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Decision 97-12-040 December 3, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for a Commission Order Finding That Gas Operations During the Reasonableness Review Period From April 1, 1992 to March 31, 1993 Were Prudent.

Application 93-05-044
(Filed May 28, 1993)

ORIGINAL

Application of Southern California Edison Company (U 338-E) for a Commission Order Finding That Gas Operations During the Reasonableness Review Period From April 1, 1993 to March 31, 1994 Were Prudent.

Application 94-05-044
(Filed May 27, 1994)

Application of Southern California Edison Company (U 338-E) for a Commission Order Finding That Gas Operations During the Reasonableness Review Period From April 1, 1994 to March 31, 1995 Were Prudent.

Application 95-05-049
(Filed May 26, 1995)

Application of Southern California Edison Company (U 338-E) for a Commission Order Finding That Gas Operations During the Reasonableness Review Period From April 1, 1995 to March 31, 1996 Were Prudent.

Application 96-05-045
(Filed May 30, 1996)

Application of Southern California Edison Company (U 338-E) for a Commission Order Finding That Gas Operations During the Reasonableness Review Period From April 1, 1996 to March 31, 1997 Were Prudent.

Application 97-05-050
(Filed May 30, 1996)

Janet K. Lohmann, Attorney at Law, for Southern California Edison Company, applicant.

Patrick L. Gileau, Attorney at Law, for the Office of Ratepayer Advocates, interested party.

O P I N I O N

I. Introduction

The Office of Ratepayer Advocates (ORA) and Southern California Edison Company (Edison) (Settling Parties or Parties) move for approval of the Settlement Agreement (Settlement) attached as Appendix A. ORA and Edison believe that in light of the extensive record in this case, the proposed Settlement is "reasonable in light of the whole record, consistent with the law, and in the public interest." (Rule 51.1(e) of the Commission's Rules of Practice and Procedure.) Accordingly, ORA and Edison request that the Commission adopt the Settlement without modification.

The basic elements of the Settlement include: (1) a \$39 million disallowance for Canadian gas costs incurred through December 31, 1996; (2) a disallowance of \$257,000/month per contract for each of Edison's four supply contracts for Canadian gas costs beginning after January 1, 1997 and continuing until each of the commodity contracts is terminated; (3) a cost-sharing mechanism in lieu of reasonableness review, whereby shareholders would absorb at least 20% of the termination or restructuring costs associated with the Canadian supply and transportation contracts and at least 5% of the termination or restructuring costs associated with the El Paso Natural Gas Company (El Paso) Transportation Contract which the Commission has already found reasonable (a portion of the disallowance associated with the cost-sharing mechanisms would be flowed through to ratepayers through the Energy Deferred Refund Account (EDRA)); and (4) agreement that all other costs incurred under these contracts, including the termination, buy-down or buyout costs, are reasonable and should be determined to be reasonable by the Commission.

II. Background

This Settlement is the result of lengthy negotiations between ORA and Edison, the only active parties during discovery and hearings.¹ The negotiations were conducted during and after the hearings in the Application (A.) 94-05-044/A.95-05-019 reasonableness applications. As a result, the Parties negotiated this Settlement with full knowledge of the Parties' positions, the strengths and weaknesses of the other party's position and risk of unfavorable outcome. The Settling Parties have achieved a far-reaching and comprehensive settlement of all pending gas issues concerning Edison's Canadian gas commodity and transportation contracts.

Edison filed with the Commission Energy Cost Adjustment Clause (ECAC) A.94-05-044, A.95-05-049, A.96-05-045, and A.97-05-050. By these applications, Edison requested, among other things, Commission determinations that Edison's gas costs for the record years 1993, 1994, 1995, 1996, and 1997 (through March 31, 1997) were prudently incurred and reasonable. The reasonableness reviews of Edison's gas procurement and operations in the 1993, 1994, and 1995 record years were consolidated into A.94-05-044, a proceeding that has been divided into several phases. The Forecast Phase, which concerned Edison's forecast ECAC expenses, was resolved by Decision (D.) 94-12-046. The nonqualifying facility reasonableness phase, except for natural gas issues, was resolved by D.96-08-030.

In May 1995, the Division of Ratepayer Advocates (DRA), the predecessor of ORA, served its report on the reasonableness of Edison's gas procurement costs for the record periods in A.93-05-044 and A.94-05-044 covering the period April 1992 through March 1994 (Ex. 225). In its report, DRA contested the reasonableness of Edison's Canadian gas commodity and transportation contracts² and recommended a \$13.3

¹ Pacific Gas Transmission Co. (PGT) did file limited rebuttal testimony addressing DRA's May 1995 Report which was admitted by stipulation (TR 6/329) as Exhibit 224.

² DRA only contested the reasonableness of execution and terms of Edison's gas transportation contracts with Alberta Natural Gas Company (ANG), PGT and Pacific Gas and Electric Company (PG&E), and Edison's four gas supply contracts with AEC Oil and Gas Company,

Footnote continued on next page

million disallowance for alleged excessive costs that Edison incurred during the 1993/1994 record period for procuring gas from Canada (*Id.* p. 3 - 22). DRA did not contest Edison's Access Agreement with Southern California Gas Company (SoCalGas) or any other gas procurement or transportation contract that was in effect during the 1993/1994 record periods and specifically found Edison's domestic gas acquisition costs reasonable for these record periods (*Id.* p. 4-1). In December 1995, Edison served its rebuttal testimony (Ex. 210, 211) addressing the issues described in DRA's May 1995 report. In May 1996, DRA served its surrebuttal testimony (Ex. 226) addressing Edison's December 1995 testimony. In August 1996, Edison served its sur-surrebuttal testimony (Ex. 216).

