Decision **DRAFT DECISION OF EXAMINER CLANON (Mailed July 20, 2004)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of Southern California Edison Company (U 338-E) for Modification of Resolution E-3843 dated December 4, 2003	Application 04-02-028 (Filed February 24, 2004)

ORDER MODIFYING RESOLUTION E-3843

I. Summary

By this order, we grant in part Southern California Edison Company's (SCE) petition to modify Resolution E-3843 to provide for equitable recovery of Historical Procurement Charge (HPC) obligations from direct access (DA) eligible customers.

- In its petition for modification, SCE proposed two methods for correcting inequities inadvertently caused by the HPC exception adopted in Resolution E-3843.
    - The **Proration method** computes a prorated or reduced HPC, reflecting payments the customer made while on bundled service towards the Procurement Related Obligations Account (PROACT) balance.
    - The **Lump Sum Payment method** allows customers to pay their HPC obligation in a lump sum, taking into account the customer's PROACT contributions while on bundled service during the PROACT recovery period, as well as the customer's HPC payments while on DA service.
- We find that both methods proposed by SCE would correct the inadvertent inequities caused by the HPC exception.

- We reject SCE's proposal not to provide refunds or bill credits to customers whose past contributions exceed their HPC obligations.
- We adopt SCE's proposal, consistent with Resolution E-3843, to adjust the effective CRS cap for partially HPC excepted customers to reflect the previously paid portion of the HPC.

II. Background

Resolution E-3843 implemented Rules for switching between DA and Bundled service that included a simple HPC exception.

In Resolution E-3843,[1] the Commission adopted implementation rules for the switching exemption that was authorized in D.03-05-034, as modified and affirmed in D.03-06-035.[2] To implement the switching exemption, the Commission in Resolution E-3843 adopted rules for eligible DA customers to switch between bundled and DA service and provided eligible customers on bundled service in early 2004 with an opportunity to return to DA or be committed to a 3-year term on bundled service.

Resolution E-3843 granted an HPC exception for customers returning to DA after the PROACT was fully recovered.

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[1] The Commission adopted Resolution E-3843 at its December 4, 2003 meeting.

[2] On October 22, 2003, the California Supreme Court summarily denied petitions for writ of review filed by The Utility Reform Network and SCE (Case Nos. S116614 & S117388) challenging the lawfulness of these two decisions.

We granted the HPC exception so that customers returning to DA after the PROACT was fully recovered would not have to pay twice for the same costs. In the absence of a specific proposed mechanism for weighting customer HPC responsibility based on PROACT contributions, the resolution adopted a simple HPC exception with no provision for partial payment towards the PROACT. Given that the HPC is included under the CRS cap, we determined in Resolution E-3843 that adjustment of the effective CRS cap for HPC excepted customers was preferable to developing an accelerated payment period for the other CRS charges (Resolution E-3843 at p. 10).

SCE petitioned for the modification of Resolution E-3843 to assess adopted HPC responsibility accurately.

On February 24, 2004, SCE filed a petition for modification of Resolution E-3843 to correct some inequities resulting from the HPC exception. As discussed below, SCE proposes modification to the resolution with respect to its determination of which DA eligible customers should be excepted from SCE's HPC. SCE's proposal also provides for a partial HPC exception for certain customers. No party protested SCE's petition for modification.

III. DISCUSSION

A. The HPC Exception created inequities.

In Resolution E-3843, we adopted an HPC exception for bundled customers returning to DA after July 18, 2003, the date on which the PROACT was fully paid off (OP 10). Thus, any customer returning to DA prior to that date would pay the full 1-cent HPC, even though the customer would have contributed to the PROACT as a bundled customer. Given the length of the

