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Decision 97-07-039 July 16, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of Southern California Edison Company for Orders: (1) Approving a Proposed Settlement and Power Purchase Agreement Restructuring Between Edison and Pacific Energy; (2) Authorizing Edison's Recovery in Rates of Payments Made Pursuant to the Power Purchase Agreements included in the Proposed Settlement and Restructuring.

Application 96-08-039
(Filed August 16, 1996)

INTERIM OPINION

1. Summary

Southern California Edison Company (Edison) seeks approval of a proposed agreement to settle certain disputes, including the restructuring of two power purchase agreements (Contracts) that are currently based on Interim Standard Offer No. 4 (ISO4). The Contracts are between Edison and affiliates of Pacific Energy (Pacific), as successor in interest to Bio-Energy Generating Partners, L.P., and provide for power purchases from the Toyon and Penrose landfill gas-fueled small power production facilities located outside of Edison's service territory in Los Angeles, California (Facilities). The disputes arose after Edison raised questions about the Facilities' practices pertaining to scheduled power deliveries and supplemental natural gas use.

To resolve these disputes, Edison and Pacific have entered into a contract restructuring and settlement agreement, contingent on Commission approval, pursuant to which the two Contracts will be converted into restated contracts with payment terms based on Edison's Standard Offer No. 1 power purchase contract (SO1). The proposed settlement and contract restructuring will resolve the dispute as follows: (1) Pacific will make a lump net present value (NPV) settlement payment to Edison; (2) the expensive ISO4-based power purchase prices under the Contracts will be converted to avoided-cost based prices contained in SO1, substantially reducing power

purchase costs; and (3) the risks and expenses associated with litigating the parties' disputes will be avoided. The settlement payment combined with the savings in power purchase costs is expected to result in a total customer benefit of $40.6 million NPV, according to the application.

In this interim decision we approve the settlement, but reserve for final decision the issue, subsequently presented by Edison and the Commission's Office of Ratepayer Advocates (ORA), of whether the settlement payment should be refunded directly to ratepayers through the electric deferred refund account, or recorded as a credit to Edison's Competition Transition Charge (CTC) Balancing Account.

2. Background

In December 1983, Edison and Central Plants Inc., a wholly owned subsidiary of Pacific, entered into the two Contracts, which relate to two separate landfill gas-fueled small electric power production Facilities located at the Penrose and Toyon landfills in Los Angeles. The Facilities are located in the service territory of the Los Angeles Department of Water and Power (LADWP), and have transmission agreements with LADWP to provide for the delivery of power from the Facilities to Edison's system.

Each Contract has a term of 20 years and provides for energy payments for the first 10 years of the Contract term to be based on Edison's Forecast of Annual Marginal Cost of Energy as then approved by the Commission. Each Contract also provides for 10 megawatts (MW) of firm capacity at a price of $143/kilowatt (kW)-yr. Both Facilities commenced Firm Operation in May 1986.

The Contracts were subsequently amended and assigned to Pacific's affiliate, Bio-Energy Generating Partners, L.P., a California limited partnership.

The Federal Energy Regulatory Commission (FERC) has promulgated operating and efficiency standards applicable to qualifying facilities (QFs), including those who are small power producers. Such standards provide that energy input from fossil fuels (natural gas, oil, or coal) cannot be more than 25% of total energy input. In addition, Federal statutory law and FERC regulations provide that energy from fossil fuels can be used only in "minimum amounts" required for "ignition, startup, testing, flame

stabilization, and control uses, and ... to alleviate or prevent unanticipated equipment outages and emergencies, directly affecting the public health, safety, or welfare, which would result from electric power outages." (18 C.F.R. § 292.204(b)(2); see also 16 U.S.C. § 796(17)(B) (1988).