On October 4, 1996, DRA issued its report on the reasonableness of Edison's gas procurement costs for the record period in A.95-05-049 which covers the period April 1994 through March 1995 (Ex. 227). In its report, DRA again contested the reasonableness of Edison's Canadian gas acquisition costs from the same contracts it contested in A.94-05-044, and recommended a disallowance of \$37.6 million for the record period. DRA did not contest any other gas procurement or transportation contract that was in effect during this record period, and specifically found Edison's domestic gas acquisition costs reasonable for this record period. Edison served its rebuttal testimony (Ex. 222) in A.95-05-049 in October 1996.

Hearings on A.94-05-044/A.95-05-049 gas reasonableness issues were held from January 21 - February 20, 1997 before Administrative Law Judge (ALJ) Robert Barnett and Commissioner Jessie Knight. Settlement discussions between the Parties began during the hearings. At the close of hearings, both ALJ Barnett and Commissioner Knight urged the Parties to continue settlement negotiations.³ The briefing schedule

ESSO Resources Canada Limited (ESSO) (which in 1992 changed its name to Imperial Oil Resources Ltd.), Shell Canada Limited (Shell), and Western Gas Marketing Limited. The term "Edison's Canadian gas commodity and transportation contracts" used throughout this opinion refers specifically to these seven contracts (Ex. 225, pp. 2-1 - 2-5).

³ TR. 14/1205.

agreed to by the ALJ and the Parties was suspended to allow settlement negotiations to continue. After months of negotiations, the Parties have reached agreement on the following issues:

- A. Pending gas reasonableness issues in ECAC A.94-05-044, A.95-05-049, A.96-05-045 and the A.97-05-050 record periods through December 31, 1996.
- B. The reasonableness of Canadian gas costs beginning January 1, 1997 through the termination date of each of Edison's Canadian gas commodity and transportation contracts.
- C. Contract termination, buy-down and buyout costs associated with each of Edison's Canadian gas commodity and transportation contracts.
- D. Contract termination, buy-down and buyout costs associated with Edison's El Paso Gas Transportation Contract.
- E. Shareholder sharing mechanisms designed to address the costs of contract termination, buy-down and buyout associated with each of Edison's Canadian gas commodity and transportation contracts without the need for reasonableness review.

Pursuant to Rule 51.1(b), Edison gave notice of a Settlement Conference to discuss the Settlement. That conference was held on July 11, 1997. Representatives of ORA, Edison, The Utility Reform Network, El Paso, California Cogeneration Council, Foster Associates, and Cogeneration Association of California/Energy Producers and Users Coalition (CAC/EPUC) attended. The notice was served on all parties of record in A.94-05-044, A.95-05-049, A.96-05-045, A.97-05-050, and A.96-08-001.

III. Issues Resolved by the Settlement

A. Reasonableness Of Canadian Gas Procurement Costs

Since November 1993, Edison purchased gas supplies totaling approximately 200 million cubic feet per day (MMcf/d) pursuant to commodity contracts executed in December 1990 with four Canadian producers. Edison initially considered procuring Canadian gas with discussions with PGT that commenced in 1988. Negotiations with shippers and producers continued until the commodity contracts were executed in December 1990. The final FTSA with PG&E was signed in November 1991, which irrevocably bound Edison to all of the transportation agreements and commodity contracts.

In their reports, ORA and its predecessor DRA challenged the reasonableness of Edison's decision to enter into these contracts. ORA asserted that the netback and spot pricing provisions of the supply contracts failed to provide Edison with Canadian gas supplies delivered to the SoCalGas' border that were competitive with Edison's alternative gas supplies from the Southwest (Ex. 225, p. 2-13). In ORA's view, Edison should have negotiated contracts which insured that the cost of Edison's Canadian supplies was no greater than the cost of Edison's alternative supplies. Among other things, ORA took the position that the inclusion of intrastate transition costs in the netback pricing formula adversely affected the competitiveness of Edison's Canadian gas supplies (Ex. 226, p. 1-4). ORA recommended a disallowance which compared the delivered cost of gas procured under these contracts with the cost of gas delivered to the California border.

In its rebuttal and sur-surrebuttal testimony, Edison explained that its Canadian gas purchases have been competitive and market-responsive when compared to the proper benchmark standard for long-term contracts (Ex. 210, pp. 40-53). Edison also detailed how these contracts provided significant long-term benefits to Edison's customers by diversifying Edison's gas supply, alleviating Edison's dependence on interruptible pipeline capacity, and thereby increasing reliability (Ex. 216, p.7). Edison further argued that DRA inappropriately used an after-the-fact annual price review in concluding Edison was imprudent and improperly calculated its disallowance by erroneously (1) comparing long-term contract prices with monthly spot market prices, and (2) failed to account for the reduction in the cost of gas at the Southern California border due to the PGT Expansion (Ex. 210, p. 16-18).

Edison and ORA discussed their litigation positions and based on statements made by the ALJ and Assigned Commissioner in A.94-05-044/A.95-05-049,⁴ the parties concluded that neither party had any assurance that its litigation position

⁴ RT 6/333, 7/507, 14/1205.

would prevail, and that the ratepayers and Edison would be better served if the Commission were to accept the proposed Settlement rather than expend its time and resources in litigation of the matter. Accordingly, as a compromise of their litigation positions and to resolve all Canadian gas issues in pending and future ECAC proceedings, the Parties agreed that (1) Edison will credit its EDRA in the amount of \$39 million, plus interest; (2) for each month beginning January 1, 1997 and continuing until the effective termination, buy-down, or buyout date of each of the four Canadian gas commodity contracts, Edison will credit its EDRA with a monthly payment equal to 1/38 of \$39 million allocated evenly among the four Canadian gas commodity contracts; (3) cost-sharing mechanisms will be applied to contract termination, buy-down or buyout costs; and (4) Edison shall be entitled the opportunity to recover all other expenses associated with each of Edison's Canadian gas commodity and transportation contracts as provided in the Settlement through either the ECAC Balancing Account or the Competition Transition Charge (CTC), and there should be no further reasonableness review of these contracts and costs for the remainder of the terms of these contracts.

