Decision **PROPOSED DECISION OF ALJ DEBERRY** (Mailed 5/10/2006)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) for Approval of a Power Purchase Agreement Between the Utility and an Affiliate and for Authority to Recover the Costs of Such Power Purchase Agreement in Rates.	Application 05-12-030 (Filed December 23, 2005)

(See Appendix A for list of appearances.)

OPINION APPROVING SETTLEMENT

Summary

Today, we approve a settlement agreement entered into by Southern California Edison Company (SCE) and all active parties in this proceeding.[1] The approved settlement agreement (Settlement Agreement)[2] resolves all disputed issues in Application (A.) 05-12-030 (Application), an application to approve a contract between SCE and Kern River Cogeneration Company (KRCC).

Although we adopt the Settlement Agreement as proposed by parties, we have modified two of the provisions. First, although the Settlement Agreement

[1] Active parties are the Division of Ratepayer Advocates (DRA); Aglet Consumer Alliance (Aglet); The Utility Reform Network (TURN); The California Cogeneration Council (CCC); and The Cogeneration Association of California (CAC). (Settling Parties.) (See, Appendix A.)

[2] *See*, Attachment A.

requests that we leave this proceeding open, or designate or open another proceeding for approval of similar QF contracts, we decline to do so. Instead, we direct SCE to file separate applications for Eligible QF[3] Party's non-standard contracts to the Commission for approval. Second, the Settlement Agreement provides that any above-market costs[4] associated with the KRCC Contract be allocated to SCE's ongoing Competition Transition Charge (CTC) revenue requirement. As explained below, we will not adopt this provision as not all parties who bear responsibility in paying ongoing CTC charges are represented in this proceeding. Therefore, SCE is directed to present its recommendation for the treatment of any above-market costs associated with the KRCC Contract, or similar QF contracts, in its annual Energy Resource Recovery Account (ERRA) and ongoing CTC revenue requirements proceedings.

Because the Settling Parties suggested these modifications at the request of the assigned Administrative Law Judge (ALJ), we believe the Settling Parties will agree to them. The Settling Parties should indicate in their comments to the proposed decision if they accept the modifications. If the modifications are unacceptable, we will send this matter back to the ALJ for further hearings.

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[3] As defined in the Settlement Agreement, Eligible QF parties are existing QFs located in SCE's service territory and whose firm capacity power sales contracts with SCE are set to expire before January 1, 2007, or have already expired.

[4] Market costs provide a benchmark for evaluating the reasonableness of utility procurement costs. (*See*, D.06-02-018, p. 6.)

Background

On December 23, 2005, SCE filed the Application and testimony for approval of the KRCC Contract.[5] On January 23, 2006, DRA protested the Application; on January 27, 2006, Aglet protested the Application and on January 30, 2006, TURN filed a response in support of the Application. On February 9, 2006, SCE filed a reply to DRA's and Aglet's protests.

ALJ Bruce DeBerry conducted a prehearing conference (PHC) on March 10, 2006, proposed an expedited schedule for the proceeding, and requested that parties participate in mediation. During the PHC, DRA and Aglet indicated continued objection to approval of the KRCC contract, and CCC raised concerns regarding the availability of similar contracts to other similarly situated QFs.

On March 22, Assigned Commissioner Geoffrey F. Brown issued a Scoping Memo and Ruling (Scoping Memo) which confirmed the categorization and need for hearing, defined the issues, and established an expedited schedule.

On March 29, 2006, DRA, Aglet and CCC served testimony. Aglet continued its objection to the KRCC Contract approval; DRA stated its support for the KRCC Contract, but stated objections regarding the contract negotiation process; CCC stated that although it did not take a position on approval of the KRCC Contract, CCC would address whether the KRCC Contract represented favorable treatment for a SCE QF affiliate, and on what basis SCE will make KRCC contract provisions and terms available to other QFs.[6]

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[5] KRCC, is owned 50% by an SCE affiliate and is a qualifying facility (QF) under the Public Utility Regulatory Policies Act of 1978. Currently, KRCC delivers power to SCE under a RSO-1 contract pursuant to Decision (D.) 04-01-050.

[6] *See*, Scoping Memo, p. 3, sub-issues D. and E.

On March 30, 2006, the Settling Parties attended mediation assisted by ALJ Peter Allen in an effort to settle their disputes, avoid evidentiary hearings, and reduce the expense of litigation. On April 3, 2006, SCE served its rebuttal testimony, and on April 4, 2006, DRA served its amended testimony.

On April 5, 2006, the Settling Parties reached an agreement settling all disputes related to this proceeding and the Application. Also, on April 5, 2006, an evidentiary hearing was held to receive the Settlement Agreement and respond to questions from the assigned ALJ regarding various provisions of the Settlement Agreement. Additional questions from the assigned ALJ were asked in a series of e-mail communications, which were made part of the record in this proceeding by an ALJ Ruling on April 26, 2006.

Following the April 5, 2006 hearing, SCE and Settling Parties filed a Joint Motion for Adoption of Settlement Agreement (Joint Motion).[7] The Joint Motion provides background for the Application, explains the terms of the Settlement Agreement and implementation, requests an expedited schedule, and explains how the Settlement Agreement meets Commission criteria for an All-Party settlement and satisfies Rule 51.1(e) of the Commission's Rules of Practice and Procedure (Rules), as further discussed below.

Terms of the Settlement Agreement

The Settlement Agreement addresses four issues to resolve all disputes among the parties: (1) the applicability of the approved KRCC Contract to other QF parties; (2) conduct by SCE for future negotiations with affiliate QF projects; (3) the allocation of any above-market costs associated with the KRCC Contract

[7] The Joint Motion is unopposed and is granted.

to SCE's ongoing CTC revenue requirement; and (4) agreement by the Settling Parties that the Commission should expeditiously approve the KRCC Contract.

The Settlement Agreement obligates SCE to engage in good faith negotiations with respect to five-year firm capacity power sales contracts with Eligible QF Parties. The Settlement Agreement defines the time limits for negotiations, provides for monetary sanctions for not negotiating in good faith, addresses procedures for future negotiations between SCE and its affiliates, and expresses the intent of the Settling Parties that the Commission should approve this Settlement Agreement using an expedited schedule.

Avoided Cost Methodology

Paragraph 8 in the Settlement Agreement provides that no party is precluded from advocating their view of avoided cost in Commission proceedings or in the negotiations contemplated by this Settlement Agreement. In Rulemaking (R.) 04-04-025, we are considering a comprehensive policy and method for determining avoided costs. Thus, our adoption of the Settlement Agreement in this proceeding does not prejudge our determination of avoided costs in R.04-04-025, and should not be construed as establishing any precedent on this issue.

Modifications to the Settlement Agreement

Should A.05-12-030 Remain as an Open Proceeding?

Paragraph 7(p. 3) of the Settlement Agreement states, in relevant part:

> "The Commission shall leave Application 05-12-030 open, or shall designate or open another proceeding, to provide Eligible QF Parties a means to bring their power sales contracts or issues regarding the negotiation of their firm-capacity power sales contracts with SCE to the Commission's attention and to allow

for consideration or approval of those contracts or disallowances or sanction, as determined by the Commission."

The California Legislature requires ratesetting and quasi-legislative matters generally to be resolved within 18 months of the issuance of the scoping memo ruling.[8] (See Pub. Util. Code § 1701.5.) Furthermore, § 1701.6 requires that the Commission annually report to the Legislature on the number of cases where resolution exceeded the time periods prescribed in scoping memos. These Legislative requirements argue against leaving this proceeding open indefinitely.

Alternatively, in an e-mail response to ALJ questions following the PHC,[9] Settling Parties indicated that if the Commission was reluctant to leave this proceeding open or to reopen the proceeding for receipt of Eligible QF Party non-standard contracts, Settling Parties were amenable to other procedural vehicles including separate applications for Commission approval of Eligible QF Party non-standard contracts. We believe that this alternative procedure can provide the means by which SCE can present Eligible QF Party non-standard contracts to the Commission for approval. Thus, we modify the relevant portion of paragraph 7 in the Settlement Agreement to read: "SCE shall file separate applications for Eligible QF Party non-standard contracts to the Commission for approval."

The Settlement Agreement section entitled *"Good Faith Negotiation Requirements and Conditions,"* which includes paragraph 7, provides assurance that Eligible QF Parties may negotiate contract terms similar to those provided in

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[8] *See*, Pub. Util. Code § 1701.5.

[9] *See*, ALJ Ruling on April 26, 2006.

the KRCC Contract. With this purpose in mind, we expect that our modification to paragraph 7 will not affect this section, and that SCE will enter into good faith negotiations with Eligible QF Parties.

Above Market Costs

Paragraph 13 of the Settlement Agreement states that:

> "SCE shall allocate any above-market costs of the KRCC Contract to the CTC component of its retail rates. SCE shall recover any above-market costs of the KRCC Contract through the CTC as authorized by the Commission."

Whether above-market costs will occur as a result of our approval of the KRCC Contract cannot be determined at this time. Further, customers of energy service providers, publicly owned utilities and other similarly situated parties who share in payment of ongoing CTC charges were not represented in this proceeding and are not parties to the Settlement Agreement. For example, municipal utility agencies and similarly situated parties share in payment of CTC, but are not represented as parties in this proceeding. Since the initial Application did not propose including any costs in ongoing CTC, it is understandable that parties who might have interests in ongong CTC charges did not participate. Because of this lack of notice, it would be unfair to adopt the Settlement Agreement's provision concerning the CTC.

The ALJ requested the Settling Parties alternative suggestions in response to this problem.[10] Using the Settling Parties' alternative suggestion, we have modified paragraph 13 to state:

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[10] *See*, ALJ Ruling on April 26, 2006.

> "SCE is directed to present its recommendation for the treatment of any above-market costs associated with the KRCC Contract, or similar contracts negotiated with Eligible QF Parties, in SCE's ERRA proceeding."

Since our modifications to the Settlement Agreement reflect alternatives suggested by the Settling Parties, we believe the purpose of the Settlement Agreement is unchanged.

Settlement Criteria

Parties to the proceeding have reached a global settlement of all disputed issues. In such cases, the Commission applies standards set forth in Rule 51.1(e) of the Commission's Rules to evaluate the proposed Settlement. This rule states:

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

The Settlement Agreement meets the criteria for a settlement pursuant to Rule 51.1(e), as discussed below.

The Settlement is Reasonable in Light of the Whole Record, Consistent With Law, and in the Public Interest

The Settlement Agreement is Reasonable in Light of the Whole Record

The prepared testimony and motion of the Settling Parties contain the information necessary to find the Settlement Agreement reasonable in light of the whole record.[11] Prior to the settlement, the Settling Parties conducted extensive

[11] Appendix B to this decision lists the exhibits of all parties which are part of the record in this proceeding.

discovery and the Settling Parties served detailed testimony on the issues related to the Application and the KRCC Contract.

The Settlement Agreement represents a reasonable compromise of the parties' positions. The prepared testimony of the Settling Parties is made a part of the Commission's record in this proceeding, and contains sufficient information for the Commission to determine the reasonableness of the Settlement Agreement.

The Settlement Agreement is Consistent with Law

The Settling Parties believe that the terms of the Settlement Agreement comply with all applicable statutes and prior Commission decisions, and reasonable interpretations thereof. In agreeing to the terms of the Settlement Agreement, the Settling Parties have explicitly considered the relevant statutes and Commission decisions and believe that we can approve the Settlement Agreement without violating applicable statutes or prior Commission decisions.

The Settlement Agreement is in the Public Interest

The Settlement Agreement is a reasonable compromise of the Settling parties' respective positions. The Settlement Agreement is in the public interest. It is in the interest of SCE's customers because approval of the KRCC Contract provides an opportunity for SCE's customers to receive 300 megawatts (MW) of firm power, 150 MW of which is baseload and 150 MW of which is dispatchable. The Settlement Agreement avoids the cost of further litigation, and reduces the use of valuable resources of the Commission and the parties.

The Settlement Agreement is an All-Party Settlement

The Settlement Agreement is an all-party settlement and satisfies the criteria set forth in Commission decisions on all-party settlements.[12]

In the All-Party Settlement Decision (A Settlement of San Diego Gas & Electric Company's 1993 General Rate Case), the Commission outlined four conditions that must be satisfied in order for the Commission to approve an all-party settlement. The sponsoring parties must show that:

a. The settlement agreement commands the unanimous sponsorship of all active parties to the proceeding;
b. The sponsoring parties are fairly reflective of the affected interests;
c. No term of the settlement contravenes statutory provisions or prior Commission decisions; and
d. The settlement conveys to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.[13]

The Settling Parties comprise all of the active parties in this proceeding and do not have knowledge of parties who contest the Settlement Agreement. Therefore, the Settlement Agreement commands the unanimous sponsorship of all active parties in this proceeding. The Settling Parties fairly represent the interests of the parties affected by the Settlement Agreement. DRA, Aglet and TURN represent ratepayer interests, CCC and CAC represent QFs, and SCE was represented by its staff and counsel. The terms of the Settlement Agreement, as modified, comply with all relevant statutes and prior Commission decisions.

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[12] *See*, D.92-12-019 (All-Party Settlement Decision).

[13] See, D.92-12-019, 46 CPUC 2d 538, 550-551 (1992).

We find that the prepared testimony and evidentiary record contain sufficient information for us to judge the reasonableness of the Settlement Agreement and for us to discharge any future regulatory obligations with respect to this matter.

Conclusion

For all of the foregoing reasons, we grant the Joint Parties' Motion and adopt the Settlement Agreement as modified herein.

Comments on Proposed Decision

Rule 77.7(g) of the Rules of Practice and Procedure provides that the 30-day comment period may be reduced upon the stipulation of all parties to the proceeding. All parties have stipulated to a five-day comment period and a five-day reply comment period. (Joint Motion.)

The Settling Parties should indicate in their comments whether they agree to the modifications to the Settlement Agreement.

Comments were received _____.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Bruce DeBerry is the assigned ALJ in this proceeding.

Findings of Fact

1. All parties have agreed to settle this case.
2. No party opposes approving the proposed Settlement Agreement.
3. The Settlement Agreement is the product of extensive discussions between the Settling Parties. Settling Parties entered into these discussions after extensive discovery, a complete review of the filed testimony, and after review of SCE's filed rebuttal testimony.

4. SCE, DRA, TURN, Aglet, CAC, and CCC, the Settling Parties, fairly reflect all affected interests in this proceeding. SCE represents the interests of its shareholders. DRA, TURN, and Aglet represent the interests of SCE customers. CCC and CAC represent QF parties.

5. The Settlement Agreement conveys sufficient information to permit the Commission to discharge its future regulatory obligations with respect to the parties and their interests.

6. The Settlement Agreement addresses four issues to resolve all disputes among the parties: (1) the applicability of the approved KRCC Contract to other QF parties; (2) conduct by SCE for future negotiations with affiliate QF projects; (3) the allocation of any above-market costs; (4) agreement by Settling Parties that the Commission should expeditiously approve the KRCC Contract.

7. The Settlement Agreement obligates SCE to engage in good faith negotiations with Eligible QF Parties with respect to similar QF contracts, and provides for negotiation time limits and sanctions.

8. Leaving this proceeding open indefinitely is contrary to Legislative requirements.

9. Allocation of any above-market costs of the KRCC Contract, or similar QF contracts, to the ongoing CTC would involve parties who are not participating in this proceeding.

10. Conducting a further proceeding would unnecessarily consume valuable resources of the Commission, SCE and other parties, and would delay, and possibly prevent, the realization of the benefits identified above pertaining to baseload and firm power available through the KRCC Contract.

Conclusions of Law

1. The Settlement Agreement fully resolves and settles all disputed issues, among the parties concerning SCE's Application in this proceeding.

2. The Settlement Agreement, as modified, we approve is reasonable in light of the whole record, consistent with law, and in the public interest.

3. The Settlement Agreement is an all-party settlement and satisfies the criteria for an All-Party Settlement.

4. The Settlement Agreement should be approved as modified herein.

5. This decision should be effective today so that the Settlement Agreement may be implemented expeditiously.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement, as modified herein, should be approved.
2. Paragraph 7 of the Settlement Agreement is modified as follows:

   "SCE shall file separate applications for Eligible QF Parties' non-standard contracts to the Commission for approval."

3. Paragraph 13 of the Settlement Agreement is modified as follows:

   "SCE is directed to present its recommendation for the treatment of any above-market costs associated with the KRCC Contract, or similar contracts negotiated with Eligible QF Parties, in SCE's ERRA proceeding."

4. Application 05-12-030 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A
LIST OF APPEARANCES

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(END OF APPENDIX A)

APPENDIX B

LIST OF EXHIBITS

Proceeding No.
A.05-12-030

ALJ
Bruce DeBerry

EXHIBIT INDEX

Exh. No.	Date		Sponsor/Witness	Description
	Ident.	Recd.		
1	4/5/06	4/5/06	So Cal Edison	Amended Application
2	4/5/06	4/5/06	So Cal Edison	Prepared Testimony-Public Version
3	4/5/06	4/5/06	So Cal Edison	Amended Prepared Testimony-Public Version
4	4/5/06	4/5/06	So Cal Edison	Rebuttal Testimony-Public Version
5	4/5/06	4/5/06	Calif.Cogeneration Council	Testimony of R. Thomas Beach
6	4/5/06	4/5/06	Division of Ratepayer Advoc.	Testimony of Rahmon Momoh-Public Version
7	4/5/06	4/5/06	Aglet Consumer Alliance	Direct Testimony
8	4/5/06	4/5/06	Aglet Consumer Alliance	Qualifications of Jan Reid
9-20	n/a	n/a	Not Assigned	
21	4/5/06	4/5/06	So Cal Edison	Prepared Testimony- Confidential Version
22	4/5/06	4/5/06	So Cal Edison	Prepared Testimony Appendices B-C / Confidential
23	4/5/06	4/5/06	So Cal Edison	Rebuttal Testimony- Confidential Version
24	4/5/06	4/5/06	Division of Ratepayer Advoc.	Amended Prepared Testimony of Rahmon Momoh-Confidential Version

(END OF APPENDIX B)