Pursuant to Commission Decision (D.) 91-05-007, Edison implemented a program to monitor compliance with FERC's efficiency and fuel use standards (QFEM Program). In general, under the QFEM Program, Edison requests data annually from QFs in order to demonstrate their compliance with such requirements. The data requested includes monthly and annual totals of electricity generated, primary fuel used, supplemental fuel used, total fuel used, useful thermal energy, and information concerning the QF's ownership. After receipt of the QFEM data, Edison reviews the information for completeness and verifies compliance with the FERC standards. Edison also conducts random site visits in order to verify the QFEM data submitted.

The Facilities appeared to be in compliance with the applicable FERC standards until recently, since the fossil fuel use in each case was kept below the 25% limit. On August 20, 1993, Edison performed a site inspection at the Facilities. Subsequent to this site inspection, Edison obtained the manufacturer's specifications for the gas-fired engines at the Facilities. After reviewing the engines' fuel requirements, Edison concluded that the engines were capable of operating on landfill gas alone, with no need for supplemental natural gas fuel. Edison, therefore, advised Pacific that the Facilities appeared to be improperly burning natural gas in order to generate more power than they otherwise would be capable of generating from landfill gas alone.

Pacific responded that the manufacturer's specifications came from a marketing brochure which discussed the engines' specifications in a generic sense only, without regard to actual installation. Pacific also provided Edison with a letter from the manufacturer which indicated that the operating requirements of the engines were consistent with Pacific's representations. Pacific further noted that the British thermal unit (Btu) content of the landfill gas observed by Edison was based on an instantaneous reading, and thus was not indicative of the actual average Btu content of the gas

flowing into the engines, and that FERC had recertified the Penrose facility based on a request that contemplated supplemental natural gas use.

In addition to the QFEM Program, Edison also administers an Annual Contract Capacity Demonstration Program whereby firm-capacity QFs are required annually to achieve and reliably sustain 100% of Contract Capacity over a pre-scheduled period of time (typically six hours). If a QF is unable to demonstrate the ability to deliver firm capacity throughout the scheduled test period, the QF may be derated to a lower firm capacity level. In the event that a firm capacity QF is derated, its future capacity payments are based on a lower firm capacity level and Edison recovers prior unearned capacity payments.

The Facilities are located in the service territory of the LADWP and have a transmission agreement with LADWP to interconnect the Facilities to the Edison system. Although the Facilities are interconnected to the Edison system through LADWP, the Facilities' generation is not instantaneously delivered to the Edison system. Instead, the Facilities schedule one week in advance with LADWP the amount of power LADWP will deliver on an hourly basis to the Edison system on behalf of the Facilities and which the Facilities then become obligated to return to LADWP. Therefore, the scheduled amount of power delivered to the Edison system by LADWP at a particular time on behalf of the Facilities does not necessarily match the actual amount of power generated by the Facilities at the same time.

Edison conducted the capacity demonstration tests for the Facilities on July 27 and 28, 1992, utilizing the LADWP output schedule to measure the Facilities' performance over the test period. As a result of facts which came to light during these tests, Edison began to suspect that the Facilities could not physically produce and deliver to Edison their full 10 MW firm capacity rating. A dispute ensued regarding Edison's entitlement to additional data regarding actual generation levels at the Facilities. During this period, the Facilities continued to insist that the correct measure of performance under the Contracts was the amount of power scheduled and delivered by LADWP to Edison on their behalves.

On February 4, 1994, the Facilities provided Edison with one month of actual meter data relating to August 1992 production. Edison used this data to compare the scheduled deliveries from LADWP to the Facilities' actual generation and found that, during certain periods of the day, the scheduled deliveries from LADWP were less than the total output of the Facilities. At other times, the schedule deliveries from LADWP were higher than the generator output of the Facilities. Further investigation revealed a pattern of reduced scheduled deliveries from LADWP during the off-peak periods, with increased scheduled deliveries during the on-peak periods. These findings led Edison to conclude that the Facilities were in effect shifting lower-valued energy generated during the off-peak periods to the higher priced, on-peak periods. Pacific responded that this outcome followed from the transmission arrangement with LADWP and contended that the deliveries were consistent with Public Utility Regulatory Policies Act (PURPA) and the Contracts. Pacific further asserted that because the Facilities originally entered into the LADWP interconnection agreements with Edison's assent, Edison was on notice of the scheduling procedures.