B. *Other Pending Gas Reasonableness Issues*

ORA did not contest or recommend any disallowance with respect to any of Edison's other gas contracts or other gas procurement costs incurred by Edison during the record periods covered by A.94-05-044 and A.95-05-049. The Parties agreed that all of Edison's remaining gas procurement, storage and transportation contracts, and costs and operations from April 1, 1993 through March 31, 1995 should be found reasonable by the Commission.

C. *Gas Contract Termination, Buy-Down and Buyout Costs Associated with Each of Edison's Canadian Gas Commodity and Transportation Contracts*

In light of Edison's decision to divest itself of all of its gas/oil generating stations in response to industry restructuring and Assembly Bill (AB) 1890, which

added Public Utilities (PU) Code Section 367(c)(2),⁵ the Parties elected to enter into a comprehensive settlement that would resolve all future Canadian gas reasonableness issues including agreement on a ratepayer/shareholder sharing mechanism designed to provide an incentive for Edison to minimize the costs of contract termination, buy-down or buyout associated with each of Edison's Canadian gas commodity and transportation contracts and thereby avoid the need for a retrospective reasonableness review of these costs. The Parties agreed that in lieu of reasonableness review, the cost-sharing mechanism will operate such that 87% of the termination, buy-down and buyout costs for each of the Canadian gas commodity and transportation contracts shall be recoverable through the CTC or ECAC Balancing Account or successor recovery mechanism. Edison will credit its EDRA with an amount equal to 7% of the termination, buy-down and buyout costs for each of the Canadian gas commodity and transportation contracts. As a result of these cost-sharing mechanisms, at least 20% of the termination, buy-down and buyout costs will be borne by Edison's shareholders. The Parties request that the Commission make a determination that this cost-sharing mechanism is reasonable in lieu of further reasonableness review.

D. Edison's El Paso Gas Transportation Contract

In D.94-03-039, the Commission found Edison's execution of its gas transportation contract with El Paso reasonable. Pursuant to PU Code Section 367(c)(2), Edison is provided the opportunity to recover 100% of the buy-down or buyout costs associated with this contract to the extent those costs are determined to be reasonable by the Commission. As part of a comprehensive settlement, the Parties agreed on a cost-sharing mechanism for the El Paso Gas Transportation Contract, in lieu of reasonableness review of any termination, buy-down or buyout of this contract.

⁵ PU Code Section 367(c)(2) provides that Edison "may recover, pursuant to this section, 100 percent of the uneconomic portion of the fixed costs paid under fuel and fuel transportation contracts that were executed prior to December 20, 1995, and were subsequently determined to be reasonable by the commission, or 100 percent of the buy-down or buyout costs associated with the contracts to the extent the costs are determined to be reasonable by the commission."

As consideration for this settlement, in the event Edison elects to terminate, buy-down or buyout its El Paso Gas Transportation Contract, the Parties agreed that 96.25% of the termination or buyout costs shall be recoverable through the CTC or ECAC Balancing Account or successor recovery mechanism. Edison will credit its EDRA with an amount equal to 1.25% of the termination, buy-down or buyout costs associated with the El Paso Transportation Contract. As a result of these cost-sharing mechanisms, at least 5% of the termination, buy-down and buyout costs will be borne by Edison's shareholders. The Parties request that the Commission make a determination that this cost-sharing mechanism is reasonable in lieu of further reasonableness review.

IV. The Settlement Is In the Public Interest

A. The Commission Has Expressed Strong Public Policy In Favor of Settlements

The Settlement is submitted pursuant to Rules 51, *et seq.* of the Commission's Rules and in the opinion of the Parties, meets the public interest standards expressed in those Rules and in the Commission's decisions on settlements. Those cases express a strong public policy favoring settlement of disputes if the settlements are fair and reasonable in light of the whole record.⁶ This policy on settlements is intended to reduce the expense of litigation to ratepayers, conserve scarce Commission resources and allow the Settling Parties to avoid the risk that a litigated resolution will produce unacceptable results.⁷ During hearings, the ALJ and the Assigned Commissioner reiterated the Commission's policy of favoring settlements.⁸

⁶ *Re Pacific Gas and Electric Co.*, D.88-12-083, 30 CPUC 2d 189, 221 - 223 (1988); *Re PG&E*, D.91-05-029, 40 CPUC 2d 301, 326 (1991).

⁷ *Re San Diego Gas and Electric Co.*, D.92-12-019, 46 CPUC 2d 538, 553 (1992).

⁸ ALJ Barnett, TR 6/333, 14/1205.

The parties submit that the Settlement is in the public interest and ratepayers' interest since it results in a substantial dollar disallowance which will be returned to the ratepayers through the EDRA. Furthermore, the Settlement constitutes a far more efficient and optimal use of the Settling Parties' resources in comparison with traditional litigation. The Parties believe that the resolutions of the issues in the Settlement Agreement fairly serve the interests of both Edison and its customers.

The Parties believe that the Settlement is a reasonable compromise of their opposing positions. Furthermore, the Parties have agreed that, in the event of any opposition to their Settlement, the Parties will actively defend the Settlement Agreement and will develop a mutually acceptable defense to address any issue raised in opposition. In this way also, the Settlement preserves the integrity of the record.

B. The Settlement Satisfies All Criteria For All Party Settlements

Pursuant to D.92-12-019, 46 CPUC2d at 550-551, all party settlements must meet the following requirements:

- a. command the unanimous sponsorship of all *active* parties to the instant proceeding;
- b. demonstrate that the sponsoring parties are fairly reflective of the affected interests;
- c. demonstrate that no term of the settlement contravenes statutory provisions or prior Commission decisions; and
- d. convey to the Commission sufficient information to permit the Commission to discharge its future regulatory obligations with respect to the Parties and their interests.

The Settlement Agreement satisfies each of these requirements.

