON COMPANY AND DUKE ENERGY TRADING AND MARKETING, L.L.C.

I. Summary

This decision grants the Application of Southern California Edison Company (SCE) to approve a settlement agreement between SCE and Duke Energy Trading and Marketing, L.L.C. (DETM).

II. The SCE/DETM Dispute

On May 10, 2006, SCE submitted Application 06-05-018 requesting Commission approval of a settlement agreement dated March 10, 2006 between SCE and DETM. The agreement would settle a dispute between SCE and DETM related to 10 power purchase agreements (PPAs) executed in late 2000 but terminated by DETM in January 2001. The dispute is over the value of the contracts to SCE and how much DETM owes SCE for exercising its termination rights.

In November and December 2000, DETM and SCE entered into 10 separate PPAs. In aggregate, the PPAs provided for delivery by DETM to SCE of more than four million megawatt-hours of power between January 1, 2001 and

December 31, 2005. The PPAs included a provision permitting either party to terminate the PPAs under specified conditions. One provision provided that if DETM terminates the PPAs, DETM must pay SCE the difference between the power's market value and its contract price, with interest. This termination payment was to be determined by the parties in a "commercially reasonable manner."

Shortly after the PPAs were executed, events in the western electric power markets plunged SCE into financial distress. On January 16, 2001, SCE issued a Securities and Exchange Commission Form 8-k financial reporting document in which it stated that it was suspending payment on certain obligations, but not on its obligations to DETM pursuant to the PPAs. Nevertheless, DETM terminated the PPAs on January 22, 2001.

The central issue in this matter is the liquidation value of the PPAs. SCE believed DETM owed it a substantial termination payment, while DETM did not agree. On January 25, 2001, DETM sent a letter to SCE stating that SCE owed DETM a certain sum instead of DETM's owing SCE money. SCE asserted that DETM's methodology was incorrect in a letter dated January 26, 2001. Ultimately, on February 27, 2001, SCE invoked the dispute resolution clause of the PPAs.

After attempts at mediation and arbitration from 2002 through 2005, and after rounds of settlement discussions, SCE and DETM negotiated a settlement agreement with the effective date of March 10, 2006.

III. Settlement Agreement

Under the settlement agreement SCE will receive from DETM a confidential[1] settlement amount plus accrued interest. (Application, p. 8.) SCE estimates that it is receiving a certain percent of estimated value of the 10 PPAs. (Application, p. 17.) SCE proposes to distribute these settlement proceeds to ratepayers through the Energy Resource Recovery Account (ERRA) Balancing Account, less escrow and arbitrator fees. SCE further requests that this ERRA credit amount be excluded when calculating ERRA Trigger or Assembly Bill (AB) 57 threshold amounts on a recorded basis, since the amount will be returned to ratepayers during the first regularly scheduled rate change after a final Commission decision in this proceeding.

The settlement agreement provides that, for the settlement agreement to be effective, the Commission must issue a decision that approves the settlement agreement in its entirety and that is final and no longer subject to review. The settlement agreement terminates without Commission approval by February 1, 2007. The Application asserts the settlement agreement is reasonable and should be approved.

---

[1] SCE filed a Motion for a Protective Order on May 10, 2006. The Motion sought to hold designated portions of the Application, Testimony and Appendices under seal pursuant to California Public Utilities Code Section 583 and General Order No. 66-C, and to withhold this information from public inspection. The basis for the Motion is that disclosure of confidential information could cause SCE competitive harm in negotiating settlements of future disputes involving similar issues. At the July 11 prehearing conference, the assigned Administrative Law Judge (ALJ) granted the unopposed Motion regarding the Application. We admit SCE's testimony as Exhibit 1 and grant SCE's Motion to Seal a specified portion of that testimony. We note that none of the material SCE seeks to have sealed is covered by Decision 06-06-066 or the "matrices" accompanying that decision.

DRA filed a protest on June 21, 2006. SCE responded on July 6, 2006. A prehearing conference was held on July 11, 2006. At the prehearing conference, DRA and SCE requested, and were granted, 30 days to discuss the issues raised in DRA's protest and determine whether any outstanding disputes continued to exist. On August 11, 2006, DRA informed the assigned ALJ and SCE that it had reviewed this matter and no disputes existed. DRA agreed that this matter can be submitted on the current record.

IV. Application of Test Approving Settlement Agreements to This Proceeding

SCE states the settlement presented in this application would follow several basic principles:

> The settlement resolves all disputed issues as required by Commission precedent;
>
> The settlement would not set a precedent for SCE's transactions with other power suppliers;
>
> The settlement results in substantial ratepayer benefits considering the relative merits of the parties' claims and litigation risks;
>
> The settlement would require Commission approval.

SCE claims the settlement comports with Rule 51.1(e) of the Rules of Practice and Procedure and is "reasonable in light of the whole record, consistent with law, and in the public interest." SCE presented evidence that the settlement fairly reflects the relative risks of the Arbitrator's decision and costs of potential litigation relating to the Arbitration decision. Further evidence shows the settlement fairly and reasonably resolves the disputed issues, conserves resources, and falls within the range of possible outcomes. SCE states the settlement agreement was achieved at an appropriate stage to avoid litigation,

and the negotiations were at arm's length, without collusion, and the parties were adequately represented.

The settlement before us is straightforward and unopposed. The terms of the settlement lie within the range of possible outcomes had the matter been decided by the Arbitrator. There is no evidence of collusion and it appears the parties negotiated the settlements in good faith and with the consultation of technical, legal and economic experts. The settlement reasonably balances the interests of SCE's ratepayers with those of DETM. We herein find the settlement agreement is reasonable and in the public interest. We also find it is reasonable to distribute the settlement proceeds to ratepayers, as described in the Application, through the ERRA balancing account, and that the ERRA credit amount be excluded when calculating ERRA Trigger or AB 57 threshold amounts on a recorded basis.

V. Categorization and Need for Hearing

Resolution ALJ 176-3173, dated May 25, 2006, categorized this matter as ratesetting with no hearings needed. We confirm these determinations.

VI. Comments on Draft Decision

This is an uncontested matter, in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

VII. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and David Gamson is the assigned ALJ in this proceeding.

Findings of Fact

1. SCE and DETM entered into 10 PPAs in November and December 2000.

2. DETM terminated the PPAs on January 16, 2001.

3. SCE and DETM disputed the termination payment required under the PPAs.

4. SCE and DETM settled their dispute on March 10, 2006.

5. SCE proposes to distribute the settlement proceeds, plus interest, to ratepayers through the ERRA Balancing Account, less escrow and arbitrator fees, and that the ERRA credit amount be excluded when calculating ERRA Trigger or AB 57 threshold amounts on a recorded basis.

Conclusions of Law

1. The settlement agreement between SCE and DETM is reasonable and should be approved.

2. It is reasonable to distribute the settlement proceeds, plus interest, to ratepayers through the ERRA Balancing Account, less escrow and arbitrator fees, and that the ERRA credit amount be excluded when calculating ERRA Trigger or AB 57 threshold amounts on a recorded basis.

3. The determinations made in Resolution ALJ 176-3173, dated May 25, 2006, that this proceeding is categorized as ratesetting and that hearings are not needed should be confirmed.

O R D E R

IT IS ORDERED that:

1. The March 10, 2006 settlement agreement between Southern California Edison Company and Duke Energy Trading and Marketing, L.L.C. is approved.

2. The settlement proceeds, plus interest, shall be distributed to ratepayers through the Energy Resource Recovery Account (ERRA) Balancing Account, less escrow and arbitrator fees.

3. The settlement proceeds, plus interest, shall be excluded when calculating ERRA Trigger or Assembly Bill 57 threshold amounts on a recorded basis.

4. The determinations made in Resolution ALJ 176-3173, dated May 25, 2006, that this proceeding is categorized as ratesetting and that hearings are not needed is confirmed.

5. Application 06-05-018 is closed.

This order is effective today.

Dated _____, at San Francisco, California.