Because it appeared that the parties would be unable to resolve their differences concerning the gas use and scheduling issues, Edison prepared to file a complaint at FERC against the owners of the Facilities. The complaint would have sought a determination from FERC that the Facilities had improperly resold non-QF power (i.e., power generated by LADWP) and burned natural gas in violation of PURPA. The complaint would have requested that FERC:

- Rule that the Facilities were not in compliance with FERC's standards;
- Revoke the Facilities' QF status;
- Find that the Facilities were public utilities during the periods of non-compliance such that their wholesale prices were required to be "just and reasonable" as determined by FERC; and
- Order the Facilities to make appropriate refunds to Edison.

After Edison notified Pacific it was prepared to file a complaint with FERC, the parties entered into a confidentiality agreement on February 10, 1995, and began settlement negotiations. These negotiations later culminated in the settlement for which

this application seeks Commission approval. Due to the settlement, Edison did not file the complaint with FERC.

3. The Settlement Agreement

As summarized above, the settlement agreement provides that Pacific will make a lump-sum NPV settlement payment to Edison, subject to audit at Edison's option; that the ISO4-based power purchase prices under the Contracts will be converted to substantially lower avoided-cost based prices contained in SO1; and that litigation will be avoided. The settlement agreement is conditioned upon our approval.

The application states that Edison's complaint with FERC would have sought a refund of the difference between the payments made by Edison under the Contracts and the payments that would have been made based upon "just and reasonable" rates as determined by FERC, plus interest on the difference, for the period during which the Facilities were found not to comply with FERC standards. Assuming that a complete victory for Edison would be based upon recovery of amounts paid in excess of 80% of its short-run avoided cost (Edison's estimate of the maximum "just and reasonable" rate), Edison calculates that the expected total customer costs under the settlement would be $146.7 million,[1] as compared to $187.3 million if Pacific were to prevail in the litigation. Estimated total customer costs would be $90.3 million if Edison were to prevail in the litigation. Thus, the settlement outcome falls within the range of estimated potential of the litigation.

The settlement agreement requires Pacific to pay a lump sum to Edison upon Commission approval, which will be accounted for as a refund of prior power purchase payments. In addition, restructuring the Contracts to SO1 contracts will save customers a substantial amount in power purchase costs. Edison states that approval of the settlement will result in customers saving at least $40.6 million.

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[1] All figures are January 1, 1995 NPV.

4. The Application and Protest

Edison filed this application on August 16, 1996.[2] The application seeks approval of its agreement with Pacific (the Settlement Agreement) and the Restated Contracts, and authorization for Edison to recover all payments to be made by Edison pursuant to the Settlement Agreement and the Restated Contracts through Edison's Energy Cost Adjustment Clause (ECAC) or other Commission mechanism, subject only to Edison's prudent administration of the Restated Contracts. Edison requested that the application be given expedited consideration as an ex parte matter.[3]

After obtaining leave for several extensions of time to review the application, on October 7, 1996, ORA filed a protest. The protest is based upon two grounds: First, that the application was incomplete and provided no means to determine the reasonableness of the request; and second, that the procedure and schedule requested by Edison provided no opportunity for ORA or any other party to adequately review the reasonableness of the agreement and application. Accordingly, in the text of its protest, ORA sought "an order setting a schedule for the application permitting an adequate review," and an order requiring Edison to supplement its application by providing specified information which ORA believed to be "essential to a review." (ORA Protest, p. 2.) ORA concluded its protest by asking us to deny Edison's request for expedited ex parte treatment, and to hold a prehearing conference (PHC) to

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[2] Edison submitted an errata to the application, dated October 7, which corrects certain figures in the original application.

[3] With the application Edison and Pacific each filed a Motion for a Protective Order to seal certain portions of the application and supporting testimony. By Ruling filed September 16, 1996, the Law and Motion Administrative Law Judge (ALJ) granted the request for a period of one year, specifying that the assigned ALJ shall ensure that this protection is not compromised through reference to the protected information in any filings in hearings during that period. Consistent with that directive, this decision has been drafted without referring to any confidential information.