The issue of reasonableness of contract formation is being considered only in A.94-04-044/A.95-05-049. The reasonableness determination in that proceeding affects future ECAC reasonableness reviews and recovery of contract costs through the CTC. The Settlement Agreement resolves these complex issues in a fair and equitable way. Any party on the service list in A.94-05-044 and A.95-05-049 had the opportunity to participate in discovery and the hearings but only Edison and ORA actively conducted discovery and cross-examined witnesses during hearings. PGT filed limited

rebuttal testimony to DRA in its May 1995 Report but did not attend the hearings. Therefore, the Settlement commands the unanimous sponsorship of all *active* parties in the ECAC proceedings.

The Settling Parties represent both ratepayer and utility concerns. The Settlement is the result of negotiations by parties of opposing interests that achieves a balance of these interests. The Settlement does not violate any statute or Commission decision and is consistent with the provisions and rules relating generally to burdens of proof. Indeed, the settlement of outstanding reasonableness reviews for a fixed dollar amount based on a compromise of the Parties' respective positions is consistent with past settlements approved by the Commission. A comparison table setting forth ORA's litigation position versus the settlement outcome is attached hereto as Appendix B. The cost-sharing mechanism for contract buyout or buy-down costs is also similar to the sharing mechanism for the restructuring of SoCalGas' contract with its affiliates, PITCO and POPCO, which was approved by the Commission as part of the SoCalGas Global Settlement in D.94-04-088, 54 CPUC 2d 337, 346.

The Parties conducted extensive discovery, produced several rounds of prepared direct, rebuttal, surrebuttal and sur-surrebuttal testimony which together with the transcripts of cross-examination comprise the record in this case. This record provides the Commission with sufficient information to permit it to discharge future regulatory obligations. The negotiations were held at arm's length, with competent counsel experienced in gas and reasonableness matters, and without collusion. The risk, exposure and complexity of the issues in this proceeding all weigh in favor of adoption of the Settlement.

V. Procedural Requests

In view of the extensive information contained in the record in A.94-05-044/ A.95-05-049, the Parties believe that expeditious processing of the settlement is warranted. Therefore, Edison and ORA request that the following procedural proposals be adopted to facilitate prompt action on the Settlement.

A. Consolidation Of The Above-Captioned Dockets Solely For The Purpose Of Considering This Gas Settlement

The moving Parties request that the Commission consolidate all the captioned dockets into the A.94-05-044/A.95-05-049 proceeding for the sole purpose of considering the reasonableness of this Settlement. The reasonableness of execution and contract administration of this contract is resolved by this Settlement and those findings are necessary for recovery of Canadian gas costs in future ECAC reasonableness cases and through the CTC. Because of the interrelated nature of the various elements of the Settlement, and the fact that the Settlement is an integrated package of compromises, consolidation is necessary to ensure that all issues resolved by this Settlement can be considered in a single forum.

The reasonableness of execution, contract administration and termination of the contracts is not being litigated in A.96-08-001 et al., the transition cost proceeding. However, a reasonableness determination is required by PU Code Section 367(c)(2) before the uneconomic portion of costs paid under these contracts and any termination, buy-down or buyout costs can be recovered through the CTC. Since the proposed Settlement is relevant and necessary to recovery of the gas costs through the CTC, the Parties provided notice of the Settlement Conference to all parties on the service list in A.96-08-001, et al.

B. Request For Waiver Of Commission Timing Rules

To afford the Commission an adequate opportunity to consider the merits of this Settlement, the Parties request waiver of Rule 51.2 of the Commission's Rules of Practice and Procedure, which provides that:

Parties to a Commission proceeding may propose a stipulation or settlement for adoption by the Commission (1) any time after the first prehearing conference and (2) within 30 days after the last day of hearings.

Hearings in A.94-05-044/A.95-05-049 concluded on February 20, 1997. Briefs have been postponed to allow settlement negotiation to continue with the encouragement of the ALJ and Assigned Commissioner. The Settlement "wipes the

slate clean" with respect to these contracts, eliminating future litigation and creates a cost-sharing mechanism that is fair and equitable to Edison's customers and shareholders and is also responsive to the Parties' and the Commission's workload in making the necessary reasonableness determinations and designing cost-sharing mechanisms to aid the Commission as it deals with electric industry restructuring. The Parties further request the briefing schedule remain suspended while the Commission evaluates the reasonableness of the Settlement. Likewise, given the extensive evidentiary record in A.94-05-044/A.95-05-049, evidentiary hearings should not be necessary to allow the Commission to make an informed decision on the merits of the Settlement.

VI. Comments

Comments on the proposed settlement were filed by three parties, the California Manufacturers Association (CMA), CAC/EPUC, and SoCalGas. The first two parties support the entire agreement while SoCalGas supports the major provisions which resolve the reasonableness issues surrounding Edison's Canadian contracts, including the provisions relating to the buyout of these contracts as a part of Edison's commitment to divest itself of its gas-fired generating units.

CMA notes that since some of the buyout costs may be recovered through the CTC, appropriate accounting procedures will have to be adopted to insure that the settlement's sharing is maintained. Edison addressed this issue on August 18, 1997, in a written response to a request from the presiding ALJ. (See Appendix C.) In ORA's view, the accounting procedures described in Edison's submission are adequate to insure that the intent of the settlement is honored; that, at a minimum, Edison's shareholders will absorb 20% of the costs associated with the buyout of its Canadian contracts and 5% of the costs associated with the buyout of its El Paso contract. We agree.

CAC/EPUC points out that the Settlement does not resolve the question of what portion, if any, of these contracts will be determined to be eligible for CTC recovery as uneconomic fixed fuel costs pursuant to PU Code § 367(c)(2). It argues that the Commission must recognize three separate steps in the determination of the costs that

will be considered eligible for CTC recovery: 1) what portion of the Edison fuel and fuel transportation costs is deemed reasonable by the Commission; 2) since only "fixed" uneconomic costs are eligible for CTC recovery, what portion of the costs deemed reasonable is "fixed" and what portion is "variable;" and 3) in order to determine those fixed costs that are "uneconomic," what market recovery (from the Power Exchange or Independent System Operator) is available to offset the identified fixed costs? The Settlement resolves only the first question in this three-step inquiry. The final two questions will be resolved in the transition cost proceeding in order to assure that the proper accounting methodologies are implemented. ORA has addressed these issues at length in the opening and reply briefs it filed in Phase 2 of the transition cost proceeding, A.96-08-001 et al., on July 21 and August 1, 1997. The matter will be resolved in that proceeding.