PROACT recovery period and the potential for customers to switch between bundled and DA service during that period, the simple exception granted in Resolution E-3843 inadvertently assigns HPC responsibility inequitably to certain customers. SCE in its application provides two examples that illustrate the extreme cases of over and under recovery. In the first example, a DA eligible customer would pay only a fraction of its adopted PROACT obligation, because the customer was on DA service for virtually all of the PROACT recovery period from September 1, 2001 through June 30, 2003 and then switched to bundled service for one month on July 1, 2003. This customer should not actually be excepted from the entire amount of the HPC when returning to DA service, because the customer has only contributed a small fraction of its share of the PROACT balance, either as a bundled or a DA customer. In the second example, the DA customer would pay far more than its share, because the customer was on bundled service for virtually all of the PROACT recovery period from September 1, 2001 through May 30, 2003, but then switched back to DA on June 1, 2003. This customer should not actually be held responsible for the entire HPC, because it contributed to a large portion of its share of the PROACT balance as a bundled service customer.

B. SCE proposes alternative methods that correct inequities.

In its petition, SCE proposes two methods for recovering HPC obligations that would correct the inequities resulting from the simple exception adopted in the resolution. DA-eligible customers would select one of these alternative HPC recovery methods based on their circumstances. SCE's proposed alternative methods reflect the customer's previous contributions to the PROACT and are thus more equitable to DA customers that spent different amounts of time on bundled service during PROACT recovery, as well as to

those DA eligible customers that returned or return to bundled service.[3] SCE's proposal prorates HPC responsibility accordingly for customers in order to avoid over or under charging customers on an ongoing basis. SCE's proposal contains no provision for refunds to customers that are found by these means to have already paid more than their adopted share. Therefore, in adopting SCE's proposal for assessing the HPC, we direct SCE to provide bill credits or refunds to any customer that has over paid.

1. The Proration method is reasonable.

In SCE's first proposed alternative method, the customer pays a reduced HPC to account for the time the customer contributed to the PROACT balance as a bundled service customer. A DA eligible customer that contributed to the PROACT balance through bundled service rates will pay a fraction of the HPC, computed as the ratio of the customer's time not on bundled service during the PROACT recovery period relative to the total PROACT recovery period. This fraction will be applied to the 1-cent/kWh HPC to derive a reduced HPC for the customer.

SCE's petition to modify the HPC exception adopted in Resolution E-3843 to provide a partial HPC exception to DA eligible customers is more equitable than granting a full exception only for customers returning to DA after July 18, 2003. Customers that contributed to the PROACT while on bundled service but returned to DA service prior to July 18 will, under the Proration method, benefit by receiving credit for those contributions. Other customers qualifying for a full

[3] Moreover, SCE proposes that both the proration and the lump sum alternatives be available to bundled service customers that spent time on both DA and bundled service during the PROACT recovery period.

HPC exception pursuant to Resolution E-3843 will instead pay a prorated HPC. SCE provided the Energy Division with a frequency distribution showing the prorated HPC that would apply to the 339 customers that would be HPC excepted pursuant to Resolution E-3843 but that would pay a reduced HPC using SCE's proposed Proration method.

Customers Affected by Prorated HPC

Prorated HPC in C/kWH	Number of Customers
0 to .05	2
.051 to .10	10
.101 to .15	5
.151 to .20	7
.201 to .25	9
.251 to .30	10
.301 to .35	5
.351 to .40	8
.401 to .45	7
.451 to .50	34
.501 to .55	141
.551 to .60	7
.601 to .65	11
.651 to .70	2
.701 to .75	13
.751 to .80	13
.801 to .85	36
.851 to .90	5
.901 to .95	9
.951 to 1.0	5
Total	339

We adopt SCE's proposed Proration method, because it ensures that customers pay their adopted share of the HPC and is therefore reasonable.

2. The Lump Sum Payment method is reasonable.

As an alternative to the reduced HPC, SCE proposes a Lump Sum HPC method for DA eligible customers that received bundled service during a portion

of the PROACT recovery period and have also paid the HPC as DA customers. SCE reasons that DA customers' paying 2.62 ¢/kWh during the entire PROACT recovery period would have fully paid their obligation at the same time as bundled service customers. Thus, the lump sum owed will be computed as 2.62 ¢/kWh times the customer's kWh DA usage during the PROACT recovery period, less any HPC charges paid by the customer. Additionally, PROACT contributions after the PROACT recovery period are increased by the adopted interest rate.

SCE further states that any lump sum payments received from DA eligible customers pursuant to this method will be credited to the HPC balancing account, resulting in an immediate reduction in the remaining balance of that account. All DA customers will benefit from the earlier ending of the HPC recovery of $473 million. We find SCE's proposed lump sum payment method, including the balancing account treatment, reasonable.

C. SCE shall return overpayments via a one-time refund or bill credit to applicable customers.

SCE's proposal requires modification to be equitable to customers that have contributed more than their share to the PROACT balance. SCE proposes that a customer be HPC-excepted when the sum of the PROACT amounts paid as a bundled service customer and the HPC paid as a DA customer is sufficient to cover the customer's total obligation. SCE does not propose to refund or provide a bill credit for any calculated HPC overpayment by the customer. We believe that a refund or a bill credit for overpayment is necessary and reasonable. Thus, we deny that part of SCE's petition for modification that does not provide for refunds or bill credits.

SCE shall file an advice letter within 45 days of the date of this Order to submit tariff changes required by this Order. In that advice letter, SCE shall describe a plan to issue a one-time refund or bill credit to all customers that have overpaid their HPC obligations. The refunds or bill credits shall commence within 90 days of the date of this Order. SCE shall provide to each customer receiving a refund or a bill credit, its calculations showing how the refund or bill credit was determined. SCE shall advise any master-metered customers among those receiving refunds or bill credits to distribute the refunds or bill credits to their submetered tenants according to Public Utilities Code Section 739.5(b).

D. The CRS cap applicable to customers paying a prorated HPC should be reduced to reflect customers' previous HPC contributions.

SCE's proposal to reduce the effective CRS cap by the amount of the appropriate reduction in the HPC is necessary to account for the customer's past partial or full payment of its HPC obligation. SCE's proposed cap method is consistent with the simplified approach adopted in Resolution E-3843 to assure that customers contribute at the same rate to the DWR Power Charge component of the CRS. The bond charge and the tail Competition Transition Charge are fully recovered under the cap, as is the HPC. The residual contributes towards DWR power costs. Resolution E-3843 adjusted the CRS cap applicable to HPC-excepted customers to avoid having customers contribute at different rates to the residual DWR Power Charge. Therefore, SCE's proposed application of the adopted CRS cap for customers fully or partially excepted from the HPC is reasonable and is adopted.

E. Resolution E-3843 is modified.

To incorporate the refinements discussed in the previous sections, Resolution E-3843 is modified as shown below.

The second full paragraph on page 10 is deleted and replaced as follows.

> "~~Since the PROACT is fully paid off, and SCE proposed no mechanism for weighting customer responsibility during brief periods of bundled service, bundled customers returning to DA after the PROACT was fully paid off will be excepted from the HPC.~~"
>
> "Full payment would have required the DA-eligible customer to be on bundled service over the full PROACT recovery period from September 1, 2001 through July 18, 2003. Some DA-eligible customers have received bundled service for part of the PROACT recovery period and thereby contributed to the PROACT balance and in some cases have also paid the HPC during periods on DA service. For some DA-eligible customers, the sum of their PROACT contributions as bundled customers and their HPC payments as DA customers may even equal or exceed their full share. Therefore, we adopt a refinement to HPC applicability. We adopt two alternative methods to determine and recover the appropriate amount of HPC from DA-eligible customers based on their past contributions to the PROACT. In the first method, the 1-cent HPC is prorated to account for the time the customer contributed to the PROACT balance as a bundled service customer. The second method computes a lump sum payment as 2.62 ¢ / kWh times the customer's kWh DA usage during the PROACT recovery period, less any HPC charges paid by the customer. (DA customers' paying 2.62 ¢ / kWh during the entire PROACT recovery period would have fully paid their adopted obligation at the same time as bundled service customers.) Additionally, PROACT contributions after the PROACT recovery period are increased by the adopted interest rate."

The last paragraph on page 10 is modified to read as follows:

> "We must also clarify how the 2.7-cent CRS cap applies to <u>customers that pay a Prorated or a Lump Sum</u> HPC ~~excepted customers~~. If ~~HPC-excepted~~ customers <u>that are fully or partially excepted from the HPC</u> pay the same capped CRS as other DA customers ~~when they return to DA~~, they would effectively contribute more revenues to DWR power costs than required of other DA customers. The

> portion of the one-cent HPC component not applicable to ~~for~~ fully or partially HPC excepted customers would be applied to another CRS cost component, e.g., the DWR power cost component. Thus fully or partially HPC-excepted customers' obligation for DWR power costs should rightfully terminate sooner than for other DA customers. No party has proposed a means of determining an appropriate and equitable accelerated CRS obligation for these customers, and the complexity of such an approach renders it impractical. Therefore, we will adopt a simplification and reduce the effective CRS cap applicable to fully or partially HPC excepted customers by the amount of the 1-cent HPC not applicable to the customer by the Proration or the Lump Sum method. These customers will thereby pay all applicable CRS components at the same rate as other DA customers. SCE shall modify its tariffs to reflect this."

IV. Comments on Draft Decision

The draft decision was issued pursuant to Public Utilities Code Section 311(g)(1). Pursuant to Article 19 of the Rules of Practice and Procedure, parties were permitted to review and comment on the draft decision.

Findings of Fact

1. On February 24, 2004, SCE filed a petition for modification of Resolution E-3843, adopted December 4, 2003. SCE's petition is A.04-02-028. SCE requested that the Historical Procurement Charge (HPC) exception be refined to account for customers' past contributions to the PROACT.

2. No party protested SCE's application.

3. Resolution E-3843 granted an HPC exception for DA eligible customers switching back to DA service after July 18, 2003, the date that SCE's PROACT balance was fully recovered.

4. The purpose of the HPC exception granted in Resolution E-3843 was to protect customers from double recovery of PROACT costs.

5. Given the length of the PROACT recovery period and the potential for switching between DA and bundled service during that period, the simple exception criterion adopted in Resolution E-3843 assigns HPC responsibility inequitably to certain customers.

6. A DA eligible customer on bundled service for some time during the PROACT recovery period that qualifies for the simple HPC exception by having switched to DA service after July 18, 2003 should not necessarily be excepted from the entire amount of the HPC. This is because the customer may have only contributed a fraction of its share of the PROACT balance, considering the sum of its contributions as a bundled and as a DA customer.

7. A DA eligible customer on bundled service for part of the PROACT recovery period that does not qualify for the simple HPC exception, having switched to DA before July 18, 2003, should not be held responsible for the entire HPC to the extent the customer contributed to the PROACT balance as a bundled service customer.

8. By SCE's proposed Proration method, the customer pays a reduced HPC, computed as the ratio of the customer's time not on bundled service during the PROACT recovery period relative to the total PROACT recovery period. This reduced HPC is to account for the time the customer contributed to the PROACT balance as a bundled service customer.

9. The Proration method proposed in SCE's petition for modification is reasonable.

10. By SCE's proposed Lump Sum Payment method, the customer's total obligation is computed as 2.62 ¢/kWh times the customer's kWh DA usage during the PROACT recovery period, less any HPC charges paid by the customer. Additionally, PROACT contributions after the PROACT recovery period are increased by the adopted interest rate.

11. The lump sum method proposed in SCE's petition for modification is reasonable.

12. SCE's petition to modify Resolution E-3843 contains no provision for bill credits or refunds to return overpayments to customers that have already paid more than their share of the HPC.

13. The lack of provision in SCE's petition for modification to correct customer overpayments of the HPC is not reasonable.

14. Customers that are fully or partially excepted from the HPC by the Proration or Lump Sum methods will contribute more than others to the DWR Power Charge component of the CRS unless the cap applicable to these customers is adjusted to reflect the full or partial HPC exception.

Conclusions of Law

1. SCE's proposed alternative methods for assessing the HPC on DA eligible customers, the Prorated HPC and the Lump Sum Payment method, assign HPC responsibility equitably.

2. SCE's proposal in its petition to modify Resolution E-3843 is not reasonable in that it contains no provision to return excess payments to customers if the lump sum payment calculation indicates an overpayment by the customer, and this part of the proposal should be rejected.

3. SCE's proposed adjustment to the effective CRS cap applicable to fully or partially HPC excepted customers is consistent with the simplification adopted in Resolution E-3843. It avoids distorting the amounts recovered from affected customers towards other CRS component charges.

4. The discussion in Resolution E-3843 should be modified as set forth herein.

O R D E R

IT IS ORDERED that

1. The alternative methods SCE proposes to determine and recover the appropriate Historical Procurement Charge (HPC) from Direct Access (DA) eligible customers based on their past contributions are adopted.

2. Finding 15 of Resolution E-3843 is modified as follows:

   15. ~~Since SCE has fully recovered its PROACT balance, an~~ A prorated HPC exception is warranted for DA-eligible customers that have been on bundled service ~~and elect to return to DA service during the 45-day notice period~~ to account for the time that the customer contributed to the PROACT balance as a bundled service customer. These customers should have an additional option of paying off their HPC obligation in a Lump Sum payment.

3. Ordering Paragraph 10 of Resolution E-3843 is modified as follows:

   10. SCE shall modify its tariffs to reflect the HPC Proration and Lump Sum Payment methods described in this Order. ~~exception we adopt herein for bundled customers returning to DA after the PROACT was fully paid off.~~ SCE shall return any payments that customers made towards the PROACT balance while on bundled or DA service that exceed the customer's HPC obligation. The effective CRS cap applicable to customers satisfying their HPC obligations by the proration or lump sum HPC methods shall be reduced by the amount of the 1-¢ / kWh HPC that does not apply by these methods.

4. The discussion section of Resolution E-3843 is revised as specified herein.

5. Within 45 days of the date of this Order, SCE shall file an advice letter to modify its tariffs to comply with this Order. SCE shall implement the requirements of this Order within 90 days of the date of this Order. The advice letter shall be effective as of the date filed, subject to the Energy Division's determining that the advice letter is in compliance with this Order.

6. In the advice letter filed in compliance with this Order, SCE shall describe a plan to issue a one-time refund or bill credit to all customers that have overpaid their HPC obligations. The refunds or bill credits shall commence within 90 days of the date of this Order. SCE shall provide to all customers receiving a refund or bill credit, its calculations showing how the refunds or bill credits were determined. SCE shall advise any master-metered customers among those receiving refunds or bill credits to distribute the refunds or bill credits to their submetered tenants according to Public Utilities Code Section 739.5(b).

7. The Executive Director shall serve this decision on parties of record in A.04-02-028 and Rulemaking 02-01-011.

8. A.04-04-028 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

July 20, 2004 Agenda ID # 3737

TO: PARTIES OF RECORD IN APPLICATION 04-02-028
AND RULEMAKING 02-01-011

Enclosed is the draft decision of Hearing Examiner Clanon. The decision will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission my act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its won decision. Only when the Commission acts does the decision become binding on the parties.

Parties my file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at http://www.cpuc.ca.gov. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages.

Parties filing comments should submit an electronic copy of their comments in WORD format to Kathryn Auriemma of the Energy Division at kdw@cpuc.ca.gov.

Finally, comments should be served separately on Hearing Examiner Clanon, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

_____
Angela K. Minkin, Chief
Administrative Law Judge

ANG:dlf

Enclosures

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the draft decision on all parties in these filings or their attorneys as shown on the attached list.

Dated June 20, 2004 at San Francisco, California.

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(a)
Jerry Royer

NOTICE

Parties should notify the Energy Division, Public Utilities Commission, 505 Van Ness Avenue, Room 4002 San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the Resolution number on the service list on which your name appears.