"schedule the rest of this proceeding, and ... determine the forum for reviewing this matter. (*Id.*, pp. 6-7).[4]

The assigned ALJ held a PHC on February 4, 1997. Edison, Pacific, and ORA appeared, although Pacific did not take an active role in the proceeding thereafter. The ALJ inquired about the status of the matter and, in view of the nature of ORA's protest, required the parties to meet and confer about the matter of disclosure, and to narrow the issues if possible. Thus, one of ORA's stated concerns was satisfied by convening the PHC, and it was hoped that the other would be addressed by the parties' efforts at voluntary disclosure of information ORA desired for its analysis. The parties were called upon to furnish a mutually agreeable hearing date in the event that these measures did not satisfy ORA's concerns, and pursuant to a letter from the parties to the ALJ a hearing was scheduled for June 4, 1997.

On May 15, ORA and Edison informed the ALJ by letter that they had reached an agreement that would permit the hearing to be taken off calendar. The letter stated:

> "Specifically, in the time since the February 4, 1997 PHC in this matter, ORA and Edison have complied with your request that the parties exchange information in an attempt to resolve informally the issues raised by ORA's Protest to Edison's Application. Based on additional information provided to ORA by Edison (and by Pacific through Edison), and ORA's analysis of this additional information, ORA and Edison have agreed as follows:
>
> "1. ORA will withdraw, and through this letter does withdraw, its Protest to Application (A.) 96-08-039 as it applies to the adequacy of the settlement terms between Edison and Pacific and/or to the consideration to be paid by Pacific pursuant to that settlement and
>
> "2. As a result of the withdrawal of ORA's Protest as stated above, the only remaining issue in dispute concerns the appropriate disposition of the settlement payment required of Pacific under the settlement agreement with Edison. ORA's position is that the settlement payment

[4] Edison and Pacific each filed a reply to ORA's protest. In light of the following discussion, we need not consider those replies.

> should be refunded directly to ratepayers through the electric deferred refund account. Edison, however, contends that the settlement payment should be recorded as a credit to Edison's CTC Balancing Account."

In lieu of a hearing, the parties request an order providing for a briefing schedule on the issue of the disposition of the settlement proceeds. In order to toll the requirement for Pacific to pay interest on those proceeds, we are issuing this interim order to approve the Settlement Agreement and Restated Contracts, and reserving the disposition issue for a final order after the briefing is concluded.

5. Discussion

In recognition that ORA has withdrawn its protest, we will treat this as an ex parte application. We note that it comes before us as a request for approval of the novation of a power purchase contract, and not a request for adoption of a settlement in a Commission proceeding pursuant to Rule 51.1(c) of our Rules of Practice and Procedure (Rules). (*See* Rule 51(c).) Consequently, we will evaluate it in accordance with the standards which govern revised power purchase contract approvals. Applications of this type generally require a persuasive showing that the new power purchase agreement will benefit ratepayers more than would the existing one, and a showing that the generating facility is a viable one that would not be likely to shut down prior to expiration of the contract. (*See San Diego Gas & Electric Company*, D.94-12-038, 58 CPUC2d 104, (1994); *Southern California Edison Company*, D.95-10-041 (October 18, 1995), *Southern California Edison Company*, D.95-11-058, 165 PUR4th 441 (1995). *See, generally, Power Purchase Contracts*, D.88-10-032, 29 CPUC2d 415 (1988); *Opinion on Guidelines for Year 11-Related Restructuring*, D.94-05-018, 54 CPUC2d 383 (1994).)