SoCalGas had no objection to the parts of the settlement addressing the reasonableness of Edison's Canadian gas supply and transportation contracts. However, SoCalGas requested certain modifications, which Edison considers inappropriate, to the settlement pertaining to Edison's contract with El Paso. SoCalGas claims that since Edison chose not to accept a settlement in the El Paso rate case in the Federal Energy Regulatory Commission (FERC) Docket No. RP 95-363-000 that SoCalGas and Commission staff supported, it would be bad policy for the Commission to approve a settlement that allows Edison to charge its customers more than the El Paso settlement.

Edison argues that SoCalGas' view that the El Paso settlement was the only just and reasonable way to go is speculative. All utilities and interested parties do not have similarly aligned interests. If Edison prevails in its litigation, then Edison will be paying a lower rate, thereby increasing the value of its contract with El Paso and correspondingly reducing the costs associated with any termination buy-down or buyout. SoCalGas' speculative comments are simply not a valid basis for modifying the Settlement.

ORA submits that it would be bad public policy for this Commission to penalize a utility in a state proceeding for exercising its lawful rights by refusing to go along

with a FERC settlement that this Commission endorses. ORA observes that regardless of the outcome of the FERC litigation, the 5% sharing mechanism of this Settlement gives Edison an incentive to minimize the costs since the more the buyout costs, the more the shareholders will bear. We agree with Edison and ORA.

Findings of Fact

1. The Settlement is the product of extensive discussions between the parties. Both ORA and Edison entered into these discussions (1) after conducting thorough discovery of each other's positions; (2) after a complete review of that discovery and the filed testimony; and (3) after cross-examination of each other's witnesses during hearings.

2. The Settlement is reasonable in light of the strength of each party's litigation position, the risk, expense, and complexity of litigation, and the settlement amounts upon which the Parties agreed.

3. The Settlement attached as Appendix A is reasonable in light of the whole record, consistent with law, and in the public interest as required by Rule 51.1(e).

4. Except as provided in this decision, all of Edison's remaining gas procurement, storage, and transportation contracts, and costs and operations from April 1, 1993, through March 31, 1995, are reasonable.

5. Except as provided in this decision, (1) all other costs incurred through December 31, 1996, under Edison's Canadian gas commodity and transportation contracts are reasonable; (2) all remaining Canadian gas commodity and transportation contract costs incurred on and after January 1, 1997, including the termination, buy-down and buyout, associated with each of the four commodity contracts are reasonable; (3) all remaining costs incurred on and after January 1, 1997, including the termination, buy-down and buyout costs associated with Edison's gas transportation contracts with PGT, PG&E, ANG, and El Paso are reasonable; and (4) for purposes of PU Code Section 367(c)(2), the execution of Edison's four commodity contracts and the gas transportation contracts with PGT, PG&E, ANG, and El Paso are reasonable.

Conclusion of Law

The Settlement attached as Appendix A should be approved.

O R D E R

IT IS ORDERED that:

1. The Settlement attached as Appendix A is approved.
2. Southern California Edison Company (Edison) shall credit its Electric Deferred Refund Account (EDRA) in the amount of \$39 million, plus applicable interest, within 30 calendar days after the effective date of this order. Edison shall submit an Advice Letter within 30 calendar days after the effective date of this order which sets forth a plan to refund these amounts to ratepayers within 60 days following the submittal.
3. For each month beginning January 1, 1997, and continuing until the effective termination, buy-down or buyout date of each of the four Canadian gas commodity contracts, Edison shall credit its EDRA with a monthly equivalent payment equal to 1/38 of \$39 million allocated evenly among the four Canadian gas commodity contracts. For those months occurring after January 1, 1997, but prior to the effective date of this order, Edison shall make the monthly equivalent payments in each of the respective months within 30 days of the effective date of this order.
4. Interest charges on the \$39 million to be credited to the EDRA shall accrue at the rate earned on prime, three-month commercial paper, as reported in the Federal Reserve Statistical release, G.13, commencing on January 1, 1997. Interest charges will

A.93-05-044 et al. ALJ/RAB/wav

begin to accrue on the date each monthly equivalent payment is credited to the EDRA until such amounts are refunded to Edison's ratepayers.

This order is effective today.

Dated December 3, 1997, at San Francisco, California.

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

APPENDIX A

Page 1

SETTLEMENT AGREEMENT OF SOUTHERN CALIFORNIA EDISON
COMPANY AND THE OFFICE OF RATEPAYER ADVOCATES ON
CANADIAN GAS REASONABLENESS AND CONTRACT TERMINATION
REASONABLENESS ISSUES

In accordance with Article 13.5 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Office of Ratepayer Advocates ("ORA") and Southern California Edison Company ("Edison"), collectively referred to as the "Parties," by and through their undersigned counsel, enter into this Settlement Agreement ("Settlement") to resolve fully and forever the issues described below.

RECITALS

- A. Edison has filed with the Commission Application Nos. ("A.") 94-05-044, 95-05-049, and 96-05-045. By these Applications, Edison requested, among other things, Commission determinations that Edison's gas costs for the record years 1993, 1994, 1995, and 1996 were prudently incurred and reasonable. In accordance with the Commission's Rate Case Plan set forth in D. 89-01-040, Edison filed its Reasonableness of Operations Report for the period 4/1/96 through 3/31/97 on May 30, 1997.
- B. The reasonableness review of Edison's gas procurement and operations in the 1993, 1994, and 1995 record years were consolidated into A. 94-05-044, a proceeding that has been divided into several phases. The Forecast Phase, which concerned Edison's forecast Energy Cost Adjustment Clause expenses was resolved by Decision No. 94-12-046. The non-QF reasonableness phase, except for natural gas issues, was resolved by Decision No. 96-08-030.
- C. In May 1995, the Division of Ratepayer Advocates (DRA), the predecessor of ORA, served its report on the reasonableness of Edison's gas procurement costs for the record periods in A. 93-05-044 and A. 94-05-044 covering the period April 1992 through March 1994. In its report, DRA contested the reasonableness of Edison's Canadian gas commodity and transportation contracts^{1/} and recommended a \$13.3 million disallowance

^{1/} DRA only contested the reasonableness of execution and terms of Edison's gas transportation contracts with Alberta Natural Gas Company (ANG), Pacific Gas

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APPENDIX A

Page 2

for alleged excessive costs that Edison incurred during the 1993/1994 record period for procuring gas from Canada. DRA did not contest Edison's Access Agreement with SoCalGas or any other gas procurement or transportation contract that was in effect during the 1993/1994 record periods and specifically found Edison's domestic gas acquisition costs reasonable for these record periods.

