Decision 87 10 042

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's own motion into the uranium purchasing policies of California utilities. Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company, Respondents.	I.85-05-002 (Filed May 1, 1985)
In the Matter of the Application of Southern California Edison Company (U 338-E) for authority to change its energy cost adjustment billing factors to reflect payments made pursuant to settlements which terminate long-term uranium supply contracts with Homestake Mining Company and Bear Creek Uranium Company.	Application 86-02-005 (Filed February 3, 1986)

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Howard V. Golub and Shirley Woo, Attorneys at Law, for Pacific Gas and Electric Company; and John R. Asmus, Jr., Attorney at Law, for San Diego Gas & Electric Company, respondents.

William S. Shaffran and Leslie Girard, Attorney at Law, for John W. Witt, City Attorney, for City of San Diego; and F. E. John and T. D. Clarke, Attorneys at Law, and Gay Phillips, for Southern California Gas Company; interested parties.

Robert Cagen, Attorney at Law, Bill Y. Lee and Kenneth K. Chew, for the Public Staff Division.

OPINION

Summary of Decision

We find the respondents' uranium purchasing policies to be reasonable.

We deny Southern California Edison Company (Edison) recovery of a portion of the termination costs of its contract with the Bear Creek Mining Company.

History of Proceeding

On May 1, 1985, the Commission issued an Order Instituting Investigation (I.) 85-05-002 into the uranium purchasing policies of California utilities. Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E) and Edison were named respondents.

The respondent utilities were ordered to file reports regarding their past purchases and strategy for future purchases by June 28, 1985. After receiving an extension of time the respondents filed their reports by September 3, 1985.

On February 3, 1986, Edison filed Application (A.) 86-02-005 to recover the payments made to terminate its long-term uranium supply contracts with Homestake Mining Company (Homestake) and Bear Creek Uranium Company (Bear Creek). The terms of the termination of the contracts were negotiated by the parties. Along with the application Edison filed a motion to consolidate A.86-02-005 with I.85-05-002. An Administrative Law Judge's (ALJ) ruling dated March 12, 1986 consolidated A.86-02-005 with I.85-05-002.

Hearings began on August 6, 1986 before ALJ Garde. At the commencement of hearings, an issue arose between Edison and the Public Staff Division (PSD) of the Commission regarding the relevance of the activities of Mono Power Company (Mono) in evaluating the reasonableness of the termination of the Bear Creek contracts. On August 22, 1986, Edison filed a motion for a ruling regarding the relevance of Mono's activities; PSD and the City of San Diego (San Diego) filed responses in opposition to Edison's motion. On September 26, 1986, the ALJ ruled that a review of Mono's activities and its books and records was relevant to the determination of the reasonableness of the cost of the termination of the Bear Creek contracts. As a result of the ruling, the respondents and PSD filed additional direct testimony and subsequently Edison and SDG&E filed rebuttal testimony.

Hearings reconvened on February 7, 1987, and were concluded on February 19, 1987. The proceeding was submitted upon the receipt of concurrent reply briefs on May 22, 1987.

Scope of Investigation

The investigation was to focus on the following issues:

A. The price of uranium offered and sold in markets available to the respondents during each of the years 1980, 1981, 1982, 1983, 1984, and 1985, including the development of evidence pertaining to all available markets, with spot purchases and contract purchases.

B. Forecasts for the next ten years of the price of uranium in such markets.

C. The quantity of uranium which has been available, and forecasted for the next ten years to be available, in the markets discussed in A and B above.

D. A summary of all contractual obligations currently in force between respondents and their uranium suppliers, including discussion of price terms, escalation factors, quantities which may and must be purchased, termination dates and termination contingencies, and the other major terms of the contracts.

E. The prudence or imprudence of respondents' past uranium purchases (from 1980-1985).

F. The prudence or imprudence of respondents' contracts for purchase of uranium.

G. Respondents' plans and proposals for future purchases of uranium, and the contractual terms which will apply to planned purchases.

URANIUM MARKET CONDITIONS

PSD retained Colorado Nuclear Corporation (CNC) as a consultant to study the uranium market conditions. CNC presented reports entitled:

"Natural Uranium - Demand, Supply and Price - 1985/86"

and

"Trends in Uranium Supply Agreement Contract Terms 1970 to Present"

CNC and the respondents portray similar uranium market conditions. CNC reports depict the following market conditions:

Several changes occurred in the uranium market place during the 1970s. In the early 1970s and well into 1973, market conditions were reasonably stable and uranium[1] prices were in the the $6/pound (lb.) to $7/lb. range. There was a prohibition (established in 1966) against enriching uranium of non-U.S. origin for use in U.S. reactors, which effectively eliminated the importation of uranium.

Near the end of 1972, the Atomic Energy Commission (AEC) announced that it would not enter into enriching contracts with flexible terms. However, in May 1973 the AEC offered a long-term fixed commitment enriching contract. The contract called for long-term uranium purchase commitment by the buyer and allowed the buyer very little flexibility regarding rescheduling of deliveries.

The 1973 oil embargo by the Organization of Petroleum Exporting Countries caused a sudden increase in demand for uranium

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1 Uranium refers to uranium yellow cake or U_3O_8.

supplies. The increased demand quickly outgrew the available supplies.

In 1974, concern began to emerge regarding the sellers' ability to meet the growing demand. As a result of that concern, the AEC relaxed its limits on the importation of uranium. Specifically, the AEC announced that 10% of the feed for uranium enrichment in 1977 could be of foreign origin. The AEC also agreed to increase the limit of the percentage of foreign uranium to be enriched to 15% in 1978, 20% in 1979, 30% in 1980, 40% in 1981, 60% in 1982, 80% in 1983. There was no limit on the enrichment of foreign uranium in 1984 and after.

In September 1975, Westinghouse (a major supplier) declared that it would be commercially impractical for it to meet many of its uranium supply commitments. This added more concern as to the adequacy of future uranium supplies. Also in 1975, there were indications that the reprocessing of spent fuel and the recycling of recovered uranium and plutonium might not occur. These indications further increased the demand for natural uranium.

In the late 1970s, it became increasingly apparent that the forecasts of the extent of future use of nuclear power were considerably overstated. New orders for reactors stopped and a large number of reactors were deferred or cancelled. The uranium market turned around and became more of a buyer's market.

Thus, there have been several distinct eras in the commercial uranium supply industry since it began in the late 1960s. Through late 1973, activity was slow, excess production capacity left over from prior programs to provide uranium to the U.S. government was in place, and it was a buyer's market. Rather suddenly in late 1973 and 1974, as perception of a scarcity developed, the transition to a seller's market began. Perceptions of scarcity began to stabilize about 1977 as it became increasingly apparent that the projected demand for uranium was decreasing substantially. Also, during that time, foreign uranium producers were becoming increasingly active in the U.S. marketplace. Once again, it became apparent that the production industry had over-expanded. In the last several years, exceptionally high grade and/or large uranium deposits have been or are undergoing development in Canada and Australia, and there is an expectation of a plentiful supply of uranium in the foreseeable future.

One can follow these changes in the marketplace by observing the historic performance of the U.S. spot market price for uranium. From late 1973 until April 1976 the price (in constant dollars) increased very rapidly, from about $16.50/lb. in 1973 to a high of $72/lb. in April 1976. Then a gradual price decline began, slowly at first, then gaining increasing momentum. By the end of 1980 the spot price had dropped to $30.50/lb. The price decline continued and at the end of 1985, it was around $17/lb.

These severe changes in the uranium marketplace had their effect on utility fuel supply planning and policies. In the 1977 through 1978 period there was a great uncertainty regarding future uranium price trends. The availability of conventional uranium purchase contracts became very scarce. The concept of market priced contracts with a fixed minimum price evolved along with the concept of advance payments on future deliveries. A number of utilities became directly involved in the uranium production industry as a means of assuring future uranium supply at a more-or-less predictable cost. The terms of uranium purchase contracts executed during the period 1976-1979 were very rigid and allowed the buyer little flexibility regarding the right to change the amount of deliveries or reschedule the deliveries. Most contracts executed during that period did not have a provision for termination except for an extended force majeure.

Current Market Status

The uranium prices are expected to remain low in the near future as a result of the existing large uranium inventories, current excess production capacity and the expectation of further increases in production capacity in the late 1980s and early 1990s.

Worldwide uranium inventories are large and tend to delay the onset of shortage. In the U.S., inventories of excess uranium are estimated at a level of 2.5 years reactor requirements; for non-U.S. WOCA[2] it is about 1.75 years.

The contracted uranium supply for U.S. utilities is considerably less than for non-U.S. WOCA. The contracted supply (firm) for future U.S. deliveries is equivalent to 4.4 years of reactor requirements. For non-U.S. WOCA, the contracted supplies are equivalent to 9 years of reactor demand.

The unfilled requirements are expected to increase for U.S. utilities as well for the non-U.S. WOCA. Filling these needs will create much activity in the marketplace.

CNC expects the price of uranium to rise to $30/lb. (in January 1986 dollars) in 1992 and to stay at about that level through the 1990s. The projection of uranium imports also shows a gradual and steady rise, reaching 65% of total reactor demand in the early 1990s and saturating at that level.

The projections of uranium market conditions are based on the existing laws and may change as a result of any new laws passed by the U.S. government and/or the governments of countries supplying uranium for the U.S. market.

ISSUES

PSD reviewed the respondents' past uranium purchases in light of the market conditions existing at the time. Based on its review, PSD concluded that there was insufficient evidence to find

2 World Outside Communist Area.

any imprudence in respondents' actions. Therefore, PSD does not recommend any disallowance for past uranium purchases.

The only contested issues in the proceeding pertain to the renegotiation of two uranium purchasing contracts by PG&E and the termination of the Bear Creek and Homestake contracts.

PG&E CONTRACTS

Since the 1960s, PG&E has had four different uranium purchase arrangements. Its first contract was executed in 1968 with Union Carbide (Union). The contract was for the purchase of 4 million lbs. at $7/lb. to be delivered during the years 1970-73. In November 1973, PG&E and Union agreed to let Union have the option to defer deliveries of 152,000 lbs. from December 1973 to January 1974 at no additional cost to PG&E. Again in September 1974, PG&E granted Union another option to defer delivery of 152,000 lbs. from December 1974 to January 1975, at no extra cost to PG&E. Union exercised both these deferral options.

In December 1975, PG&E renegotiated the contract to terminate the 1975 delivery of 152,000 lbs. of uranium and to provide for the purchase of 305,000 lbs. for delivery in 1977 or 1978 at a firm price of $20.28/lb. This price was the weighted average of the 1975 contract price of $8.83/lb. for 152,000 lbs. and the market price of $23.50/lb. for 153,000 lbs. plus 12% carrying cost for two years deferral.

In August 1977, PG&E amended the contract to allow deliveries of 305,000 lbs. scheduled for 1977-78 to be deferred until either 1979/80/81 at Union's choice, and at no additional cost to PG&E.

In December 1980, the existing contract with Union was terminated and Union agreed to pay PG&E a $2.7 million fee on recognition of PG&E's agreement to a subsequent contract calling for the delivery of these 305,000 lbs. in 1985 at a firm price of

$53/lb. The $53/lb. represented the 1980 spot market price escalated at 16% per year for the four-year deferral. The $2.7 million payment represented the difference between the contract price of $20.28/lb. and the spot market price of $29.00/lb. PG&E's present value analysis showed this alternative to be $3.45 million less expensive than continuing the existing contract. PG&E, in a subsequent renegotiation, agreed to accept delivery of the 1985 quantity by March 31, 1983 and in return Union agreed to reimburse PG&E for its share of all PG&E's carrying costs resulting from financing the early delivery plus a premium of 2% on the financing expenses. Reimbursement was to continue from the date of payment for the material through November 30, 1985.

Intercontinental Energy Corporation (IEC) Contract

PG&E entered into contract with IEC on December 6, 1976. The agreement called for an advance of $12 million to IEC as payment which IEC would use to acquire and bring the Zamzow properties in South Texas into production. The agreement set a $40/lb. price for the first 843,750 lbs. of uranium delivered and for each pound thereafter the price was the fair-market value, less $5/lb., with a maximum price of $50/lb. and a minimum of $40/lb. Forty percent of the purchase price at the time of delivery was to be credited against prepayments of $12 million plus $1.5 million fixed imputed interest.

If IEC was unable to produce 843,750 lbs. by December 31, 1982, the contract called for IEC to turn over the deed of trust for the property to PG&E and also repay a pro rata portion of the prepayments up to a total of $3.25 million. If IEC was unable to produce uranium concentrates by in-situ leach techniques[3] by December 31, 1979, PG&E had the right to: (1) require IEC to mine the property using open-pit methods or (2) exercise its right of

3 A relatively new and unproven mining technology at the time the contract was signed.

foreclosure under the deed of trust. The agreement also called for IEC to sell to PG&E all uranium economically recoverable from the Zamzow properties by in-situ leach techniques at costs less than contract price.

In May 1978, the contract was revised whereby PG&E would pay $40/lb. in cash for the first 43,750 lbs. delivered with no credit for prepayment and for the next 750,000 lbs. delivered, $18/lb. would be credited against the $13.5 million principal and interest and $22/lb. would be paid in cash upon delivery. For the remaining 50,000 lbs. of the 843,750 lbs., PG&E would pay $40/lb. in cash upon delivery. This revised amortization schedule provided IEC with more funds in the near term but correspondingly speeded up the amortization of PG&E's $12 million advance and interest so that there was no increased cost to PG&E on a present value basis.

IEC completed the repayment of the obligation of $13.5 million to PG&E via credits against the deliveries of uranium to PG&E in 1982. Shortly thereafter, PG&E began discussions with IEC in an effort to seek the termination of the remainder of the contract.

In December 1984, PG&E agreed to termination of the contract after purchasing a total of 80,000 lbs. in 1985. The termination agreement called for a prepayment of $2 million payable in two equal installments at the end of February and June 1985. The prepayment was to be credited on a pro rata basis against the 80,000 lbs. delivered in 1985, which reduced the cash payment at time of delivery to $25 per lb. The effect of these changes was to increase the price of the 80,000 lbs. to $47.06/lb. in 1985 dollars.

As of July 31, 1985, PG&E has received approximately 32,000 lbs. of the 80,000 lbs. deliverable in 1985. The balance was expected to be delivered by January 31, 1986.

ARCO Contract

In 1975 PG&E entered into a contract with ARCO to purchase 125,000 lbs. per year for three years starting in September 1975. The pricing terms called for a minimum purchase price of $20/lb. for the first year, $22/lb. for the second year, and $24/lb. for the third year. However, the price payable was subject to change. The increase/decrease in price was limited to $1.40 per calendar quarter. The contract included a ceiling price of $35.40/lb. The delivery quantity was nominally 125,000 lbs. per year, but under the terms of the contract PG&E had the right to acquire any increased supply if production increased during the term of this contract since ARCO and its partners planned to double the size of their plant within the next three years.

In December 1976, the ARCO contract was assigned to U.S. Steel as part of their purchase of the ARCO properties. Subsequently, PG&E entered into a contract with U.S. Steel in November 1978 for the purchase of one million lbs. of uranium for delivery during 1979-1983 at market price at the time of delivery.

In August 1981, PG&E attempted to renegotiate the U.S. Steel contract. U.S. Steel was somewhat receptive because the contract price was tied to declining spot market prices. PG&E requested termination of deliveries of 156,250 lbs. in 1981 and 250,000 lbs. each in 1982 and 1983, for a total of 656,250 lbs. of uranium, which at the then current spot market price of $23/lb., equalled $15 million. U.S. Steel agreed to cancel the balance of the contract at $3.33/lb. which equalled $1,250,000. There was no basis for this termination charge since the contract was a market price contract and if terminated, U.S. Steel could sell the same quantity to another buyer at market price. PG&E therefore rejected U.S. Steel's proposal and elected to take the remaining deliveries under the contract. This contract ended when PG&E received the last deliveries.

Western Nuclear Contract

In September 1976, PG&E entered into a contract with Western Nuclear for purchase of 1,250,000 lbs. of uranium over the years 1978 through 1982 at the rate of 250,000 lbs. per year. The base price was $25/lb. with a clause for escalation beginning December 1974. PG&E tried to cancel this contract but Western Nuclear was unwilling to discuss cancellation. This contract ended in November 1982 when PG&E received the final delivery.

Pacific Energy Trust

On February 4, 1981 PG&E sold all of the previously purchased uranium to the Pacific Energy Trust (PET), its uranium financing trust, under a sale lease back agreement. PG&E transferred 3,286,531 lbs. of uranium during the initial transaction. It transferred an additional 2,172,571 lbs. through December 31, 1985.

PSD's Recommendations

PG&E has not requested recovery for any contract renegotiation payments made to IEC and Union. However, PSD auditor Hill believes that PG&E's renegotiated prices of $50/lb. and $53/lb. respectively were not the best available prices at the time and that the terms of renegotiations in fact included a termination charge. According to PSD, the difference in the renegotiated price and the NUEXCO[4] spot market price at the time the renegotiations occurred would represent the termination charge. PSD recommends a risk-sharing disallowance based on the ECAC/Annual Energy Rate

4 NUEXCO - one of the major uranium industry consultants that provide proprietary price information based on information received from clients which is indicative of the current market condition.

Prices of uranium purchased under long-term contracts which provide higher assurance of supply are available on a non-proprietary basis from the Department of Energy in its Survey of Uranium Market Analysis.

(AER) split for PG&E. Accordingly, PSD proposes to allocate 91% of the amount representing the termination charge to ratepayers and the remaining 9% to shareholders. In addition to the 9% risk-sharing disallowance, PSD recommends that of the remaining 91% of the amount representing termination charge, 91% be allowed ECAC recovery and 9% be allowed AER recovery.

In recommending its risk-sharing disallowance, PSD relies on Commission treatment of fuel oil sale losses in Decision (D.) 84-08-118. PSD also cites various Commission decisions in support of its risk-sharing recommendation. The cited decisions deal with allocation of fuel oil sale losses and termination costs of long-term oil supply agreements.

According to PSD, the Commission's allocation of contract termination costs between shareholders and ratepayers is based on the consideration of fairness and provides the utility an incentive to reduce fuel-related costs. PSD also believes that ratepayers should not bear the entire burden of fuel-related losses.

In case of the IEC contract, the termination cost would be the difference between the December 1984 NUEXCO spot price of $15.25/lb. and the negotiated price of $50/lb. PSD calculates the shareholders' share of termination cost to be $250,000. For the Union contract, the termination cost would be the difference between the March 24, 1983 NUEXCO spot market price of $22.25/lb. and the negotiated price of $53/lb. According to PSD's calculation, the shareholders' share of the termination cost would be $844,087. PSD recommends that the shareholders' share of the termination costs for both contracts along with AFUDC[5] and carrying costs be removed from PG&E's ECAC balancing account.

5 Allowance for Funds Used During Construction - an item not normally associated with ECAC balancing accounts.

Even though PSD believes that PG&E did not renegotiate the best deal possible, it does not recommend any disallowance based on imprudence.

PG&E's Position

PG&E contends that its uranium contracts should be judged in light of the conditions existing at the time they were negotiated and executed and should not be held to an absolute measure based on spot market prices. According to PG&E, Hill has used the spot market prices at the time of delivery as the standard for evaluating the reasonableness of changes in the IEC and Union contracts, even though the contracts originally were negotiated as long-term contracts in very different historical markets. In so doing, maintains PG&E, he assumed that the renegotiations could start from a clean slate, as if there were no existing contracts affecting the parties. Hill's use of spot price as the "best price available", according to PG&E, is arbitrary.

PG&E further contends that instead of considering the impact of the renegotiations in its totality, Hill has relied solely on one isolated element of the changes in the terms of the contracts in making his recommendation. PG&E maintains that the renegotiated terms of the contracts resulted in savings for the ratepayers.

PG&E argues that it was in no position to renegotiate the contracts on its own terms and that it could not demand the remaining deliveries at a reduced spot price. According to PG&E, Hill's position is unduly simplistic, ill-advised, and out of touch with the reality of the commercial market place.

As to Hill's recommendation to remove his recommended disallowances from the ECAC balancing account, PG&E points out that the costs in question are not in the balancing account but in PET. PG&E submits that Hill's proposed approach is not only inconsistent with sound regulation, but further demonstrates his total lack of understanding concerning the Union and IEC contracts.

Discussion

We note that PG&E executed the Union and IEC contracts during a period when buyers were allowed little flexibility in negotiating terms. Therefore, we agree with PG&E that it had a very limited ability to renegotiate the contracts on its own terms and that it is unreasonable to expect it to renegotiate the long-term contract prices to the level of prevailing spot market.

In considering PSD's recommendation of risk sharing, we have to establish whether the difference in renegotiated price per pound for a portion of the contracted deliveries and the prevailing spot price is in fact a settlement payment. We note that the terms for restructuring the IEC and Union contracts contain other clauses besides the final deliveries at higher than spot prices. We believe that the terms of renegotiation should be considered in their totality in order to evaluate their impact. The restructuring of the contracts resulted in overall savings to the ratepayers. Indeed the restructuring for either contract was not a true termination. The contractual relationship continued between the parties. The contract renegotiations allowed PG&E to alter deliveries of uranium without any net additional cost. Therefore, we do not believe that the difference between the renegotiated price and the existing spot market price is in fact a termination charge. We will, therefore, not adopt PSD's risk-sharing recommendation.

EDISON'S CONTRACTS

During the 1980-1985 period, Edison purchased uranium from Bear Creek and Homestake for use in the San Onofre Nuclear Generating Station.

Also during that period, through a uranium contract between Arizona Public Service Company (APS) and Anaconda Company, Edison purchased uranium for use in Palo Verde Nuclear Generating

Station (Palo Verde). APS was acting as agent for the participants in the Palo Verde joint venture. APS also made a small spot purchase from Allied Chemical Company to supply a portion of the Palo Verde uranium requirement.

In February 1976 Edison executed a long-term uranium supply agreement with Rocky Mountain Energy Company (RMEC)[6]. In June 1977, this agreement was assigned to Bear Creek, a partnership of RMEC and Mono. Also in June 1977, a second contract was executed with Bear Creek. The second contract was identical to the first and was negotiated contemporaneously[7].

Under the Bear Creek contracts, the deliveries were scheduled from 1977 to 1989. The uranium was to be priced at the market price or a minimum price of $32.50/lb., whichever was higher. The minimum price had an escalation clause which allowed the recovery of any increase in production costs while maintaining a 12.5% return on investment.

Mono is a wholly owned subsidiary of Edison and receives a majority of its funding and revenues through the Energy Exploration Development Adjustment (EEDA) component of Edison's fuel costs. Under the EEDA program utilities are permitted to recover in rates those project expenses which are justified. Edison recovers costs for its exploration and development programs through the Edison-Mono Fuel Service Agreement.

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6 The obligation and responsibilities of buyers under this contract are divided between Edison and SDG&E on an 80%/20% basis, respectively. Edison's obligations are further divided between Edison and the Cities of Anaheim and Riverside (Cities) on a 95%/5% basis, resulting in a net obligation to Edison of approximately 76%.

7 The obligation and responsibility of this contract are divided between Edison and the Cities on a 95%/5% basis, respectively.

The Bear Creek contracts were signed with both Edison and SDG&E. Edison acted as an agent for SDG&E in these contracts.

In January 1977, Edison executed a long-term supply contract with Homestake[8]. The contract was for the delivery of 2,500,000 lbs. of uranium, which was to be priced at the market price or a minimum price of $35/lb., whichever was higher. The minimum price had an escalation clause similar to the one in the Bear Creek contract.

In order to protect against a downturn in the future market price in both the Bear Creek and Homestake contracts, terms were negotiated which would permit the buyer to terminate the contracts in the event specific conditions were met. In the case of Homestake contract, the buyers could terminate the contract after one-half of the scheduled deliveries had been made with payment of a fee set forth in the contract. In the case of the Bear Creek contract, the arrangement could be terminated in the event of a gross inequity. A formula upon which gross inequity was supposed to exist was included in the contract. Upon termination, the buyers were required to reimburse Bear Creek for unrecovered investments and costs incurred in shutting down the mining operation. The buyers, however, were not responsible for lost profits.

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8 The obligations and responsibilities of buyers under the contract are divided between Edison and SDG&E on an 80%/20% basis, respectively. Edison's obligations are further divided between Edison and the Cities on 95%/5% basis, resulting in a net obligation to Edison of approximately 76%.

SDG&E'S CONTRACTS

SDG&E had only two long-term uranium purchase contracts during the review period 1980 through 1985. These two contracts were jointly executed by SDG&E and Edison with Bear Creek and Homestake. SDG&E's share of the contracts has been discussed earlier.

Termination of Contracts

In the 1980s Edison assessed from time to time the economics of continuing the contract or of terminating it under the gross inequity provisions. Beginning with the 1981 purchases, Edison negotiated price reductions for the years 1981 through 1984.

In 1984, Edison began discussing with RMEC termination or modification of the contract. In January 1985, Edison declared to RMEC that gross inequity then existed under the contract. After further negotiations, in July 1985, buyers entered into settlement agreements with Bear Creek terminating the contract. Under the settlement agreements, buyers agreed to make a termination payment of $74.8 million to Bear Creek, with a $4.5 million contingency for complete reclamation.

The allocation of the termination costs among Edison, SDG&E, and the Cities for the two Bear Creek contracts is as follows:

First Contract
(Million $)

Payment Date	Edison	SDG&E	Cities	Total
8/5/1985	$13.66	$3.6	$0.74	$18.00
7/1/1986	11.15	2.94	0.61	14.70
7/1/1987	3.57	0.94	0.19	4.70
	28.38	7.48	1.54	37.40

Second Contract

Payment Date	Edison	Cities	Total
8/5/1985	$17.07	$0.93	$18.00
7/1/1986	13.94	0.76	14.70
7/1/1987	4.46	0.24	4.70
	35.47	1.93	37.40

Edison's total share of the Bear Creek settlement payments is $63.9 million; SDG&E's share is $7.48 million.

In addition, if Bear Creek is unsuccessful in obtaining regulatory approval for a lower cost partial backfill method of reclaiming the final major open pit at the mine, and a complete backfill is required, buyers are obligated to pay an additional $4.5 million plus escalation to the date of payment. Edison's share of this payment is $3.8 million.

Edison also entered into a termination agreement, effective December 31, 1984, with Homestake. Under the agreement, buyers agreed to pay Homestake a termination payment of $19.2 million. Edison paid its share of $18.2 million for the termination of the Homestake contract in June 1985; the balance of $988,000 was to be paid by the Cities. SDG&E settled its Homestake contract differently than Edison. In June 1985, SDG&E signed a renegotiated contract calling for delivery of 295,000 lbs. of uranium from Homestake. SDG&E contends that it agreed to take delivery of the uranium because it had near-term unfilled need for approximately 305,000 lbs.

In A.86-02-005 Edison requests authority to recover the following amounts of the termination payments:

1. Ninety-eight percent of the California Public Utilities Commission (CPUC) jurisdictional portion of the $18.23 million termination payment made to Homestake on June 3, 1985, plus interest.

2. Ninety-eight percent of the CPUC jurisdictional portion of the $30.73 million termination payment made to Bear Creek on August 5, 1985 plus accrued interest.

3. One hundred percent of the CPUC jurisdictional portion of the $25.98 million termination payment to be made to Bear Creek on July 1, 1986.

4. One hundred percent of the CPUC jurisdictional portion of the $8.02 million termination payment to be made to Bear Creek on July 1, 1987.

5. One hundred percent of the CPUC jurisdictional portion of the $3.8 million payment, escalated to the date of payment to be made to Bear Creek in the event a total reclamation of the open pit mine is required.

The termination payments which have already been made to Homestake and Bear Creek were recorded 98% in Edison's ECAC balancing account in accordance with the procedures in effect at the time the payments were made. Edison requests that all future payments be reflected in its ECAC balancing account.

In D.85-12-104 SDG&E was authorized to recover its share of the Bear Creek termination costs of $7.48 million in the ECAC rates. The rate increase was subject to refund pending a review in this proceeding of the reasonableness of the termination conditions.

PSD's Recommendation Regarding Edison
<u>and SDG&E Contract Terminations</u>

PSD's auditor Grove reviewed the contract terminations. Based on his review, Grove recommends that Edison be allowed to recover only $44.6 million of the Bear Creek settlement in rates. Grove recommends the following four adjustments to the $63.9 million Bear Creek settlement costs:

1. Adjustment for $5.9 million worth of assets sold to RMEC by Bear Creek.

2. Adjustment for reclamation credits already collected by Bear Creek in the price of uranium which it had sold.

3. An adjustment of $1.35 million based on a joint audit by Edison and SDG&E which concluded that they had been overbilled by Bear Creek.

4. A 10% risk sharing disallowance, based on Edison's ECAC/AER split, on the remaining $49.5 million of the settlement cost.

Adjustment For The Sale of Assets

During 1985, Bear Creek sold RMEC certain equipment for $5,902,000. RMEC bought the equipment for use in the reclamation work. The purchase price of the assets sold was $21,185,000. PSD recommends that the $5.9 million revenues from sale should be used as a reduction to the termination settlement costs.

PSD contends that neither Bear Creek nor Mono obtained a market valuation or appraisal of the net worth of the assets and that the assets were sold at below their market value. In addition, maintains PSD, there was no provision in the sale agreement to recognize the salvage value of the assets. PSD also recommends that Edison and Mono be required to obtain outside appraisals on all assets with estimated value in excess of $1,000,000.

PSD asserts that it made a spot check of equipment to ascertain its salvage value. Grove telephoned the Wyoming Machinery Company, which had originally sold the earth moving equipment to Bear Creek. The Wyoming Machinery Company sales manager told Grove that the assets in question still had a wholesale value of 50% of the original price and that the salvage value of assets would range from $150,000 to $300,000.

Edison contends that there is no basis for disallowing $5.9 million from the settlement amount of $74.8 million which even Grove concurs was a reasonable amount to pay to terminate the Bear

Creek contract. PSD's proposal would cause Edison to recover $5.9 million less than the reasonable amount to terminate the contract.

Edison maintains that Mono's actions as a seller of uranium are not properly at issue in this proceeding; those matters should be reviewed in the EEDA wind-down proceeding. Edison claims that despite the premature introduction of the issue, it has clearly demonstrated that Mono's agreement with RMEC relieving Mono of further responsibility for the reclamation work was reasonable and in the best interest of the ratepayers.

Edison believes that in order to do the reclamation work for the price Edison agreed to pay in the settlement, RMEC required the use of the machinery and equipment owned by the Bear Creek partnership. According to Edison, PSD's allegation that the assets had more value than the price for which Mono sold them is irrelevant. Edison believes that the important determination is what the value of the equipment will be after the reclamation work is complete since the plan had been to continue to use the equipment to perform the reclamation work. According to Edison witness Clisby's testimony, there will be no salvage value for the equipment after the reclamation is complete.

Edison contends that PSD's "policy recommendation" regarding appraisal requirement, is unnecessary because such an appraisal is required by D.84-09-078.

Discussion

We disagree with Edison's contention that Mono's actions as a seller of uranium are not properly at issue in this proceeding. We affirm the ALJ's ruling of September 26, 1986, which found a review of Mono's activities relevant to the determination of the reasonableness of the termination costs of the Bear Creek contracts.

We agree with PSD that Bear Creek should have obtained a market valuation of the equipment sold to RMEC. Although Edison claims that $5.9 million was a reasonable price for the assets sold to RMEC, it has not provided convincing evidence in support of its claim.

Edison has also failed to demonstrate that the equipment will have no salvage value after the reclamation work is complete. PSD through its contact with The Wyoming Machinery Company has provided sufficient evidence that the equipment would have some salvage value after reclamation work is completed. If RMEC sells the equipment after reclamation, it will benefit from the sale proceeds.

It appears that Bear Creek sold the equipment for less than its net worth. Also, the sale agreement did not have a provision for any salvage value. Therefore, an adjustment to Bear Creek contract termination cost is justified. However, we do not believe that the entire sale amount should be disallowed because that would imply that the assets were sold for half their worth. The record does not provide adequate information to make that conclusion. In the absence of such information, we will adopt one-half or $3 million of the PSD's recommended disallowance.

The Joint Audit Adjustment

In 1981, auditors from Edison and SDG&E conducted an audit of the Bear Creek transactions. The auditors concluded that Bear Creek had overbilled Edison and SDG&E by $3,593,000 for the years 1976 through 1980. The overbilling pertained to the interpretation and calculation of the minimum base price specified in the contract.

Edison took the position with RMEC that a realistic settlement of the contractual differences would have been a $1.5 million reduction to the 1976 through 1980 overbillings. The PSD auditor reviewed the audit and the correspondence between the parties on the claim. He concluded that Edison's claim had been reasonable.

RMEC refused to accept Edison's claim. Edison dropped the claim because RMEC said it would not grant price concessions for 1982 through 1984 if Edison insisted on pursuing its $1.5 million claim.

RMEC agreed to a number of the audit findings, but the method for resolving the differences would have been through legal arbitration. Since Edison had achieved price reductions during 1983 of over $1.5 million, it decided not to pursue the audit issue any further.

PSD contends that Edison was justified in making its claim for adjustment for overbilling and that the ratepayers should not pay for the overbillings just because Edison chose to drop its claim.

Edison claims that it thoroughly investigated the audit findings and vigorously asserted its claims to RMEC. According to Edison, RMEC disagreed with the findings of the joint audit and asserted that, in fact, there had been $1.1 million underbilling. RMEC suggested that the underbillings be treated as additional discounts, by Edison and SDG&E, to the discounts from minimum price already granted in 1981.

Edison believes that it would have been unwise for it to pursue arbitration because it would have jeopardized price reductions far exceeding the $1.5 million in question. Edison also points out that there was a potential risk of the arbitrator ruling in favor of RMEC, thus exposing the ratepayers to $1.1 million in additional charges.

Edison further believes that even if had been successful in arbitration, the $1.5 million of claimed overbillings would most likely have been deducted from future price concessions that it might have received. In Edison's judgment, it was in the best interest of the ratepayers to pursue further price reductions rather than the audit issue, and that is what it did and achieved a savings of over $16 million. Edison contends that the termination negotiations addressed the resolution of all outstanding issues including the audit issue. Edison asserts that the audit issue was in fact explicitly identified during the termination negotiations.

Discussion

Based on the information available to Edison, its decision to pursue further price reductions rather than the audit issue was sound. RMEC had claimed that contrary to Edison's claim of overbilling, there had in fact been an underbilling of $1.1 million. There was a risk involved in taking the audit issue to arbitration. Even if Edison had succeeded in asserting its overbilling claim, the amount most likely would have been deducted from the price concessions. Therefore, we believe that Edison acted prudently in settling the issue and PSD's recommended disallowance is not justified.

Adjustment for Reclamation Reserve

PSD recommends the Bear Creek termination settlement costs be reduced by $7,834,393 to reflect an adjustment for a reclamation credit. Edison's share of this reclamation adjustment is $7,051,000, SDG&E's share is $783,000.

The State of Wyoming, where the Bear Creek mines are located, requires that open pit mines be restored to original or near original condition after the mine is closed.

The price of uranium sold under the Bear Creek contract explicitly contained a component to pay for reclamation costs. From 1977 to contract termination in 1985, the buyers' purchases accumulated the following credits for reclamation:

Year	Amount of Uranium Purchased (000's lb.)		Pass-Through Cost Factor	Potential Reclamation Credit
1977	229	x	$0.168	$ 38,472
1978	619	x	1.206	746,514
1979	576	x	1.381	795,456
1980	614	x	1.381	847,934
1981	1,007	x	1.381	1,390,667
1982	614	x	1.381	847,934
1983	624	x	1.381	861,774
1984	542	x	1.381	748,502
1985	265	x	5.876	1,557,140
			TOTAL	$7,834,393

PSD contends that there is no evidence that the $74.8 million settlement cost for the Bear Creek contract includes an allowance for this reclamation credit. Ratepayers of Edison and SDG&E have already paid $7.8 million for reclamation of the mine.

In support of its position PSD refers to Exhibit (Ex.) 50, which is a letter dated February 11, 1983 from RMEC to Edison detailing Bear Creek's 1983 budget. The letter shows a breakdown of 1983 prices and how those prices were expected to meet budget costs. In that letter RMEC allocates $3/lb. for "final reclamation accrual", defined there as "allocation of final reclamation costs over all remaining Bear Creek pounds".

According to PSD, this letter demonstrates that RMEC knew that Bear Creek uranium sales included a component for reclamation. However, maintains PSD, RMEC changed its position during settlement negotiations when it claimed that price reductions which it had given to Edison for the years 1982 through 1984 had destroyed the reclamation credit.

PSD argues that RMEC never changed or "corrected" the position about the uranium pricing and the inclusion of reclamation allowance found in Ex. 50. RMEC changed its position regarding reclamation credits as part of its negotiating stance after Edison claimed reclamation credits. PSD maintains that if the price reductions for the years 1982-1984 had really destroyed reclamation credits, RMEC would have said so in Ex. 50. According to PSD, Edison's claim that the termination settlement reflects its claim for reclamation credits is simply wrong.

Edison claims that it did consider reclamation adjustment as part of the alternate termination settlement. According to Edison, it recognized that it would have great difficulty in overcoming RMEC's position regarding reclamation credits before an arbitrator, but nonetheless it strongly asserted its position during negotiations. Edison asserts that its negotiated termination was achieved at the lowest cost, and represented a better outcome than would have resulted from termination under the specific contract terms. Edison maintains that any further downward adjustment to the settlement costs for reclamation credits would double count its value.

According to Edison, even if PSD's assertion is assumed to be correct, it fails to consider offsets for reclamation work already performed. Edison claims that approximately $7.9 million of reclamation costs were estimated to be incurred by Bear Creek at the time of termination.

San Diego claims that PSD has understated the reclamation credits for 1983 and 1984, because it used a credit of $1.381/lb. for uranium sold. According to Ex. 50, RMEC collected $3/lb. for reclamation in 1983 and 1984. Therefore, the actual amount of reclamation credits collected during the lifetime of the contract was $9,802,117 rather than $7,834,393.

San Diego claims that Attachment 3 to Ex. 49 clearly shows that, as of June 30, 1985, Bear Creek had spent $4,881,592 for reclamation work. Therefore, San Diego recommends that the disallowance for reclamation credits should be $4,920,525 ($9,802,117-$4,881,592).

Discussion

The record clearly supports PSD's assertion that the price of uranium sold under the Bear Creek contract contained a component to pay for reclamation costs and that Bear Creek had collected a reclamation credit reserve.

We agree with PSD that Edison has not provided any convincing evidence that the termination settlement includes an allowance for reclamation credits collected by Bear Creek. Edison claims that it asserted the reclamation credit claim during the settlement negotiations but that it recognized that it would have had great difficulty in overcoming RMEC's position that the reclamation credits were destroyed by the price reductions for 1982-1984. We agree with PSD that if RMEC had intended to use the reclamation charges to offset the price reductions it granted in 1981, it would have clearly indicated that in Ex. 50.

Edison claims that Bear Creek had incurred an estimated $7.9 million in reclamation costs at the time of termination of the contracts. However, the balance sheet contained in Attachment 3 to Ex. 49 shows that as of June 30, 1985 only $4,881,592.64 had been expended on reclamation work. This figure was confirmed by Edison's witness Clisby during his cross-examination.

We agree with San Diego that as provided for in Ex. 50, the reclamation credits for 1983 and 1984 should be computed at the rate of $3/lb., instead of the $1.381/lb. used by PSD. Using the $3/lb. rate for reclamation credits for 1983 and 1984 the total reclamation credit through the life of the contract would be $9,802,117. Therefore, we note that Bear Creek had collected $9,802,117 for reclamation through June 30, 1985 and had expended only $4,881,592. Edison has not demonstrated that the contract termination settlement costs include an allowance for the remaining

$4,920,525 of reclamation credits. Therefore, the Bear Creek contract settlement costs should be reduced by $4,920,525.

Risk-Sharing Adjustment

PSD recommends applying a 10% risk-sharing disallowance to the termination costs remaining after the adjustment for the previously adopted disallowances. The 10% disallowance is based on Edison's AER/ECAC split. PSD recommends a similar 8% risk-sharing disallowance for SDG&E.

PSD cites various Commission decisions in support of its recommendation. The cited decisions deal with allocation of fuel oil sale losses and termination costs of long-term oil supply agreements.

According to PSD, the Commission's allocation of contract termination costs between shareholders and ratepayers is based on the consideration of fairness and provides the utility an incentive to reduce fuel-related costs. PSD also believes that ratepayers should not bear the entire burden of fuel-related losses.

PSD claims that it has lingering doubts about Edison's transactions. PSD cites Commission's "lingering doubts" about the reasonableness of the PG&E-Chevron settlement as an additional reason for its cost allocation between ratepayers and shareholders in D.84-12-033.

PSD maintains that in other decisions ordering risk sharing, the Commission has rejected the utilities' claim that risk sharing is a perverse incentive and that it is an automatic disallowance of prudently incurred expenses. PSD claims that no party in this proceeding has shown that risk sharing acts as perverse incentive. PSD points out that Edison's witness testified that he did not analyze how Edison's uranium contract settlements were influenced by the question of whether the Commission would apply risk sharing.

PSD believes that risk sharing fairly divides costs occurring from changed conditions and also sends a signal to utilities to reduce their costs and therefore remains a good goal to be applied to termination costs in this proceeding.

San Diego supports PSD's position regarding risk sharing for basically similar reasons.

Edison contends that risk sharing as traditionally defined and applied by the Commission is a procedure which affords an opportunity to a utility to recover more or less than its prudently incurred costs based upon some fair, objective and predetermined standard. According to Edison, the AER mechanism, The Nuclear Incentive Procedure (Target Capacity Factor), and the Coal Plant Incentive Procedure are good examples of risk-sharing mechanisms because they pre-establish the objective standard. PSD's recommended risk sharing is applied retroactively to costs already incurred and is nothing less than automatic disallowance.

Edison maintains that PSD fails to recognize that the Commission adopted risk sharing in those limited instances where it could not attach a specific dollar disallowance to an action or actions of a utility. There is no case, Edison claims, where the Commission has applied both a specific disallowance for imprudence or unreasonable conduct as well as risk sharing to the same cost.

According to Edison, PSD does not find anything regarding the termination settlement to be unreasonable; this is particularly true for the termination of the Homestake contract.

Edison claims that PSD's risk-sharing proposal does not have a valid basis and is contrary to sound regulatory principles and therefore, should be rejected.

SDG&E supports Edison's position regarding the risk sharing disallowance for basically the same reasons.

<u>Discussion</u>

PSD correctly points out that the Commission has allocated to shareholders the utility's AER percentage of oil oversupply costs in several other proceedings. Shareholders have been required to pay the AER percentage of oil sales losses, underlift payments, and carrying cost of excess oil inventory. The Commission repeatedly has found that ratepayers should not bear all the costs of long-term fuel oil supply agreements and has assigned the company's AER percentage of these costs to its shareholders.[9]

PSD witness Grove has testified that his risk sharing proposal is not a policy recommendation. Rather, he claims that his recommendation is based upon the "cloud of doubt" he has about certain terms of settlement of the Bear Creek contract. Although he has no specific doubts about the terms of settlement of the Homestake contract, Grove described the bases for his Homestake risk sharing disallowance as follows:

> "Q. Why did you make a similar recommendation for the Homestake termination costs?
>
> "A. Because in comparison to the total dollars associated with the Bear Creek termination, it was much easier and more consistent just to add that on and use that one consistent method for the two contracts.
>
> "Q. So it's simply for the sake of consistency? There's no specific relationship with Mono that you would base the 10 percent disallowance of Homestake's cost on; is that correct?
>
> "A. Yes."

Since PSD has recommended specific adjustments to the Bear Creek settlement costs, the circumstances of this case are different than in other cases in which an AER percentage disallowance has been made. We have addressed each of those issues and made appropriate disallowances. We believe that the disallowances ensure that ratepayers are required to pay only the

9 In D.84-08-118 The Commission required PG&E's shareholders to absorb 9% of expected losses from the sale of excess fuel oil. In D.85-12-104 the Commission required SDG&E's shareholders to pay 8% of underlift payments.

prudently incurred costs for the contract settlements. Any further risk sharing disallowance is not justified.

According to PSD's opening brief, its risk sharing recommendation is based on the Commission's policy regarding the treatment of such costs. However, we note that the Commission disavowed risk sharing in D.87-06-021, issued on June 15, 1987. In D.87-06-021 the Commission stated that:

> "We are not persuaded by past Commission decisions adopting risk sharing as an appropriate way of allocating oil oversupply costs, whether or not those costs are deemed prudent and reasonable. Thus, the risk sharing doctrine should no longer be cited as Commission policy. As recently stated on Decision 87-01-051 at page 16, the risk sharing concept was a very short-term phenomenon whose rationale is no longer applicable."

D.87-06-021 was issued subsequent to the close of this record. However, there is no need to reopen the proceeding to receive further evidence, because, as we noted earlier the Commission used risk sharing only when it could not find any specific imprudent action. We have made disallowances for specific imprudent actions by Edison. Therefore, the risk-sharing circumstances in this proceeding are different than in other proceedings in which an AER percentage disallowance has been made. Having addressed the specific adjustments recommended by PSD, we believe that no further adjustment for risk sharing is necessary.

Allocation of Disallowances

PSD has assigned a 90% share of the recommended adjustments for the audit and reclamation issues and 100% of the adjustment for the Bear Creek assets issue to Edison. SDG&E is assigned a 10% share for the audit and reclamation issues.

Edison contends that PSD has inaccurately represented Edison's share of the recommended disallowances. According to Edison, its share of the Bear Creek settlement was 85.37%. Edison also contends that the disallowances related to these issues should be reduced by 50% because of Mono's 50% ownership of Bear Creek allows any Mono benefits to flow through to Edison's ratepayers through the Fuel Service Charge.

We agree with Edison that its share of the Bear Creek settlement costs is 85.37%, not 90%. Its share is reduced because of the participation of the Cities in the Bear Creek contract termination. We also agree with Edison that its share of disallowances should be reduced by 50% because of Mono's 50% ownership of Bear Creek. Mono's share of benefits flow through to Edison's ratepayer. Therefore, Edison's net share of disallowances will be 42.685%. SDG&E's share of the Bear Creek termination costs is 10%. The adopted disallowances should be allocated in accordance with the following table:

Disallowance	Edison's Share 42.685%	SDG&E's Share 10%
Sale of Assets ($3,000,000)	$1,280,550	$300,000
Reclamation Credits ($4,920,525)	$2,100,326	$492,053
Net Share of Bear Creek Termination Costs	$60,519,134	$6,687,947

Edison's Bear Creek terminations payments were scheduled to be made in installments. In recording the payments in the ECAC balancing account, Edison should apply the ECAC/AER split in effect at the time of payment.

FUTURE URANIUM PURCHASES

The scope of this proceeding includes a review of the respondent utilities' plans and proposals for future purchases of uranium, and the contractual terms which apply to the planned purchases. Following is a brief summary of the respondents' plans for meeting future needs:

PG&E

At present, PG&E does not have any contracts for future purchase of uranium and it has no immediate plans to enter into any such contracts. Instead, PG&E plans to satisfy its needs for uranium over the next few years from its existing stock of uranium.

Edison

Edison expects to fill its near-term uranium needs on the spot market. However, in the intermediate to long-term as utility and producer excess inventories are depleted and availability of uranium from the spot market is reduced, Edison expects to meet the majority of its requirements by entering staggered term contracts with multiple suppliers, while reserving a smaller portion of requirements for purchase on the spot market. The exact proportions of term contract purchases versus spot market purchases will depend on market conditions at the time and, in particular, the flexibility obtainable under term contracts. To accommodate uncertainty in uranium requirements, Edison will, to the extent possible, seek term contracts with provisions that allow adjustments to delivery schedules to conform to changes in requirements. Also, to the extent possible, each term contract will provide price adjustment provisions to reflect market conditions, including provisions for contract termination.

SDG&E

SDG&E's uranium needs through 1988 will be covered by recent 100,000 lbs. spot purchases and its contracts with Homestake and RMEC dated June 28, 1985 and July 1, 1985, respectively.

SDG&E is tentatively planning to purchase its 1988-1989 requirements, if any, on the spot market.

Reasonableness of Plans for Future Purchases

PSD has not provided any analysis of the respondents' plans for future purchases. However, it recommends that the utilities' future uranium purchases be analyzed on a case-by-case basis. We agree with PSD's recommendation.

Review of Plans for Future Purchases

PSD had recommended an incentive program for the recovery of the acquisition cost for future uranium purchases by respondents. However, it withdrew that recommendation due to the unavailability of the information upon which PSD had proposed to base its standard. Instead, PSD recommends that utilities' future uranium acquisition costs be reviewed for reasonableness on a case-by-case basis.

PG&E believes that the procedure for reviewing prudence of uranium deliveries can be improved by reviewing the cost of deliveries in the year of, or following, delivery instead of later when the uranium is loaded into the reactor as fabricated fuel. According to PG&E, the Commission can better review the utility's choices, information and decisions in the context of prevailing market conditions instead of recreating the past. This prompt review, contends PG&E, is especially important for uranium fuel costs, since that market has shown volatile tendencies in the past.

Edison supports PG&E's position and recommends using the current ECAC proceedings to review future uranium purchases.

We agree with PG&E and Edison that review of uranium purchases should be conducted as soon as possible following the purchase. The review of uranium purchases should be performed in the ECAC reasonableness proceedings.

Comments on the Proposed Decision

Edison, PG&E, SDG&E, and PSD have filed comments on the ALJ's proposed decision. Edison has also filed a reply to the comments filed by SDG&E and PSD. Based on review of the comments and Edison's reply to the comments, we believe that we need to address only the following two issues:

1. Bear Creek Assets Issue

According to SDG&E's comments, the table showing the allocation of disallowances at page 33 mistakenly assigns it a 10% share ($300,000) of the $3,000,000 disallowance associated with the sale of Bear Creek assets. SDG&E contends that the text of the decision, which allocates 100% of the adjustment for the sale of Bear Creek assets to Edison, correctly characterizes the record in the proceeding. Therefore, SDG&E requests that the table showing the allocation of disallowance should be corrected to reflect no SDG&E disallowance for the Bear Creek assets issue.

In its reply to SDG&E's comments, Edison requests that the Commission clarify whether the disallowance for the Bear Creek assets issue is imposed because (1) the payment for termination of the Bear Creek contract did not adequately reflect the net asset value in which case both Edison and SDG&E should be allocated their proportionate share of the disallowance, or because (2) Mono did not adequately address the net value of the assets in which case the disallowance should be assessed against Edison only.

We agree with Edison that a clarification of the disallowance for the sale of Bear Creek assets is required. We believe that Mono, as 50% owner of Bear Creek, should have addressed the net value of the assets sold by Bear Creek to RMEC. It did not do so; and, therefore, the entire disallowance should be assessed against Edison, and the table allocating the disallowances should be revised as follows:

Disallowance	Edison's Share 42.685%	SDG&E's Share 10%
Sale of Assets ($3,000,000) Edison's Share 50%	$ 1,500,000	-
Reclamation Credits ($4,920,525)	$ 1,740,389[10]	$ 492,053
Net Share of Bear Creek Termination Costs	$60,659,611	$6,987,947

2. Allocation of Disallowances

In its comments, PSD contends that Edison did not request in its briefs that any disallowance assigned to Edison be reduced by 50% because of a Mono pass through. According to PSD, Mono pass through of benefits to ratepayers is strictly a theoretical assumption. PSD maintains that the record does not show how, when, or if at all Edison's ratepayers will receive half the disallowance. Therefore, PSD recommends that Mono be ordered to return its half of the disallowance to Edison immediately and that Edison's ECAC rates be adjusted to reflect this transfer of the disallowance.

In its response to PSD's comments, Edison points out that it had asserted in briefs that any proposed disallowance be reduced to reflect Mono's 50% ownership interest in Bear Creek. Edison also contends that the record clearly demonstrates how funds received by Mono through its participation in Bear Creek flow to Edison's ratepayers. According to Edison, the Mono Fuel Service Agreement which is a part of the record in this proceeding (Exhibit 41, Attachment 4) clearly describes the flow through to Edison of benefits derived by Mono from sales of fuels, energy or an interest

10 Includes full 50% credit for Mono's share of disallowance.

in an EEDA project. Edison maintains that the flow through of Mono benefits to Edison ratepayers occurs automatically as set forth in the Preliminary Statement, Part G of Edison's tariffs.

We note that Edison did assert in its opening brief that any of its proposed disallowance should be reduced by 50% to reflect Mono's 50% interest in Bear Creek. We also note that the Mono Fuel Service Agreement is part of the record in this proceeding and that it does describe the flow through to Edison of benefits derived by Mono. The flow through to ratepayers of Mono benefits occurs automatically through Edison's tariffs.

We think that PSD's recommendation to immediately reflect 50% of the disallowances in Edison's rates has some merit. However, we believe that PSD should have made its recommendation in its reply brief and not in its comments on the ALJ's proposed decision. Besides we note that what PSD recommends is ultimately accomplished through the Mono Fuel Service Agreement and Edison's tariffs. Therefore, there is no need to adopt PSD's recommendation to immediately modify Edison's ECAC rates to reflect 50% of the disallowances.

Findings of Fact

1. PSD has reviewed the respondents' reports regarding their past purchases and future plans for purchasing uranium.

2. Based on its review, PSD does not find respondents' past uranium purchases to be imprudent.

3. PG&E executed uranium purchasing contracts with IEC and Union.

4. The IEC and Union contracts were executed during a period when the sellers demanded very rigid terms for uranium supply contracts which allowed the buyer little flexibility regarding the right to change the amount of deliveries or reschedule the deliveries.

5. PG&E renegotiated the Union and the IEC contracts.

6. The terms of renegotiation of the contracts called for, among other things, the purchase of certain quantities of uranium at higher than prevailing spot market prices.

7. PG&E has not requested reimbursement for any termination costs.

8. PSD contends that the difference between the renegotiated price for uranium and the prevailing spot market prices, in fact, represents a termination cost for the two contracts.

9. PSD recommends a risk sharing disallowance based on PG&E's ECAC/AER split for what it considers to be termination costs.

10. PSD does not recommend any disallowance based on imprudence in PG&E's restructuring of the contracts.

11. Terms for restructuring the IEC and Union contracts contain other clauses besides providing uranium deliveries at higher than spot prices.

12. The restructuring of the contracts resulted in net overall savings to PG&E's ratepayers.

13. The contractual relationship continues between parties after the renegotiation of the contracts.

14. Edison and SDG&E executed long-term uranium supply contracts with Bear Creek and Homestake in 1977. SDG&E participated in only the first of two contracts.

15. Bear Creek is a partnership of RMEC and Mono.

16. Mono is a wholly owned subsidiary of Edison and receives a majority of its funding and revenues through the EEDA component of Edison's fuel costs.

17. In June 1985, buyers entered into settlement agreement with Bear Creek terminating the contracts.

18. Buyers agreed to make a termination payment of $74.8 million, with a $4.5 million contingency for complete reclamation.

19. Edison's share of the Bear Creek termination payment is $63.9 million and its share for the reclamation payment is $3.8 million.

20. SDG&E's share of the Bear Creek termination payment is $7.48 million.

21. In December 1984, Edison entered into a termination agreement with Homestake.

22. Edison agreed to pay Homestake a termination payment of $18.2 million.

23. SDG&E did not terminate its contract with Homestake, instead it signed a renegotiated contract calling for delivery of 295,000 lbs. of uranium from Homestake.

24. On February 3, 1986, Edison filed A.86-02-005 to recover its share of the termination costs for the Bear Creek and Homestake contracts.

25. Edison requests that its share of the Bear Creek and Homestake contract termination costs be reflected in its ECAC balancing account.

26. D.85-12-104 authorized SDG&E to recover its share of the Bear Creek termination costs of $7.48 million in ECAC rates.

27. SDG&E's rate increase for the recovery of the Bear Creek termination costs was subject to refund pending a review of the reasonableness of the conditions of termination.

28. PSD has reviewed the terms of termination for the Bear Creek and Homestake contracts.

29. PSD recommends that a portion of the termination cost for Bear Creek contracts should not be paid by the ratepayers.

30. Bear Creek sold certain assets to RMEC for $5.9 million.

31. The assets will be used for the reclamation of the Bear Creek mines.

32. Bear Creek did not obtain a market valuation of the assets sold.

33. It appears that Bear Creek sold the assets for less than their net worth.

34. The sale agreement for the assets did not recognize any salvage value.

35. The assets will have a salvage value after the reclamation is completed.

36. The record does not provide either the reasonable price or the salvage value of the assets.

37. Edison and SDG&E conducted an audit of the Bear Creek transactions.

38. Edison determined that Bear Creek had overbilled the buyers $1.5 million.

39. PSD recommends that the Bear Creek termination costs be reduced by the overbilled amount of $1.5 million.

40. Edison had asserted its claim for the $1.5 million overbilling with RMEC.

41. RMEC refused to accept Edison's claim regarding the overbilling.

42. RMEC had granted granted price reduction to the buyers for the years 1981-1984.

43. Had Edison insisted on its overbilling claim, RMEC most likely would have adjusted the price reductions it granted.

44. The price of uranium sold under the Bear Creek contract contained a component to pay for the reclamation costs.

45. Bear Creek had collected $9,802,117 in reclamation credits during the lifetime of the contract.

46. Bear Creek had spent $4,881,592 of the reclamation credits by the time the contract was terminated.

47. The unused balance of the reclamation credits of $4,920,525 ($9,802,117-4,881,592) are not recognized in the Bear Creek contract settlement.

48. PSD and San Diego recommend that the unused portion of the Bear Creek reclamation credits should be excluded from the termination costs.

49. PSD recommends a risk-sharing disallowance of the Bear Creek and Homestake contract termination costs based on the respective ECAC/AER splits for Edison and SDG&E.

50. PSD recommends its risk-sharing disallowance because it has a "cloud of doubt" regarding certain terms of the Bear Creek settlement agreement.

51. PSD concerns regarding the terms of the Bear Creek settlement agreement have been addressed.

52. PSD contends that its risk-sharing adjustment is also based on the Commission's policy regarding the treatment of such costs.

53. Risk-sharing circumstances in this proceeding are different than in other proceedings in which a risk sharing disallowance has been made.

54. Edison's share of disallowance is 85.37%, SDG&E's share is 10%.

55. PSD recommends that respondents' future uranium purchases be analyzed on a case-by-case basis.

56. Reviewing the reasonableness of the respondents' future uranium purchases as soon as possible following the purchase would provide the Commission better information in the context of the prevailing market conditions.

Conclusions of Law

1. Respondents past uranium purchases were reasonable.

2. The terms of renegotiation of PG&E's contract with IEC and Union were reasonable.

3. The restructuring of PG&E's contracts was not a true termination.

4. PSD recommended risk-sharing disallowance concerning the renegotiation of the IEC and Union contracts should not be adopted.

5. Only one-half or $3 million of the PSD recommended disallowance of $5.9 million for the transfer of Bear Creek assets to RMEC is justified and should be adopted.

6. PSD's recommended disallowance for the Bear Creek audit should not be adopted.

7. Bear Creek termination costs should be reduced by $4,920,525 to account for the unused reclamation credits.

8. PSD's recommended risk sharing disallowance should not be adopted.

9. The terms of settlement of the Bear Creek and Homestake contracts were reasonable except for the disallowance adopted in Conclusions of Law 5 and 7.

10. Respondents' future purchases of uranium should be analyzed on a case-by-case basis.

11. Edison should be allowed to recover its share of the termination costs of the Bear Creek and Homestake contracts through the ECAC balancing account.

12. SDG&E's ECAC balancing account should be adjusted to reflect the adopted disallowances.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company (Edison) shall be allowed to recover the termination payments made for the settlement of its contracts with the Bear Creek Mining Company and the Homestake Mining Company. The termination payments shall reflect the disallowances set forth in this decision.

2. San Diego Gas & Electric Company's (SDG&E) ECAC balancing account shall be adjusted to reflect the disallowances set forth in this decision.

3. For the period reviewed in this decision, the uranium purchasing practices of Pacific Gas and Electric Company, SDG&E, and Edison are reasonable.

This order is effective today.

Dated OCT 1 6 1987, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
Commissioners

Commissioner John B. Ohanian, being necessarily absent, did not participate.

I CERTIFY THAT THIS DECISION ...ROVED BY THE ABOVE ...IONERS TODAY.

Victor Weisser, Executive Director

ALJ/AVG/vdl

Item 1
Agenda 9/23/87

Decision PROPOSED DECISION OF ALJ GARDE

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's own motion into the uranium purchasing policies of California utilities. Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company, Respondents.	I.85-05-002 (Filed May 1, 1985)
In the Matter of the Application of Southern California Edison Company (U 338-E) for authority to change its energy cost adjustment billing factors to reflect payments made pursuant to settlements which terminate long-term uranium supply contracts with Homestake Mining Company and Bear Creek Uranium Company.	Application 86-02-005 (Filed February 3, 1986)

Richard K. Durant, Carol B. Henningson, by Larry C. Mount, Attorneys at Law, for Southern California Edison Company, respondent and applicant.
Howard V. Golub and Shirley Woo, Attorneys at Law, for Pacific Gas and Electric Company; and John R. Asmus, Jr., Attorney at Law, for San Diego Gas & Electric Company, respondents.
William S. Shaffran and Leslie Girard, Attorney at Law, for John W. Witt, City Attorney, for City of San Diego; and F. E. John and T. D. Clarke, Attorneys at Law, and Gay Phillips, for Southern California Gas Company; interested parties.
Robert Cagen, Attorney at Law, Bill Y. Yee and Kenneth K. Chew, for the Public Staff Division.

current excess production capacity and the expectation of further increases in production capacity in the late 1980s and early 1990s.

Worldwide uranium inventories are large and tend to delay the onset of shortage. In the U.S., inventories of excess uranium are estimated at a level of 2.5 years reactor requirements; for non-U.S. WOCA[2] it is about 1.75 years.

The contracted uranium supply for U.S. utilities is considerably less than for non-U.S. WOCA. The contracted supply (firm) for future U.S. deliveries is equivalent to 4.4 years of reactor requirements. For non-U.S. WOCA, the contracted supplies are equivalent to 9 years of reactor demand.

The unfilled requirements are expected to increase for U.S. utilities as well for the non-U.S. WOCA. Filling these needs will create much activity in the marketplace.

CNC expects the price of uranium to rise to $30/lb. (in January 1986 dollars) in 1992 and to stay at about that level through the 1990s. The projection of uranium imports also shows a gradual and steady rise, reaching 65% of total reactor demand in the early 1990s and saturating at that level.

The projections of uranium market conditions are based on the exiting laws and may change as a result of any new laws passed by the U.S. government and/or the governments of countries supplying uranium for the U.S. market.

ISSUES

PSD reviewed the respondents' past uranium purchases in light of the market conditions existing at the time. Based on its review, PSD concluded that there was insufficient evidence to find

2 World Outside Communist Area.

any imprudence in respondents' actions. Therefore, PSD does not recommend any disallowance for past uranium purchases.

The only contested issues in the proceding pertain to the renegotiation of two uranium purchasing contracts by PG&E and the termination of the Bear Creek and Homestake contracts.

PG&E CONTRACTS

Since the 1960s, PG&E has had four different uranium purchase arrangements. Its first contract was executed in 1968 with Union Carbide (Union). The contract was for the purchase of 4 million lbs. at $7/lb. to be delivered during the years 1970-73. In November 1973, PG&E and Union agreed to let Union have the option to defer deliveries of 152,000 lbs. from December 1973 to January 1974 at no additional cost to PG&E. Again in September 1974, PG&E granted Union another option to defer delivery of 152,000 lb.s from December 1974 to January 1975, at no extra cost to PG&E. Union exercised both these deferral options.

In December 1975, PG&E renegotiated the contract to terminate the 1975 delivery of 152,000 lbs. of uranium and to provide for the purchase of 305,000 lbs. for delivery in 1977 or 1978 at a firm price of $20.28/lb. This price was the weighted average of the 1975 contract price of $8.83/lb. for 152,000 lbs. and the market price of $23.50/lb. for 153,000 lbs. plus 12% carrying cost for two years deferral.

In August 1977, PG&E amended the contract to allow deliveries of 305,000 lbs. scheduled for 1977-78 to be deferred until either 1979/80/81 at Union's choice, and at no additional cost to PG&E.

In December 1980, the existing contract with Union was terminated and Union agreed to pay PG&E a $2.7 million fee on recognition of PG&E's agreement to a subsequent contract calling for the delivery of these 305,000 lbs. in 1985 at a firm price of

Western Nuclear Contract

In September 1976, PG&E entered into a contract with Western Nuclear for purchase of 1,250,000 lbs. of uranium over the years 1978 through 1982 at the rate of 250,000 lbs. per year. The base price was $25/lb. with a clause for escalation beginning December 1974. PG&E tried to cancel this contract but Western Nuclear was unwilling to discuss cancellation. This contract ended in November 1982 when PG&E received the final delivery.

Pacific Energy Trust

On February 4, 1981 PG&E sold all of the previously purchased uranium to the Pacific Energy Trust (PET), its uranium financing financing trust, under a sale lease back agreement. PG&E transferred 3,286,531 lbs. of uranium during the initial transaction. It transferred an additional 2,172,571 lbs. through December 31, 1985.

PSD's Recommendations

PG&E has not requested recovery for any contract renegotiation payments made to IEC and Union. However, PSD auditor Hill believes that PG&E's renegotiated prices of $50/lb. and $53/lb. respectively were not the best available prices at the time and that the terms of renegotiations in fact included a termination charge. According to PSD, the difference in the renegotiated price and the NUEXCO[4] spot market price at the time the renegotiations occurred would represent the termination charge. PSD recommends a risk-sharing disallowance based on the ECAC/Annual Energy Rate

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4 NUEXCO - one of the major uranium industry consultants that provide proprietary price information based on information received from clients which is indicative of the current market condition.

Prices of uranium purchased under long-term contracts which provide higher assurance of supply are available on a non-proprietary basis from the Department of Energy in its Survey of Uranium Market Analysis.

Discussion

We note that PG&E executed the Union and IEC contracts during a period when buyers were allowed little flexibility in negotiating terms. Therefore, we agree with PG&E that it had a very limited ability to renegotiate the contracts on its own terms and that it is unreasonable to expect it to renegotiate the long-term contract prices to the level of prevailing spot market.

In considering PSD's recommendation of risk sharing, we have to establish whether the difference in renegotiated price per pound for a portion of the contracted deliveries and the prevailing spot price is in fact a settlement payment. We note that the terms for restructuring the IEC and Union contracts contain other clauses besides the final deliveries at higher than spot prices. We believe that the terms of renegotiation should be considered in their totality in order to evaluate their impact. The restructuring of the contracts resulted in overall savings to the ratepayers. Indeed the restructuring for either contract was not a true termination. The contractual relationship continued between the parties. The contract renegotiations allowed PG&E to alter deliveries of uranium without any net additional cost. Therefore, we do not believe that the difference between the renegotiated price and the existing sport market price is in fact a termination charge. We will, therefore, not adopt PSD's risk-sharing recommendation.

EDISON'S CONTRACTS

During the 1980-1985 period, Edison purchased uranium from Bear Creek and Homestake for use in the San Onofre Nuclear Generating Station.

Also during that period, through a uranium contract between Arizona Public Service Company (APS) and Anaconda Company, Edison purchased uranium for use in Palo Verde Nuclear Generating

Second Contract

Payment Date	Edison	Cities	Total
8/5/1985	$17.07	$0.93	$18.00
7/1/1986	13.94	0.76	14.70
7/1/1987	4.46	0.24	4.70
	35.47	1.93	37.40

Edison's total share of the Bear Creek settlement payments is $63.9 million; SDG&E's share is $7.8 million.

In addition, if Bear Creek is unsuccessful in obtaining regulatory approval for a lower cost partial backfill method of reclaiming the final major open pit at the mine, and a complete backfill is required, buyers are obligated to pay an additional $4.5 million plus escalation to the date of payment. Edison's share of this payment is $3.8 million.

Edison also entered into a termination agreement, effective December 31, 1984, with Homestake. Under the agreement, buyers agreed to pay Homestake a termination payment of $19.2 million. Edison paid its share of $18.2 million for the termination of the Homestake contract in June 1985; the balance of $988,000 was to be paid by the Cities. SDG&E settled its Homestake contract differently than Edison. In June 1985, SDG&E signed a renegotiated contract calling for delivery of 295,000 lbs. of uranium from Homestake. SDG&E contends that it agreed to take delivery of the uranium because it had near-term unfilled need for approximately 305,000 lbs.

In A.86-02-005 Edison requests authority to recover the following amounts of the termination payments:

1. Ninety-eight percent of the California Public Utilities Commission (CPUC) jurisdictional portion of the $18.23 million termination payment made to Homestake on June 3, 1985, plus interest.

to RMEC, it has not provided convincing evidence in support of its claim.

Edison has also failed to demonstrate that the equipment will have no salvage value after the reclamation work is complete. PSD through its contact with The Wyoming Machinery Company has provided sufficient evidence that the equipment would have some salvage value after reclamation work is completed. If RMEC sells the equipment after reclamation, it will benefit from the sale proceeds.

It appears that Bear Creek sold the equipment for less than its net worth. Also, the sale agreement did not have a provision for any salvage value. Therefore, an adjustment to Bear Creek contract termination cost is justified. However, we do not believe that the entire sale amount should be disallowed because that would imply that the assets were sold for half their worth. The record does not provide adequate information to make that conclusion. In the absence of such information, we will adopt one-half or $3 million of the PSD's recommended disallowance.

<u>The Joint Adjustment</u>

In 1981, auditors from Edison and SDG&E conducted an audit of the Bear Creek transactions. The auditors concluded that Bear Creek had overbilled Edison and SDG&E by $3,593,000 for the years 1976 through 1980. The overbilling pertained to the interpretation and calculation of the minimum base price specified in the contract.

Edison took the position with RMEC that a realistic settlement of the contractual differences would have been a $1.5 million reduction to the 1976 through 1980 overbillings. The PSD auditor reviewed the audit and the correspondence between the parties on the claim. He concluded that Edison's claim had been reasonable.

RMEC refused to accept Edison's claim. Edison dropped the claim because RMEC said it would not grant price concessions underlift payments, and carrying cost of excess oil inventory. The Commission repeatedly has found that ratepayers should not bear all the costs of long-term fuel oil supply agreements and has assigned the company's AER percentage of these costs to its shareholders.[9]

PSD witness Grove has testified that his risk sharing proposal is not a policy recommendation. Rather, he claims that his recommendation is based upon the "cloud of doubt" he has about certain terms of settlement of the Bear Creek contract. Although he has no specific doubts about the terms of settlement of the Homestake contract, Grove described the bases for his Homestake risk sharing disallowance as follows:

> "Q. Why did you make a similar recommendation for the Homestake termination costs?
>
> "A. Because in comparison to the total dollars associated with the Bear Creek termination, it was much easier and more consistent just to add that on and use that one consistent method for the two contracts.
>
> "Q. So it's simply for the sake of consistency? There's no specific relationship with Mono that you would base the 10 percent disallowance of Homestake's cost on; is that correct?
>
> "A. Yes."

Since PSD has recommended specific adjustments to the Bear Creek settlement costs, the circumstances of this case are different than in other cases in which an AER percentage disallowance has been made. We have addressed each if those issues and made appropriate disallowances. We believe that the disallowances ensure that ratepayers are required to pay only the

9 In D.84-08-118 The Commission required PG&E's shareholders to absorb 9% of expected losses from the sale of excess fuel oil. In D.85-12-104 the Commission required SDG&E's shareholders to pay 8% of underlift payments.

prudently incurred costs for the contract settlements. Any further risk sharing disallowance is not justified.

According to PSD's opening brief, its risk sharing recommendation is based on the Commission's policy regarding the treatment of such costs. However, we note that the Commission disavowed risk sharing in D.87-06-021, issued on June 15, 1987. In D.87-06-021 the Commission stated that:

> "We are not persuaded by past Commission decisions adopting risk sharing as an appropriate way of allocating oil oversupply costs, whether or not those costs are deemed prudent and reasonable. Thus, the risk sharing doctrine should no longer be cited as Commission policy. As recently stated on Decision 87-01-051 at page 16, the risk sharing concept was a very short-term phenomenon whose rationale is no longer applicable."

D.87-06-021 was issued subsequent to the close of this record. However, there is no need to reopen the proceeding to receive further evidence, because, as we noted earlier the Commission used risk sharing only when it could not find any specific imprudent action. We have made disallowances for specific imprudent actions by Edison. Therefore, the risk-sharing circumstances in this proceeding are different than in other proceedings in which an AER percentage disallowance has been made. Having addressed the specific adjustments recommended by PSD, we believe that no further adjustment for risk sharing is necessary.

Allocation of Disallowances

PSD has assigned a 90% share of the recommended adjustments for the audit and reclamation issues and 100% of the adjustment for the Bear Creek assets issue to Edison. SDG&E is assigned a 10% share for the audit and reclamation issues.

Edison contends that PSD has inaccurately represented Edison's share of the recommend disallowances. According to Edison, its share of the Bear Creek settlement was 85.37%. Edison also contends that the disallowances related to these issues should

prudently incurred costs for the contract settlements. Any further risk sharing disallowance is not justified.

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Edison contends that PSD has inaccurately represented Edison's share of the recommend disallowances. According to Edison, its share of the Bear Creek settlement was 85.37%. Edison also contends that the disallowances related to these issues should purchases. Following is a brief summary of the respondents' plans for meeting future needs:

PG&E

At present, PG&E does not have any contracts for future purchase of uranium and it has no immediate plans to enter into any such contracts. Instead, PG&E plans to satisfy its needs for uranium over the next few years from its existing stock of uranium.

Edison

Edison expects to fill its near-term uranium needs on the spot market. However, in the intermediate to long-term as utility and producer excess inventories are depleted and availability of uranium from the spot market is reduced, Edison expects to meet the majority of its requirements by entering staggered term contracts with multiple suppliers, while reserving a smaller portion of requirements for purchase on the spot market. The exact proportions of term contract purchases versus spot market purchases will depend on market conditions at the time and, in particular, the flexibility obtainable under term contracts. To accommodate uncertainty in uranium requirements, Edison will, to the extent possible, seek term contracts with provisions that allow adjustments to delivery schedules to conform to changes in requirements. Also, to the extent possible, each term contract will provide price adjustment provisions to reflect market conditions, including provisions for contract termination.

SDG&E

SDG&E's uranium needs through 1988 will be covered by recent 100,000 lbs. spot purchases and its contracts with Homestake and RMEC dated June 28, 1985 and July 1, 1985, respectively.

SDG&E is tentatively planning to purchase its 1988-1989 requirements, if any, on the spot market. SDG&E does not have specific plans for uranium requirements past 1989.

Reasonableness of Plans for Future Purchases

PSD has not provided any analysis of the respondents' plans for future purchases. However, it recommends that the utilities' future uranium purchases be analyzed on a case-by-case basis. We agree with PSD's recommendation.

Review of Plans for Future Purchases

PSD had recommended an incentive program for the recovery of the acquisition cost for future uranium purchases by respondents. However, it withdrew that recommendation due to the unavailability of the information upon which PSD had proposed to base its standard. Instead, PSD recommends that utilities' future uranium acquisition costs be reviewed for reasonableness on a case-by-case basis.

PG&E believes that that the procedure for reviewing prudence of uranium deliveries can be improved by reviewing the cost of deliveries in the year of, or following, delivery instead of later when the uranium is loaded onto the reactor as fabricated fuel. According to PG&E, the Commission can better review the utility's choices, information and decisions in the context of prevailing market conditions instead of recreating the past. This prompt review, contends PG&E, is especially important for uranium fuel costs, since that market has shown volatile tendencies in the past.

Edison supports PG&E's position and recommends using the current ECAC proceedings to review future uranium purchases.

We agree with PG&E and Edison that review of uranium purchases should be conducted as soon as possible following the purchase. The review of uranium purchases should be performed in the ECAC reasonableness proceedings.

Findings of Fact

1. PSD has reviewed the respondents' reports regarding their past purchases and future plans for purchasing uranium.

2. Based on its review, PSD does not find respondents' past uranium purchases to be imprudent.

3. PG&E executed uranium purchasing contracts with IEC and Union.

4. The IEC and Union contracts were executed during a period when the sellers demanded very rigid terms for uranium supply contracts which allowed the buyer little flexibility regarding the right to change the amount of deliveries or reschedule the deliveries.

5. PG&E renegotiated the Union and the IEC contracts.

6. The terms of renegotiation of the contracts called for, among other things, the purchase of certain quantities of uranium at higher than prevailing spot market prices.

7. PG&E has not requested reimbursement for any termination costs.

8. PSD contends that the difference between the renegotiated price for uranium and the prevailing spot market prices, in fact, represents a termination cost for the two contracts.

9. PSD recommends a risk sharing disallowance based on PG&E's ECAC/AER split for what it considers to be termination costs.

10. PSD does not recommend any disallowance based on imprudence in PG&E's restructuring of the contracts.

11. Terms for restructuring the IEC and Union contracts contain other clauses besides providing uranium deliveries at higher than spot prices.

12. The restructuring of the contracts resulted in net overall savings to PG&E's ratepayers.

13. The contractual relationship continues between parties after the renegotiation of the contracts.

14. Edison and SDG&E executed long-term uranium supply contracts with Bear Creek and Homestake in 1977.

15. Bear Creek is a partnership of RMEC and Mono.

16. Mono is a wholly owned subsidiary of Edison and receives a majority of its funding and revenues through the EEDA component of Edison's fuel costs.

17. In July 1985, buyers entered into settlement agreement with Bear Creek terminating the contracts.

18. Buyers agreed to make a termination payment of $74.8 million, with a $4.5 million contingency for complete reclamation.

19. Edison's share of the Bear Creek termination payment is $63.9 million and its share for the reclamation payment is $3.8 million.

20. SDG&E's share of the Bear Creek termination payment is $7.8 million.

21. In December 1984, Edison entered into a termination agreement with Homestake.

22. Edison agreed to pay Homestake a termination payment of $18.2 million.

23. SDG&E did not terminate its contract with Homestake, instead it signed a renegotiated contract calling for delivery 295,000 lbs. of uranium from Homestake.

24. On February 3, 1986, Edison filed A.86-02-005 to recover its share the termination costs for the Bear Creek and Homestake contracts.

25. Edison requests that its share of the Bear Creek and Homestake contract termination costs be reflected in its ECAC balancing account.

26. D.85-12-104 authorized SDG&E to recover its share of the Bear Creek termination costs of $7.8 million in ECAC rates.

27. SDG&E's rate increase for the recovery of the Bear Creek termination costs was subject to refund pending a review of the reasonableness of the conditions of termination.

28. PSD has reviewed the terms of termination for the Bear Creek and Homestake contracts.

29. PSD recommends that a portion of the termination cost for Bear Creek contracts should not be paid by the ratepayers.

30. Bear Creek sold certain assets to RMEC for $5.9 million.

31. The assets will be used for the reclamation of the Bear Creek mines.

32. Bear Creek did not obtain a market valuation of the assets sold.

33. It appears that Bear Creek sold the assets for less than their net worth.

34. The sale agreement for the assets did not recognize any salvage value.

35. The assets will have a salvage value after the reclamation is completed.

36. The record does not provide either the reasonable price or the salvage value of the assets.

37. Edison and SDG&E conducted an audit of the Bear Creek transactions.

38. Edison determined that Bear Creek had overbilled the buyers $1.5 million.

39. PSD recommends that the Bear Creek termination costs be reduced by the overbilled amount of $1.5 million.

40. Edison had asserted its claim for the $1.5 million overbilling with RMEC.

41. RMEC refused to accept Edison's claim regarding the overbilling.

42. RMEC had granted granted price reduction to the buyers for the years 1981-1984.

43. Had Edison insisted on its overbilling claim, RMEC most likely would have adjusted the price reductions it granted.

44. The price of uranium sold under the Bear Creek contract contained a component to pay for the reclamation costs.

45. Bear Creek had collected $9,802,117 in reclamation credits during the lifetime of the contract.

46. Bear Creek had spent $4,881,592 of the reclamation credits by the time the contract was terminated.

47. The unused balance of the reclamation credits of $4,920,525 ($9,802,117-4,881,592) are not recognized in the Bear Creek contract settlement.

48. PSD and San Diego recommend that the unused portion of the Bear Creek reclamation credits should be excluded from the termination costs.

49. PSD recommends a risk-sharing disallowance of the Bear Creek and Homestake contract termination costs based on the respective ECAC/AER splits for Edison and SDG&E.

50. PSD recommends its risk-sharing disallowance because it has a "cloud of doubt" regarding certain terms of the Bear Creek settlement agreement.

51. PSD concerns regarding the terms of the Bear Creek settlement agreement have been addressed.

52. PSD contends that its risk-sharing adjustment is also based on the Commission's policy regarding the treatment of such costs.

53. Risk-sharing circumstances in this proceeding are different than in other proceedings in which a risk sharing disallowance has been made.

54. Edison's share of disallowance is 85.37%, SDG&E's share is 10%.

55. PSD recommends that respondents' future uranium purchases be analyzed on a case-by-case basis.

56. Reviewing the reasonableness of the respondents' future uranium purchases as soon as possible following the purchase would provide the Commission better information in the context of the prevailing market conditions.

Conclusions of Law

1. Respondents past uranium purchases were reasonable.

2. The terms of renegotiation of PG&E's contract with IEC and Union were reasonable.

3. The restructuring of PG&E's contracts was not a true termination.

4. PSD recommended risk-sharing disallowance concerning the renegotiation of the IEC and Union contracts should not be adopted.

5. Only one-half or $3 million of the PSD recommended disallowance of $5.9 million for the transfer of Bear Creek assets to RMEC is justified and should be adopted.

6. PSD's recommended disallowance for the Bear Creek audit should not be adopted.

7. Bear Creek termination costs should be reduced by $4,920,525 to account for the unused reclamation credits.

8. PSD's recommended risk sharing disallowance should not be adopted.

9. The terms of settlement of the Bear Creek and Homestake contracts were reasonable except for the disallowance adopted in Conclusions of Law 4 and 6.

10. Respondents' future purchases of uranium should be analyzed on a case-by-case basis.

11. Edison should be allowed to recover its share of the termination costs of the Bear Creek and Homestake contracts through the ECAC balancing account.

12. SDG&E's ECAC balancing account should be adjusted to reflect the adopted disallowances.