In the absence of the settlement, Edison would have been compelled to litigate the disputed issues before the FERC. As presented by Edison, if Edison had litigated the disputed matters before FERC and not prevailed, the $40.6 million NPV savings expected from the settlement and contract restructuring would be lost. In addition, Edison's analysis showed that the total customer benefits associated with the settlement and contract restructuring fall well within the range of possible outcomes had the parties litigated their disputes before FERC. Therefore, in addition to their combined

customer benefits, the settlement and contract restructuring also satisfy the Commission's standards for approval. ORA, having had ample opportunity to confirm this conclusion, has withdrawn its protest and is presumed not to contest this conclusion. The parties to this proceeding agreed that the Facilities are viable, in that there is no reason to believe that they would not operate for the full term of the Contract.

We will approve the Settlement Agreement and Contract Restructuring, and defer a determination concerning the disposition of the settlement proceeds until after that issue is fully briefed by the parties in accordance with the terms of our Order.

Findings of Fact

1. On June 21, 1984, Edison entered into two Amended and Restated 20-year Power Purchase Contracts with affiliates of Pacific, respectively, the Penrose Landfill Contract (QF I.D. No. 1018), and the Toyon Landfill Contract (QF I.D. No. 1022) (collectively, the Contracts). Both Facilities commenced Firm Operation in May 1986.

2. A number of disputes between Edison and Pacific have arisen during the course of performance of the Contracts. In order to resolve these disputes, Edison and Pacific entered into the Settlement Agreement which is the subject of this application.

3. Implementation of the Settlement Agreement will resolve the disputes and prevent the likelihood of future disputes concerning the Contracts; save ratepayers at least $40.6 million (Net Present Value) resulting from the settlement and contract restructuring; and provide total customer benefits within the range of possible outcomes had the parties litigated their disputes before FERC.

4. No doubts were raised about the technical viability of the Facilities.

5. The Settlement Agreement is reasonable.

6. Edison's entering into the Settlement Agreement is prudent.

7. In similar proceedings, the Commission has conditioned permanent recovery of expenses incurred under the approved agreements upon reasonable contract administration by the utility.

Conclusions of Law

1. The application should be granted in accordance with the terms of the Order.
2. Edison's request for authorization to recover all payments to be made by Edison pursuant to the Settlement Agreement and Restated Contracts through Edison's ECAC, or any other mechanism authorized by the Commission, should be granted, subject only to Edison's prudent administration of the Restated Contracts.
3. No hearing is necessary.
4. Other relief should be granted, as specified in the Order.

INTERIM ORDER

IT IS ORDERED that:

1. The application of Southern California Edison Company (Edison) for approval of the Settlement Agreement between Pacific Energy (Pacific) and Edison dated September 14, 1995, is approved.
2. Not later than 10 days after the effective date of this order, Edison and Office of Ratepayer Advocates shall submit opening briefs on the issue of whether the payment specified in the Settlement Agreement should be refunded directly to ratepayers through the electric deferred refund account, or recorded as a credit to Edison's Computation Transition Charge Balancing Account. The parties may submit reply briefs not later than 20 days after the effective date of this order.

3. Pending the issuance of an order directing how the payment referred to in the preceding paragraph shall be treated, Pacific shall make that payment to Edison, and Edison shall place the payment in a memorandum account.

This order is effective today.

Dated July 16, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

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In the Matter of the Application of Southern California Edison Company for Orders: (1) Approving a Proposed Settlement and Power Purchase Agreement Restructuring Between Edison and Pacific Energy; (2) Authorizing Edison's Recovery in Rates of Payments Made Pursuant to the Power Purchase Agreements included in the Proposed Settlement and Restructuring.	Application 96-08-039 (Filed August 16, 1996)

INTERIM OPINION

1. Summary

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To resolve these disputes, Edison and Pacific have entered into a contract restructuring and settlement agreement, contingent on Commission approval, pursuant to which the two Contracts will be converted into restated contracts with payment terms based on Edison's Standard Offer No. 1 power purchase contract (SO1). The proposed settlement and contract restructuring will resolve the dispute as follows: (1) Pacific will make a lump net present value (NPV) settlement payment to Edison; (2) the expensive ISO4-based power purchase prices under the Contracts will be converted to avoided-cost based prices contained in SO1, substantially reducing power

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2. Background

In December 1983, Edison and Central Plants Inc., a wholly owned subsidiary of Pacific, entered into the two Contracts, which relate to two separate landfill gas-fueled small electric power production Facilities located at the Penrose and Toyon landfills in Los Angeles. The Facilities are located in the service territory of the Los Angeles Department of Water and Power (LADWP), and have transmission agreements with LADWP to provide for the delivery of power from the Facilities to Edison's system.