- D. On October 4, 1996, DRA issued its report on the reasonableness of Edison's gas procurement costs for the record period in A. 95-05-049 which covers the period April 1994 through March 1995. In its report, DRA again contested the reasonableness of Edison's Canadian gas acquisition costs from the same contracts listed in paragraph C above, and recommended a disallowance of \$37.6 million for the record period. DRA did not contest any other gas procurement or transportation contract that was in effect during this record period, and specifically found Edison's domestic gas acquisition costs reasonable for this record period.
- E. On August 19, 1997, ORA is scheduled to serve its report on the reasonableness of Edison's operations, including gas operations, for the record period in A. 96-05-045 covering the period April 1995 through March 1996.
- F. ORA, and its predecessor DRA, representing the interests of all California ratepayers, have actively participated in each of the filed Application proceedings listed in paragraph A, above.
- G. Hearings on A. 94-05-044/95-05-049 gas reasonableness issues were held from January 21 - February 20, 1997 before Administrative Law Judge (ALJ) Robert Barnett and Commissioner Jessie Knight. At the close of hearings, ALJ Barnett and Commissioner Knight urged the Parties to continue settlement negotiations and after months of negotiations, the Parties have reached agreement on the following issues:

Transmission Company (PGT) and Pacific Gas and Electric Company (PG&E Expansion), and Edison's four gas supply contracts with AEC Oil and Gas Company (AEC), ESSO Resources Canada Limited (ESSO) which in 1992 ESSO changed its name to Imperial Oil Resources Ltd. (Imperial), Shell Canada Limited (Shell), and Western Gas Marketing Limited (Western). The term "Edison's Canadian gas commodity and transportation contracts" used throughout this document refers specifically to these seven contracts.

APPENDIX A

Page 3

1. Pending gas reasonableness issues in ECAC Application Nos. 94-05-044, 95-05-049, 96-05-045 and 97-05-050 record periods through December 31, 1996.
2. The reasonableness of Canadian gas costs beginning January 1, 1997 through the termination date of each of Edison's Canadian gas commodity and transportation contracts.
3. Contract termination, buy-down and/or buy-out costs associated with each of Edison's Canadian gas commodity and transportation contracts.
4. Contract termination, buy-down and/or buy-out costs associated with Edison's El Paso Gas Transportation Contract.
5. Shareholder sharing mechanisms designed to address the costs of contract termination, buy-down and/or buy-out associated with each of Edison's Canadian gas commodity and transportation contracts without the need for reasonableness reviews.

The briefing schedule agreed to by the ALJ and the Parties was suspended to allow settlement negotiations to continue. The Parties intend that the Commission approve this Settlement without modification or condition as described herein. The Parties believe this Settlement is (1) reasonable in light of the record; (2) consistent with the law; (3) in the public interest because it reasonably resolves issues of law and fact; and (4) provides for a mutually acceptable outcome to pending proceedings including agreement on the recovery of past and future Canadian gas costs and future contract termination costs, thereby avoiding the time, expense, and uncertainty of litigation and future Commission involvement in all the matters this Settlement resolves.

AGREEMENT

In consideration of the recitals set forth above, the Parties agree as follows:

A. CANADIAN GAS REASONABLENESS ISSUES

1. As a compromise between their respective litigation positions in Application No. 94-05-044 and A. 95-05-049, the Parties agree that

APPENDIX A

Page 4

all Canadian gas reasonableness issues through December 31, 1996 are resolved by Edison agreeing to credit its Electric Deferred Refund Account (EDRA) in the amount of \$39 million, plus applicable interest, within 30 calendar days of a final Commission decision approving this Settlement. Edison agrees to submit an Advice Letter within 30 calendar days of a final Commission decision approving this Settlement, which sets forth a plan to refund these amounts to ratepayers within 60 days following the submittal.

2. As a compromise between their respective litigation positions, the Parties agree that for each month beginning January 1, 1997 and continuing until the effective termination, buy-down, and/or buy-out date of each of the four Canadian gas commodity contracts, Edison agrees to credit its EDRA with a monthly equivalent payment equal to 1/38 of \$39 million allocated evenly among the four Canadian gas commodity contracts. For those months occurring after January 1, 1997, but prior to the date the CPUC approves the Settlement, Edison agrees to make the monthly equivalent payments in each of the respective months within 30 days of a final Commission decision approving this Settlement.
3. Interest charges on the \$39 million to be credited to the EDRA shall accrue at the rate earned on prime, three-month commercial paper, as reported in the Federal Reserve Statistical Release, G. 13, commencing on January 1, 1997. Interest charges will begin to accrue on the date each monthly equivalent payment is credited to the EDRA until such amounts are refunded to Edison's ratepayers.
4. The Parties further agree that except for the above credits and 20% of the cost sharing amounts described below, Edison shall be entitled the opportunity to recover all expenses associated with each of Edison's Canadian gas commodity and transportation contracts either through the ECAC Balancing Account and/or the Competition Transition Charge (CTC) and there will be no further reasonableness review of Edison's Canadian gas costs by the Commission.
5. ORA did not contest or recommend any disallowance with respect to any of Edison's other gas contracts or other gas procurement costs incurred by Edison during the record periods covered by Application Nos. 93-05-044, 94-05-044 and 95-05-049. The Parties agree that all

APPENDIX A

Page 5

of Edison's remaining gas procurement, storage and transportation contracts, and costs and operations from April 1, 1993 through March 31, 1995 should be found reasonable by the Commission.

B. CONTRACT TERMINATION/BUY-DOWN/BUY-OUT COSTS

1. The Parties agree that all termination, buy-down, and/or buy-out costs associated with any of Edison's Canadian gas commodity and transportation contracts will be subject to cost-sharing mechanisms, in lieu of reasonableness review. The Parties agree that the cost sharing mechanism will operate such that 87% of the termination, buy-down and/or buy-out costs for each of the Canadian gas commodity and transportation contracts shall be recoverable through the CTC and/or ECAC Balancing Account or successor recovery mechanism. Edison shall credit its EDRA with an amount equal to 7% of the termination, buy-down and/or buy-out costs for each of the Canadian gas commodity and transportation contracts. As a result of these cost-sharing mechanisms, at least 20% of the termination, buy-down and/or buy-out costs will be borne by Edison's shareholders. In the event that Edison elects to buy-down any of its Canadian gas supply and transportation contracts, all net financial benefits that may accrue in the future as a result of the buy-down will be credited directly to the CTC and/or ECAC balancing account. The net financial benefits refer to excess revenues that would result in the event that the rate charged after contract buy-down, less expenses incurred, is lower than the market rate.
2. The Commission found reasonable Edison's execution of its gas Transportation Contract with El Paso in D. 94-03-039. As consideration for this Settlement, in the event Edison elects to terminate, buy-down or buy-out its El Paso Transportation Contract, the Parties agree that 96.25% of the termination and/or buy-out costs shall be recoverable through the CTC and/or ECAC Balancing Account or successor recovery mechanism. Edison shall credit its Electric Deferred Refund Account with an amount equal to 1.25% of the termination buy-down and/or buy-out costs associated with the El Paso Transportation Contract. As a result of these cost-sharing mechanisms, at least 5% of the termination, buy-down and/or buy-out costs will be borne by Edison's shareholders. Edison agrees in the event that it elects to buy-down

APPENDIX A

Page 6

this contract, then all net financial benefits that may accrue in the future as a result of the buy-down will be credited directly to the CTC and/or ECAC balancing account. The net financial benefits refer to excess revenues that would result in the event that the rate charged after contract buy-down, less expenses incurred, is lower than the market rate.

3. Edison agrees to credit its EDRA, as described above in B.1. and B.2, in the same month in which the payment to terminate, buy-out and/or buy-down the contract is made by Edison. For those payments made prior to a final Commission approval of the Settlement, Edison agrees to credit the EDRA within 30 days of a final Commission decision approving the Settlement.
4. The Parties agree that except for the 5% cost-sharing mechanism described above in B.2, Edison shall be entitled the opportunity to recover all expenses associated with its El Paso Transportation Contract, including any termination, buy-out and/or buy-down costs through the ECAC Balancing Account and/or the CTC, and there will be no further reasonableness review of Edison's costs by the Commission.
5. The Parties agree that any contract termination, buy-out and/or buy-down costs for the gas transportation and commodity contracts discussed herein included in CTC must be recovered within the transition period for electric restructuring specified in AB 1890, which is prior to December 31, 2001.

C. OTHER PROVISIONS

1. As consideration for the \$39 million credit, the monthly equivalent payment credit, and the cost sharing mechanisms set forth above, the Parties agree that (1) all other costs incurred through December 31, 1996 under Edison's Canadian gas commodity and transportation contracts were reasonably incurred and should be determined to be reasonable by the Commission; (2) all remaining Canadian gas commodity and transportation contract costs incurred on and after January 1, 1997, including the termination, buy-down and/or buy-out, associated with each of the four commodity contracts are reasonable and should be determined to be reasonable by the Commission; (3) all remaining costs incurred on and after

APPENDIX A

Page 7

January 1, 1997 including the termination, buy-down and/or buy-out costs associated with Edison's gas transportation contracts with PGT, PG&E, ANG and El Paso are reasonable and should be determined to be reasonable by the Commission; and (4) for purposes of Article 6, Section 367(c)(2) of Assembly Bill 1890, the execution of Edison's four commodity contracts and the gas transportation contracts with PGT, PG&E, ANG, and El Paso should be determined to be reasonable by the Commission.

2. The Parties intend that the Commission's approval of this Settlement will resolve fully and forever all issues of reasonableness and prudence concerning Edison's Canadian gas transportation and commodity contracts, both as to all issues of liability for a disallowance of any kind and future recovery of costs incurred under these contracts and the El Paso Transportation Contract, including termination, buy-down, and/or buy-out costs, through the ECAC Balancing Account or successor recovery mechanism and the CTC. Accordingly, ORA agrees that it will not seek or advocate in any forum any disallowance, penalty or sanction based on the matters this Settlement compromises and settles, or take any position inconsistent with this Settlement in any forum or proceeding.
3. In agreeing to this Settlement, the Parties took into account the Parties' litigation positions, ORA's disallowance recommendations and potential future liability associated with these contracts, including termination, buy-down, and/or buy-out costs, which were specifically factored into the negotiated Settlement amounts.
4. This Settlement, if approved by the Commission, would resolve all outstanding gas issues in four pending reasonableness reviews, three of which are included in these consolidated proceedings and in subsequent reviews regarding the reasonableness of these Canadian long-term gas transportation and commodity contracts through termination.
5. Edison agrees that it will not assign, transfer or sell any rights or interest in the Canadian gas transportation and commodity contracts and/or the El Paso Transportation Contract to any subsidiary or affiliate of Edison International.