Each Contract has a term of 20 years and provides for energy payments for the first 10 years of the Contract term to be based on Edison's Forecast of Annual Marginal Cost of Energy as then approved by the Commission. Each Contract also provides for 10 megawatts (MW) of firm capacity at a price of $143/kilowatt (kW)-yr. Both Facilities commenced Firm Operation in May 1986.

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[3] With the application Edison and Pacific each filed a Motion for a Protective Order to seal certain portions of the application and supporting testimony. By Ruling filed September 16, 1996, the Law and Motion Administrative Law Judge (ALJ) granted the request for a period of one year, specifying that the assigned ALJ shall ensure that this protection is not compromised through reference to the protected information in any filings in hearings during that period. Consistent with that directive, this decision has been drafted without referring to any confidential information.

"schedule the rest of this proceeding, and ... determine the forum for reviewing this matter. (*Id.*, pp. 6-7).[4]

The assigned ALJ held a PHC on February 4, 1997. Edison, Pacific, and ORA appeared, although Pacific did not take an active role in the proceeding thereafter. The ALJ inquired about the status of the matter and, in view of the nature of ORA's protest, required the parties to meet and confer about the matter of disclosure, and to narrow the issues if possible. Thus, one of ORA's stated concerns was satisfied by convening the PHC, and it was hoped that the other would be addressed by the parties' efforts at voluntary disclosure of information ORA desired for its analysis. The parties were called upon to furnish a mutually agreeable hearing date in the event that these measures did not satisfy ORA's concerns, and pursuant to a letter from the parties to the ALJ a hearing was scheduled for June 4, 1997.

On May 15, ORA and Edison informed the ALJ by letter that they had reached an agreement that would permit the hearing to be taken off calendar. The letter stated:

> "Specifically, in the time since the February 4, 1997 PHC in this matter, ORA and Edison have complied with your request that the parties exchange information in an attempt to resolve informally the issues raised by ORA's Protest to Edison's Application. Based on additional information provided to ORA by Edison (and by Pacific through Edison), and ORA's analysis of this additional information, ORA and Edison have agreed as follows:
>
> "1. ORA will withdraw, and through this letter does withdraw, its Protest to Application (A.) 96-08-039 as it applies to the adequacy of the settlement terms between Edison and Pacific and/or to the consideration to be paid by Pacific pursuant to that settlement and
>
> "2. As a result of the withdrawal of ORA's Protest as stated above, the only remaining issue in dispute concerns the appropriate disposition of the settlement payment required of Pacific under the settlement agreement with Edison. ORA's position is that the settlement payment

[4] Edison and Pacific each filed a reply to ORA's protest. In light of the following discussion, we need not consider those replies.

> should be refunded directly to ratepayers through the electric deferred refund account. Edison, however, contends that the settlement payment should be recorded as a credit to Edison's CTC Balancing Account."

In lieu of a hearing, the parties request an order providing for a briefing schedule on the issue of the disposition of the settlement proceeds. In order to toll the requirement for Pacific to pay interest on those proceeds, we are issuing this interim order to approve the Settlement Agreement and Restated Contracts, and reserving the disposition issue for a final order after the briefing is concluded.