APPENDIX A

Page 8

D. RESERVATIONS

1. The Parties agree that this Settlement represents a compromise of their respective litigation positions. It is neither an admission of imprudence or liability for damages or a penalty of any kind on the part of Edison nor does it represent the ORA's endorsement of, or agreement with, any or all of Edison's actions.
2. The Parties agree that Edison's obligation to: (1) credit \$39 million; (2) make the monthly equivalent payment credits; and (3) be subject to the cost-sharing mechanism described in Section B.1 and B.2, will become effective only if the CPUC unconditionally approves this Settlement, without modifications, and makes specific findings of reasonableness as set forth in this Settlement Agreement.
3. The Parties shall jointly request Commission approval of this Settlement. The Parties additionally agree to actively support prompt approval of the settlement including approval on an ex parte basis. Active support shall include comments, written and oral testimony, if required, appearances and other means as needed to obtain the approvals sought. The Parties further agree to jointly participate in briefings to Commissioners and their advisors regarding the settlement and the issues compromised and resolved by it.
4. This Settlement embodies the entire understanding and agreement of the Parties with respect to the matters described herein, and supersedes and cancels any and all prior oral or written agreements, principles, negotiations, statements, representations or understandings between the Parties.
5. This Settlement may be amended or changed only by a written agreement signed by the Parties.
6. The Parties have bargained earnestly and in good faith to achieve this agreement. The Parties intend the agreement to be interpreted and treated as a unified, interrelated settlement and not as a collection of separate agreements on discrete issues. The Parties therefore agree that if the Commission fails to approve the Settlement Agreement as reasonable, and adopt the Settlement

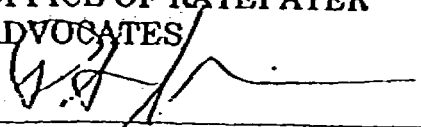
APPENDIX A

Page 9

Agreement unconditionally and without modification, including the findings and determinations requested herein, either Party may, in its sole discretion, elect to terminate the Settlement Agreement. The Parties further agree that any material change to the Settlement Agreement shall give each Party, in its sole discretion, the option to terminate the Settlement Agreement. In the event the Settlement Agreement is terminated, the Parties will seek to brief the unresolved issues in A. 94-05-044 and A. 95-05-049 gas reasonableness phase at the earliest convenient time.

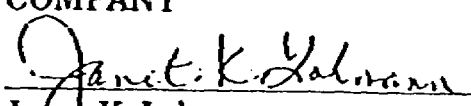
7. This Settlement shall become effective between the Parties on the date the last Party to sign the Settlement executes the document as indicated below.

OFFICE OF RATEPAYER
ADVOCATES



Patrick Gileau
Staff Counsel

SOUTHERN CALIFORNIA EDISON
COMPANY



Janet K. Lohmann
Senior Attorney

Dated: 7/11/97

Dated: 7/11/97

(END OF APPENDIX A)

APPENDIX B

A.94-05-044, et. al.
Reasonableness of SCE's Gas Costs
ORA Recommended versus Settlement Disallowance
November 1993 through December 1996

Application Number	Time Period	ORA Recommended Disallowance (\$ MM) a/	Settlement Disallowance (\$ MM) a/
A.94-05-044	Nov. '93 - March '94	\$13.3 b/	
A.95-05-049	April '94 - March '95	<u>\$37.6 c/</u>	
Subtotal	Nov. '93 - March '95	\$50.9	

		Estimate of ORA Recommended Disallowance Based on Position in A.94-05-044/95-05-049	
Application Number	Time Period		
A.96-05-045	April '95 - March '96	\$37.3	
A.97-05-050	April '96 - Dec '96	<u>\$20.0</u>	
Subtotal	April '95 - Dec. '96	<u>\$57.3</u>	

TOTAL	Nov. '93 - Dec. '96	\$108.2	\$39.0

Notes:

a/ Excludes interest.

b/ Exhibit 225, page 1-1.

c/ Exhibit 227, page i.

(END OF APPENDIX B)

APPENDIX C
Implementation of the Cost Sharing Mechanism
Pursuant to the Settlement Agreement (SA)

- Prior to Commission approval of the SA, Edison will record (debit) 100% of the termination, buy-down and/or buy-out costs for each of the Canadian gas commodity and transportation contracts to the ECAC Balancing Account.
- Upon Commission approval of the SA, Edison will implement the adopted cost sharing mechanism as follows:

Costs Recorded *Prior To* Commission Approval

- 1) A one-time credit entry will be immediately made to the ECAC Balancing Account to true-up for the difference between (1) the termination, buy-down and/or buy-out costs previously recorded to the ECAC Balancing Account at 100% and (2) the Commission-adopted ECAC/CTC recoverable amount of termination, buy-down and/or buy-out costs at 87%, plus interest, for the effect of the true-up entry. The true-up entry allocates 13% (100% less 87%) of the termination, buy-down and/or buy-out costs previously recorded to the ECAC Balancing Account to Edison's shareholders.
- 2) A one-time credit entry will also be made to the EDRA to directly refund to ratepayers 7% of the termination, buy-down and/or buy-out costs and associated interest originally recorded to the ECAC Balancing Account.

The combination of the above two true-up entries allocates 20% (13% plus 7%) of the termination, buy-down and/or buy-out costs incurred prior to Commission approval of the SA to Edison's shareholders.

Costs Recorded *Subsequent To* Commission Approval

- 1) 87% of the termination, buy-down and/or buy-out costs for each of the Canadian gas commodity and transportation contracts will be recorded (debited) either to the ECAC or the CTC Balancing Account depending on the timing of a final Commission Decision.
- 2) 7% of the termination, buy-down and/or buy-out costs for each of the Canadian gas commodity and transportation contracts will be credited to the EDRA for direct refund to ratepayers.

The above two entries will result in Edison recovering 80% of the termination, buy-down and/or buy out costs from ratepayers (87% recovered from ratepayers through the ECAC/CTC Balancing Account less 7% directly refunded back to ratepayers through the EDRA). Therefore, the remaining 20% of the termination, buy-down and/or buy-out costs will be immediately borne by Edison's shareholders.

(END OF APPENDIX C)