5. Discussion

In recognition that ORA has withdrawn its protest, we will treat this as an ex parte application. We note that it comes before us as a request for approval of the novation of a power purchase contract, and not a request for adoption of a settlement in a Commission proceeding pursuant to Rule 51.1(c) of our Rules of Practice and Procedure (Rules). (*See* Rule 51(c).) Consequently, we will evaluate it in accordance with the standards which govern revised power purchase contract approvals. Applications of this type generally require a persuasive showing that the new power purchase agreement will benefit ratepayers more than would the existing one, and a showing that the generating facility is a viable one that would not be likely to shut down prior to expiration of the contract. (*See San Diego Gas & Electric Company*, D.94-12-038, 58 CPUC2d 104, (1994); *Southern California Edison Company*, D.95-10-041 (October 18, 1995), *Southern California Edison Company*, D.95-11-058, 165 PUR4th 441 (1995). *See, generally, Power Purchase Contracts*, D.88-10-032, 29 CPUC2d 415 (1988); *Opinion on Guidelines for Year 11-Related Restructuring*, D.94-05-018, 54 CPUC2d 383 (1994).)

In the absence of the settlement, Edison would have been compelled to litigate the disputed issues before the FERC. As presented by Edison, if Edison had litigated the disputed matters before FERC and not prevailed, the $40.6 million NPV savings expected from the settlement and contract restructuring would be lost. In addition, Edison's analysis showed that the total customer benefits associated with the settlement and contract restructuring fall well within the range of possible outcomes had the parties litigated their disputes before FERC. Therefore, in addition to their combined

customer benefits, the settlement and contract restructuring also satisfy the Commission's standards for approval. ORA, having had ample opportunity to confirm this conclusion, has withdrawn its protest and is presumed not to contest this conclusion. The parties to this proceeding agreed that the Facilities are viable, in that there is no reason to believe that they would not operate for the full term of the Contract.

We will approve the Settlement Agreement and Contract Restructuring, and defer a determination concerning the disposition of the settlement proceeds until after that issue is fully briefed by the parties in accordance with the terms of our Order.

Findings of Fact

1. On June 21, 1984, Edison entered into two Amended and Restated 20-year Power Purchase Contracts with affiliates of Pacific, respectively, the Penrose Landfill Contract (QF I.D. No. 1018), and the Toyon Landfill Contract (QF I.D. No. 1022) (collectively, the Contracts). Both Facilities commenced Firm Operation in May 1986.

2. A number of disputes between Edison and Pacific have arisen during the course of performance of the Contracts. In order to resolve these disputes, Edison and Pacific entered into the Settlement Agreement which is the subject of this application.

3. Implementation of the Settlement Agreement will resolve the disputes and prevent the likelihood of future disputes concerning the Contracts; save ratepayers at least $40.6 million (Net Present Value) resulting from the settlement and contract restructuring; and provide total customer benefits within the range of possible outcomes had the parties litigated their disputes before FERC.

4. No doubts were raised about the technical viability of the Facilities.

5. The Settlement Agreement is reasonable.

6. Edison's entering into the Settlement Agreement is prudent.

7. In similar proceedings, the Commission has conditioned permanent recovery of expenses incurred under the approved agreements upon reasonable contract administration by the utility.

Conclusions of Law

1. The application should be granted in accordance with the terms of the Order.
2. Edison's request for authorization to recover all payments to be made by Edison pursuant to the Settlement Agreement and Restated Contracts through Edison's ECAC, or any other mechanism authorized by the Commission, should be granted, subject only to Edison's prudent administration of the Restated Contracts.
3. No hearing is necessary.
4. Other relief should be granted, as specified in the Order.

INTERIM ORDER

IT IS ORDERED that:

1. The application of Southern California Edison Company (Edison) for approval of the Settlement Agreement between Pacific Energy (Pacific) and Edison dated September 14, 1995, is approved.
2. Not later than 10 days after the effective date of this order, Edison and Office of Ratepayer Advocates shall submit opening briefs on the issue of whether the payment specified in the Settlement Agreement should be refunded directly to ratepayers through the electric deferred refund account, or recorded as a credit to Edison's Computation Transition Charge Balancing Account. The parties may submit reply briefs not later than 20 days after the effective date of this order.

3. Pending the issuance of an order directing how the payment referred to in the preceding paragraph shall be treated, Pacific shall make that payment to Edison, and Edison shall place the payment in a memorandum account.

This order is effective today.

Dated July 16, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners