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Decision 98-04-023 April 9, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of the Southern California Edison Company (U 338-E) for: (1) Authority to Revise Its Energy Cost Adjustment Billing Factors, Its Major Additions Adjustment Billing Factor, Its Electric Revenue Adjustment Billing Factor, Its Low Income Surcharge, and Its Base Rate Levels Effective January 1, 1991; (2) Authority to Revise the Incremental Energy Rate, the Energy Reliability Index and Avoided Capacity Cost Pricing; and (3) Review of the Reasonableness of Edison's Operations During the Period From April 1, 1990 Through March 31, 1991.	Application 91-05-050 (Filed May 24, 1991)

Munger, Tolles & Olson LLP, by Henry Weissman, Attorney at Law, for Southern California Edison Company.

Robert C. Cagen, Attorney at Law, for the Office of Ratepayer Advocates.

OPINION

This case involves the reasonableness of a revision to a qualifying facilities (QF) contract. Public hearing was held before Administrative Law Judge Robert Barnett.

A. Description of the Project

The Mojave Cogeneration Project (Mojave Project or the Project) is a 55 megawatts (MW) combined cycle cogeneration plant located at the U.S. Borax Mine and Refinery in Boron, California. The cogeneration system consists of a gas turbine generator exhausting into a heat recovery steam generator which produces high and intermediate pressure steam. The steam is used in the operation of the U.S. Borax plant, to control NOx emissions and to generate electrical energy. All electric power generated by the Mojave Project is sold to Southern California Edison Company

(Edison). Mojave is the second cogeneration project at the site. The first, Borax I, is rated at 45 MW and is subject to a separate agreement with Edison.

At the time Edison initially contracted for what became the Mojave Project, the Project was owned by United States Borax and Chemical Corporation (Borax). Later, Edison consented to an assignment of the Project to Mojave Cogeneration Company, L.P. (MCC), a limited partnership in which Wesgen, Inc., a wholly owned subsidiary of Westinghouse Electric Corporation (Westinghouse), is the general partner. Borax remains as a limited partner and supervises the operation and maintenance of the Project.

B. The Original Contract

The Project was initially the subject of an as-available interim Standard Offer 4 (ISO4), energy payment Option 3 contract (the Original Contract) executed by Edison and Borax on April 12, 1985. The Original Contract provided for the sale of as-available capacity, estimated to be 35 MW and 300,000,000 kilowatt-hour/year (kWh/yr.), from a generating facility with a nameplate rating of 40 MW. The Project was to receive capacity payments as established by the forecast of annual as-available capacity payment schedule approved by the Commission. The contract term was 20 years, construction to commence by June 1987 with firm operation in June 1988.

The Original Contract provided for an interconnection facilities contract (IFC) for the Project to establish transmission requirements. The transmission requirement fee was $5,000 per megawatt of generation. Borax paid $200,000, based on 40 MW.

C. The Dispute Concerning the Meaning of the Original Contract

Under the Original Contract, the Project agreed to sell as-available capacity, estimated to average 35 MW, from a generating unit with a nameplate rating of 40 MW. In September 1987, before construction started, a dispute developed concerning the impact of those provisions on the ability of the Project to sell power to Edison in excess of the 35 MW as-available capacity estimate and the 40 MW nameplate rating.

Edison took the position that the 40 MW nameplate rating placed an upper limit on the amount of power Edison was required to purchase from the Project at the contract prices even though the actual generating capability of the facility was in excess of 50 MW. The Borax representatives disagreed and asserted that their attorneys were of the opinion the Original Contract placed no limits on the amount of power Edison would be required to buy from the Project at the contract prices.

By letter to Borax dated September 25, 1987, Edison reasserted its position that the Project's 40 MW nameplate rating established an upper limit on the amount of capacity to be purchased by Edison; if the Project delivered power above the nameplate rating, Edison would pay for such excess deliveries at a price equal to the then-current published avoided cost.

On October 22, 1987, a meeting took place among representatives of Edison, Borax, and the soon-to-be general partner of MCC, Westinghouse. The Borax representatives presented three sets of meeting notes which they maintained reflected Edison's previous commitment to increase the as-available capacity stated in the Original Contract to match the actual operational capability of the facility. The Edison representatives responded that the possibility of a change in as-available capacity had always been premised on the mutual agreement of the parties, which Edison believed was not possible in view of Edison's forecasted resource situation as of late 1987. The Edison representatives further stated that Edison wanted to limit the capacity to be purchased from the Project and that consideration should be given to the dispatchability of both the Mojave Project and Borax I.

D. The Restated Contract

The solution ultimately agreed upon was to revise the contract capacity limits from 0 kW to 55 MW for on-peak periods, 48 MW for mid-peak periods, and 37 MW for off-peak periods. The expected annual production was increased from 300,000,000 kWh to 380,000,000 kWh. The nameplate rating was increased from 40,000 kW to 56,850 kW.

Borax initially signed the Restated Contract on March 4, 1988. Edison declined to sign at that time because of concerns that had developed regarding the potential economic impact of the terms of the new agreement on ratepayers and the possibility that the Project would become subject to the California Energy Commission's (CEC) jurisdiction based on the proposed increase in the Project's nameplate rating.[1] These concerns were resolved to Edison's satisfaction and Edison signed the Restated Contract September 13, 1988, made effective as of March 4, 1988. The Restated Contract converted the parties' agreement from an as-available capacity basis to a firm capacity basis, and provided for an increase in the nameplate rating of the Project. The Restated Contract, as subsequently amended, is essentially a modified firm capacity ISO4, energy payment Option 3 (EPO3) contract.

Edison believed the Restated Contract was reasonable based on an Edison economic analysis which projected that payments to the Project under the Original Contract, assuming it did not operate above 40 MW, would exceed actual avoided costs by $29 million over the life of the Original Contract (1990 net present value (NPV)) while payments to the Project under the proposed Restated Contract would exceed actual avoided costs by $37 million (same basis), assuming that the Project limited deliveries to the specified contract capacity levels. Edison's analysis also projected that if the Project operated at 56 MW under the Original Contract, as Westinghouse argued, total payments to the Project would exceed Edison's actual avoided costs by $46 million (1990 NPV). Edison concluded that Edison's ratepayers would receive a net benefit from the Restated Contract of approximately $9 million.

E. The Third Amendment to the Restated Contract

The Third Amendment to the Restated Contract was executed to recognize a force majeure claim by the Project resulting from the CEC's decision to assert jurisdiction over the Project.

In May 1987, the staff of the CEC reviewed the terms of the Original Contract and concluded that the Project was exempt from the CEC's jurisdiction since it appeared that the Project would limit its power output to under 50 MW. Based on this

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[1] Under the Warren-Alquist Act, Pub. Resources Code § 25000 et seq., the CEC has exclusive jurisdiction to certify all sites and related facilities for California thermal power plants of 50 MW or more.

decision, Borax obtained all of the necessary governmental permits for the Project except for a CEC site permit or Small Power Plant Exemption (SPPE).[2] Later, after the parties had negotiated the terms of the proposed Restated Contract, which contemplated sales in excess of 50 MW, Edison became concerned that the Project's permits might now be invalid because of the possibility that the Project had become subject to CEC jurisdiction. Borax informed Edison that if the CEC asserted jurisdiction, the Project would submit an application for an SPPE. Edison was also informed that the Project did not anticipate any construction delay due to the CEC issue. On May 19, 1988, Westinghouse reported to Edison that some delay was now expected in obtaining a decision from the CEC on the jurisdictional question. Westinghouse also reported that the Project was investigating whether grounds existed for a force majeure claim based on the CEC situation and the transmission limitation.

On June 1, 1988, Borax told Edison that it expected to make an election as to whether to keep the contract capacity below 50 MW or whether it instead would seek an SPPE in order to increase deliveries to 55 MW. With regard to the Project's potential force majeure claim, Edison indicated that Edison would accept the claim if the CEC acknowledged that a valid basis for it existed and if the Project was diligent in pursuing CEC clearance. On June 7, 1988, the CEC voted to reverse the previous conclusion of its staff and assert jurisdiction over the Mojave Project.

By letter dated June 17, 1988, Borax gave formal notice to Edison that the Project was invoking the Uncontrollable Forces provision because of the CEC's decision on jurisdiction. Edison was asked in the letter to acknowledge that the five-year deadline for completion of the Project would be extended by (1) the number of days from June 7, 1988 required for completion of the CEC review process and (2) the length of any

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[2] Thermal power plants of up to 100 MW may be exempted from the CEC's certification process if the CEC finds that (a) no substantial adverse impact on the environment or energy resources will result from the construction or operation of the facility and (b) the added generating capacity will not substantially exceed the CEC's latest adopted forecast of energy demands. (Public Resources Code § 25541.)

additional delays in construction which were attributable to the CEC's late assertion of jurisdiction.

The CEC review process for the Project was initially expected to last approximately four months. However, the proceedings extended into spring 1989. On April 12, 1989, the CEC issued the SPPE requested by the Project, which became effective 30 days later. As part of its decision, the CEC made an express finding that the initial May 1987 staff determination that the CEC lacked jurisdiction and the later reversal of that determination by the CEC had resulted in a force majeure event and that the Project developer had proceeded in good faith throughout the SPPE proceeding. The CEC further concluded that "the jurisdictional uncertainty at the outset of this case has contributed to a protracted regulatory proceeding" so that "application of the force majeure clause is warranted." By letter dated April 19, 1989, the Executive Director of the CEC submitted a copy of the CEC's finding on the force majeure claim to this Commission.

Upon the issuance of the SPPE, Edison calculated that the CEC proceeding had delayed the Project by 339 days. Based on this determination, the Project and Edison agreed in Amendment No. 3 to the Restated Contract to extend by an equivalent number of days the expected Firm Operation date (from January 30, 1990 to January 1, 1991). Firm operation began July 27, 1990.

F. The Office of Ratepayer Advocates' (ORA) Position

ORA disputes Edison's claim that the Restated Contract benefits ratepayers. ORA finds Edison's analysis misleading and incorrect; ORA finds that Edison's execution and administration of this contract harms ratepayers. Based upon information that was known or should have been known to Edison at the time it took action, using reasonable assumptions and a sound analytical approach, the modifications to the Original Contract should have been expected to result in a net cost to ratepayers of $14.7 million over the life of the contract.

In ORA's opinion, Edison did not obtain any benefits for ratepayers in granting the modifications requested by Borax and instead increased expected overpayments relative to the Original Contract. ORA states that the Original Contract was not ambiguous in regard to capacity or delivery. The Original Contract was signed in the final months of the availability of the ISO4 contract, and after EPO3 had been suspended for cogeneration projects over 50 MW. Edison knew it was facing an over-capacity situation and had no reason to sign a contract which would have permitted sales above 50 MW. Moreover, Borax provided information to the CEC in 1985 based on a project of approximately 40 MW of generation, with a maximum growth capacity of 40-49 MW and 3.4 MW of parasitic load. Borax's application for authority to construct with the county Air Pollution District and the Environmental Protection Agency specified a capacity of 41-45 MW.

ORA further claims that Edison was unreasonable in granting a force majeure continuance of the online start date of the project. In the Restated Contract, the online start date is January 30, 1990; by granting the force majeure claim of Borax, Edison extended the start date to January 4, 1991. Edison conceded that the exercise of CEC jurisdiction was a legitimate force majeure act. ORA argues that Edison's action was unreasonable because force majeure treatment requires that a force be uncontrollable and not reasonably foreseen by the affected party. The exercise of CEC jurisdiction was reasonably foreseen by Borax as a result of modifying the Original Contract and was controllable in that, at any time, the project could have limited deliveries to Edison and remained outside CEC jurisdiction. Edison was well aware of the jurisdictional problem as it had warned Borax in April 1988 that the CEC might exert jurisdiction if deliveries to Edison were to exceed 50 MW. Borax responded that it was none of Edison's business to worry about CEC. ORA maintains that Edison obtained no benefits from Borax for agreeing to the force majeure extension.

In regard to ratepayer benefit or harm from the Restated Contract, ORA states that Edison's computations are replete with error. Rather than saving ratepayers from $2 to $4 million as Edison claims, careful analysis would have shown that the Restated Contract would cost Edison more than $45 million over the life of the contract. ORA asserts that not only is it counterintuitive to argue that increasing capacity under outdated prices and offering bonus payments can save ratepayers money, but also the actual computations by Edison in determining ratepayer benefit were riddled with error.

Among the errors found by ORA in its analysis of the Restated Contract were:

a. Edison inappropriately discounted the benefits of dispatch to 1990, when all other costs and benefits of the contract are in 1988 terms. ORA discounted the value of dispatch to 1988, reducing the benefits of dispatch by approximately $286,000.

b. Edison assumed Mojave would achieve a capacity factor of 97%, and would only receive 97% of its firm capacity payment. A QF with a capacity factor of 97% will receive 100% of its firm payment under ISO4. ORA corrected the capacity payments under the Restated Contract, reflecting the increased cost of almost $2 million.

c. Edison assumed that the avoided cost of capacity would be considerably higher under the Restated Contract than under the original. ORA assumed the same avoided cost of capacity under the two scenarios, increasing the overpayments under the Restated Contract by approximately $5 million.

Edison has agreed that the results of ORA's analysis, insofar as it corrects for these errors, represent a reasonable estimate of ratepayer cost under the scenarios considered, based upon then-current forecasts and reasonable assumptions. Edison admits it would not have entered into the Restated Contract had it had an accurate analysis of the cost of the Restated Contract.

Compared to the scenario considered most reasonable by ORA, which assumes that Edison had limited Mojave to deliveries of 40 MW under the Original Contract, the Restated Contract should have been expected to result in an increased cost to ratepayers of $14.7 million, 1988 NPV. ORA asserts that any QF-requested modification to the Original Contract should have included commensurate ratepayer benefits, leaving ratepayers no worse off than under the Original Contract. Edison did not obtain such benefits, and instead increased contract costs substantially.

ORA's witness testified that if Edison had acceded to Borax 's interpretation of the Original Contract – i.e., Edison was obligated to take all energy Mojave could produce and pay contract prices – ratepayers would be $17 million better off than under the Restated Contract over the life of the contract. The cost of delivered kWh's of electricity under the Restated Contract is $17 million more than if those exact same kWhs's had been delivered under the Original Contract.

Using these scenarios, ORA has projected the cost of delivered energy as:

Scenario	Contract Terms	Delivery Limit/ Dispatch	Ratepayer Cost	NPV Expected Benefit (1997 $000)***	90/91 Record Benefit (Nominal $000)****
Restated Contract *	$163,434	($120)	$163,313		
Original @ 40 MW **	$117,802		$118,341	($44,972)	($1,315)
Original @ Current Delivery	$146,106	$113	$146,219	($17,094)	($2,943)

* Actual start date. Restated Contract reflects benefits of dispatch. Original @ current delivery reflects benefits of delivery limitation.

** Start date January 30, 1990. Includes cost of replacement power up to current delivery levels.

*** Discount rate equal to Edison's authorized rate of return.

**** Energy savings included relative to 40 MW due to incremental energy rate ceiling.

ORA's recommended disallowance for the record period is based upon actual increased costs which were a direct result of Edison's unreasonable modifications.

OVERPAYMENTS, 1990-1991 RECORD PERIOD
(Nominal Dollars)

Line	Scenario	Capacity Payments ($000) (A)	Avoided Cost ($000) (B)	Dispatch Value ($000) (C)	Energy Benefit ($000) (D)	Excess Cost ($000) (E=A-B-C-D)	Contract Benefit ($000) (F)
1	Restated Contract	6,394	0	13	11	6,370	
2	Original Contract	5,054	0	0	0	5,054	
3	Benefit (Cost) (line 2-line 1)						(1,315)

ORA recommends that these excess costs be disallowed annually from rate recovery, as they are a direct result of Edison's unreasonable contract execution and administrative actions. This results in a disallowance of $1.315 million plus interest for the 1990-1991 record period, and an expected disallowance of $45 million, 1997 NPV, over the contract's life.

G. Discussion

The questions to be decided are (i) whether the Original Contract was ambiguous in regard to the amount of electricity Edison was obligated to purchase at contract rates, resulting in a genuine dispute, and (ii) whether the Restated Contract was a reasonable resolution of the ambiguity. For the reasons set forth below, we find that the Original Contract was ambiguous. However, the Restated Contract was an unreasonable, costly resolution.

The Commission's standard for reasonableness is whether the utility decision represents "... the exercise of reasonable judgment in light of facts known or which should have been known at the time the decision is made." (D.87-06-021, Re Southern California Edison (1987) 24 CPUC2d 476, 486.) This standard of reasonableness applies to contract modifications. Negotiated modifications to QF contracts are judged based upon information known, or which should have been known, when the modifications were made. (Re Power Purchase Contracts (1988) 29 CPUC2d 415, 435.)

Edison argues that it acted reasonably in settling the dispute. In September 1987, Borax claimed that the Original Contract it had signed in April 1985 did not impose an absolute limitation on deliveries, and that it intended to deliver, on average, approximately 45 MW, but at times as much as 56 MW, to Edison's system. Edison disagreed with Borax's position. However, upon examination of the Standard Offer contract and review of Commission decisions, and after consultation with Edison's attorneys, Edison concluded that Borax had a colorable argument that the contract did not limit deliveries to Edison at contract rates. Edison believes it was faced with the prospect of litigation and the risk that under the terms of the contract, Edison's customers could be required to purchase substantially higher deliveries at full contract prices for a period of 20 years. Edison claims that it reached a negotiated settlement of the dispute which capped overall deliveries and achieved desired performance characteristics.

Edison contends that it had no choice but to enter the standard offer Original Contract. It could not negotiate terms and conditions. In other words, the standard offer contract is ambiguous on its face. This is not clearly the case. First, there were extensive negotiations leading up to the Original Contract; it is those negotiations that form the basis of Borax's claim. Second, by adopting Edison's view any standard offer as-available contract would be suspect and would be an "any quantity, any time" contract. This is contrary to every decision we have issued on the subject. (Chapter 4 of the Joint CEC/CPUC Report (April 1988); D.88-10-032 Re Power Purchase Contracts 29 CPUC 415, 429 ("we hold the QF to its end of 'a deal is a deal'.").)

On the other hand, there is no clear evidence as to the specific meaning of the term "nameplate." Nameplate capacity in this context appears to be best described as the manufacturer's suggested rating. It is not clear that the nameplate is intended to represent a specific limitation on output or an exact capacity level. On the contrary, it is unrealistic to assume that exactly 40 MW of output would ever be generated at any particular time, or on average. It is also unclear that a 40 MW nameplate plant could not be understood to be able to generate at any particular level of output. This appears to be the claim of the QF.

Edison says that Borax's interpretation of the Original Contract met the Commission's colorable claim standard. It maintains that according to Commission precedent, if a QF presents a "colorable claim" in a dispute with a utility, then it is reasonable for a utility to settle the dispute. (D.88-08-021, Re PG&E (1988) 28 CPUC2d 582, 586.) Edison states that whether a claim is "colorable" presents a legal question, governed by the law of contract interpretation. In this instance, the language of the Commission-approved Standard Offer contract contained no express limitation on deliveries from the QF that were entitled to receive contract prices under the as-available capacity option. In contrast, the firm capacity payment option, contained in the same Standard Offer contract, expressly limited firm capacity (but not energy) position. If the other party does not have a unilateral right to make modifications to the contract, then the utility should determine what reasonable concessions can be obtained in exchange for the contract modification sought by the other party." (Emphasis added; 27 CPUC2d at 527.)[3]

A lawyer's opinion does not, ipso facto, give rise to a "colorable claim" nor does it meet the standard of "clear and convincing evidence" nor does it raise "substantial issues of law and fact." We are concerned about the lawyer's opinion relied upon by Edison. There is no written opinion in the record. Edison's witness testified that he consulted with Edison's legal counsel, but the record is silent as to counsel's opinion.

Edison contends that the evidence reveals that Borax never considered the nameplate rating of the equipment to be a limit on deliveries entitled to capacity

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[3] Both parties cite 27 CPUC2d 525. This was a dispute between PG&E and Madera Power Plant Partnership (Madera) over the interpretation of a Standard Offer contract. In that case, a dispute arose as to whether the ISO4 contract permitted the QF, Madera, to downsize its firm capacity commitment from 50 to 25 MW. Madera interpreted the contract to permit such downsizing. The Commission subsequently determined that Madera had misinterpreted the contract. Despite Madera's erroneous interpretation, PG&E settled the dispute by agreeing to an amended contract at the lower level of deliveries. The Commission found a lack of communication between the utility and the QF and said "PG&E must share the blame in this case as well." (At 528.) As a result, the Commission approved the settlement, stating that: "[O]n the whole Madera's misinterpretation of the standard offer contract language was not unreasonable, given the lack of precedent in the matter of contract modifications. ... As the settlement of potential litigation caused by the mutual misunderstanding, the amended agreement appears reasonable." (At 529, emphasis added.)

The facts in Madera are clearly distinguishable from Mojave. In Mojave, there is no lack of communication, no inequity, no mutual misunderstanding, and no lack of precedent (Madera was issued before the Restated Contract was signed by Edison). As we said in Madera: "While the Commission has encouraged parties to settle disputes rather than proceed to litigation, the Commission has also stated that it will not automatically accept all settlements. Each settlement will be examined for reasonableness since it is the Commission's duty to protect the interest of ratepayers, who are not parties to the settlement. D.87-11-063, mimeo. at page 20. Both the utility and the QF must keep this objective in mind with respect to any contract modifications." (At p. 528.) The Restated Contract is unreasonable when compared with the Original Contract.

"[1] PG&E's standard offers are different in certain respects from Edison's. Specifically, Edison's standard offers do not have an interconnection limit specified in the contract. Therefore,

Footnote continued on next page

payments under the contract. Rather, even at the outset, the project was described as capable of producing 56 MW on a limited basis, with a lower average output depending upon steam needs at the refinery and mine. Borax's intent to deliver, at times, as much as 56 MW to Edison is reflected in the contemporaneous, pre-dispute documents, including the June 1985 Ebasco study, the 1986 electrical drawing for interconnection service, and the 1986 Federal Energy Regulatory Commission (FERC) application.

It is unclear whether Edison would have prevailed in Court had it attempted to limit Borax to 40 MW based on the nameplate capacity. Clearly, Edison thought there was a reasonable chance it would not prevail. We find that there was an ambiguity in the contract concerning whether 40 MW was in fact a specific or absolute limit on output. We will not make any finding as to whether this ambiguity was open-ended.

We conclude that Edison acted reasonably in entering into negotiations with Borax to amend the terms of the Original Contract.

H. The Burden of the Restated Contract

It is not enough to find that Edison acted reasonably in renegotiating the Original Contract. We must also determine whether the Restated Contract burdened Edison's ratepayers to a greater degree than the Original Contract. Our review shows that at the time the Restated Contract was executed a reasonable person would have known, or should have known, that the benefits to Edison and its ratepayers from the contract were minimal and the burden was excessive. In fact, Edison and its ratepayers would have been better off if Edison had agreed to Borax's interpretation of the Original Contract and paid contract prices for all energy Mojave could generate.

Edison argues that the Restated Contract was reasonable because it placed a cap on annual average deliveries while providing significant performance benefits that

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resolution of the issue of nameplate rating interpretation in this specific case may not have a direct impact on Edison's Standard Offers."

[4] In D.89-01-044, the Commission agreed with this position. (30 CPUC2d 677, 681.)

were absent from the Original Contract. Under the capacity levels and limitations set forth in the Restated Contract, total annual energy production from the Borax project does not exceed the total annual production under the Original Contract assuming that Borax delivered only 40 MW under the Original Contract. More power was purchased during Edison's on-peak periods, when Edison needs it most, and less power was purchased during Edison's off-peak periods, when lower cost economy energy is available for purchase. Therefore, although on-peak deliveries from the project reach 55 MW under the terms of the Restated Contract, total deliveries were capped at an annual average of approximately 40 MW. This was a reasonable settlement of the dispute because it provided additional value to both Borax and Edison, while limiting total deliveries of power to 40 MW and providing other performance benefits.

Edison explains that its renegotiation obtained a delivery schedule of 55 MW capacity on-peak, 48 MW mid-peak and 37 MW off-peak. These levels of output matched, as closely as possible, Edison's daily load demand curve while still permitting Borax to meet efficiency standards necessary for QF status. The lower capacity level during off-peak periods provided permanent curtailment of power that Edison would otherwise have been required to take under the Original Contract when it was least needed. At the same time, the Restated Contract eliminated the risk that Borax would have been allowed to deliver significantly higher levels of power on an annual average basis in the absence of load-following provisions. Under the terms of the Restated Contract, any additional deliveries made by Borax are accepted by Edison without any payment whatsoever. Further, the Restated Contract obtained dispatch rights that were not contained in the Original Contract. Edison obtained 1,800 hours of dispatch, which permits it to curtail deliveries of power and take even greater advantage of the availability of less expensive economy energy. These purchases of economy energy result in considerable and measurable savings to Edison's customers.

ORA declares Edison's argument fallacious. It notes that at the time of entering the Restated Contract Edison's operating people told the negotiators that Edison had no need for any additional firm capacity. It points out that while Edison argues today that the Restated Contract costs no more than if Borax had delivered only to 40 MW under the Original Contract, Borax in 1987 stated it was not limited by the 40 MW capacity. There would be no need for the Restated Contract if Borax were to deliver only 40 MW.

But ORA's most telling point is that if Edison had made an accurate cost analysis of both contracts in 1987, it would have found it cheaper to accept Borax's interpretation of the Original Contract rather than enter into the Restated Contract. The benefits of dispatchability of unneeded firm capacity are negligible in relation to the increased cost of the Restated Contract. ORA's recommended adjustment is $1,315,000.

Although Edison appropriately entered into negotiations with Borax, there must be a limit as to the reasonable level of payments under the Restated Contract. One element in looking at this standard is that, at minimum, the negotiated payment level in the Restated Contract should not exceed the maximum level of payments that could occur had Borax prevailed in a civil suit, and generally should not exceed the level of payment related to the risk of loss in a civil suit. For example, if Edison believed it had a 50/50 chance of prevailing, Edison should not have settled for more than 50% of the level between its position and the position of Borax.

Another standard may be that the payment level in the Restated Contract should not exceed payments associated with the highest level of output allowed for such a plant based on other Commission policies. At the time of the Restated Contract, the Commission had a policy restricting utilities from entering into any contract with a QF for over 50 MW.

It is not possible based on the record to determine the exact strength of what would have been Edison's case against Borax. However, it is clear that Edison should not have settled on an amount that, if properly analyzed, would have paid more to the QF than what the QF had requested – payment at the Original Contract prices for as-available power consistent with a 56 MW plant. Edison admits that spreadsheet errors caused it to settle at such a level. We find that Edison should have known that the payment levels in the Restated Contract were more than Edison should have agreed to under any circumstances. The fact that these errors were inadvertent does not relieve Edison of its burden to meet the ratepayer benefit standard.

The next question is what would have been a reasonable payment level. There is a range of reasonableness that extends no higher that the level of payments had Borax' position prevailed in a civil action. In this case, we have evidence that Edison could have and should have limited its payment level at a point that clearly would have provided ratepayer benefits compared to the position of Borax.

We will not attempt to evaluate the exact strengths and weaknesses of Edison and Borax' legal positions. Nor will we make a determination of what would have been the likelihood that either position would have prevailed. Instead, we will look to other evidence to provide a range of possible reasonable outcomes, and the associated disallowance of excessive payments.

There are at least two methods for calculating a possible disallowance based on reasonable outcomes.

One method would be to compare the Restated Contract with a contract for 56 MW of as-available power at the Original Contract. As noted above, this would be the minimum possible disallowance, because this is the payment level requested by the QF. If Edison had any chance of winning a civil suit on this point, it would not be reasonable for Edison to simply give the QF everything it asked for in the dispute (or, in this case, even more.) This minimum disallowance level is $1.4 million (1997 NPV). However, there is nothing in the record to indicate that Borax could produce 56 MW at all times. In fact, the record shows that the QF actually intended to produce power at levels no more than agreed to in the Restated Contract. (SCE Exhibit 133, p. 24 and Attachment 31, p. 31-1.) If Edison had agreed to a Restated Contract with Original Contract prices and the production limits of the actual Restated Contract, the disallowance would be $17.094 million.

A second method is to look at the maximum output that would have been possible for the plant to generate without exceeding the Commission's policy restricting contracts above a 50 MW threshold. On February 21, 1985, the PUC suspended the terms and conditions of Payment Option #3 of Edison's Interim Standard Offer 4 (ISO4) for QF projects over 50 MW until April 17, 1985. (D.85-02-069.) The Original Contract, an as-available ISO4 with Payment Option #3 for a generating facility with a nameplate rating of 40 MW, was executed by Edison and Borax on April 12, 1985. On April 17, 1985, the Commission continued the suspension of Payment Option #3 of ISO4 for projects larger than 50 MWs indefinitely, and suspended the ISO4 for all other projects until further orders of the Commission. (D.85-04-075.) On July 10, 1985, the Commission continued the complete suspension of the availability of the ISO4 for all QFs of all sizes seeking to purchase power with the utilities for an indefinite period (D.85-07-021).

Edison signed the Original Contract in the final month of the availability of the ISO4 contract, and after Payment Option #3 had been suspended for projects over 50 MW. Thus, Edison knew or should have known that it was facing an overcapacity situation, and had no reason to sign a contract that would have permitted sales above 50 MWs. (ORA Report, Exhibit 134, p. VII-13 and PD, p. 7.) If Edison had limited the Restated Contract to allow no more than 49.9 MW of power to flow at any time under the prices in the Original Contract, the difference in costs, and thus the disallowance, would be $16.329 million (1997 NPV) over the contract's life (see Appendix A).

We will adopt a disallowance of $46,000 for the 1991 record period, or $16.329 million 1997 NPV. It is not reasonable to assume that Edison should have agreed to a Restated Contract at prices and costs representing a 100% loss from Edison's negotiating position. It is reasonable to determine that Edison under no circumstances should have signed a Restated Contract worth more than what it would have paid for 49.9 MW of output.

In D.96-12-025, we established the Electric Deferred Refund Account (EDRA) to, among other things, accumulate credits for electric disallowances ordered by this Commission. As we are ordering a disallowance in this decision, we shall also order a credit to EDRA.

While we are adopting a disallowance of $46,000 for the 1991 record period, the best forecast is that this will result in an overall disallowance of $16.329 million for all applicable record periods. We invite parties to file a settlement in the appropriate docket to eliminate future review of this case in yearly reasonableness reviews and instead place the full $16.329 million (or other settled figure) into EDRA at one time.

I. Force Majeure

ORA asserts that given that the Restated Contract constituted an unreasonable concession to the project, the extension of time granted to the Project pursuant to the force majeure contract clause exacerbated the situation. ORA argues that the need for CEC certification was wholly within the control of the project. If Mojave had built and operated a 40 MW nameplate facility, designed to deliver 35 MW average to the Edison system, as provided for in the Original Contract, no CEC certification would have been required. The project's decision to design and build a 56 MW nameplate facility, and to expect payment for deliveries over 50 MW, was directly responsible for the assertion of jurisdiction. Had Edison refused to consider the assertion of CEC jurisdiction a force majeure event, its bargaining position would have been improved, limiting the project to a lower capacity level. This result would have benefited ratepayers. Under the circumstances, the granting of force majeure by Edison only served to further benefit the project with no commensurate benefit for ratepayers.

Edison asserts that the force majeure delay represents a benefit of the Restated Contract regardless of whether Edison was reasonable in settling with Borax. Edison argues that its agreement to accept Borax's force majeure claim provided a benefit under the terms of the Restated Contract by delaying payments and postponing the final year of the contract to a time when the value of electricity to Edison's customers is expected to be higher. Edison states that the evidence shows that the force majeure event was not caused by the fault or negligence of Borax, and therefore Edison properly accepted Borax's force majeure claim. The benefit to Edison's customers from the force majeure delay is independent of the issue whether Edison should have settled with Borax in the first place. And, Edison submits, the CEC's finding on this issue should be dispositive.

We will defer to the CEC's finding that application of the force majeure clause is warranted.

Comments to Proposed Decision

This decision was issued as a Proposed Decision to which Edison and the Independent Energy Producers (IEP) responded with comments. IEP argues that the decision should exclude discussion of matters of contract interpretation which are extraneous to the reasonableness issue and that the finding regarding nameplate rating should be modified to conform to prior findings of the Commission. IEP does not express an opinion on the finding of unreasonableness. After citing Commission decisions expressing our reluctance to be a forum for contract disputes between utilities and QFs, IEP states "the Commission's declination to wade into the arena of contract interpretation is appropriate. Its charge is to ensure the protection of customers from unjust and unreasonable rates, not to resolve contract disputes between competing interests."

IEP misconstrues our decision. We are not resolving a contract dispute between competing interests. We are determining whether or not Edison's action was reasonable. To protect "customers from unjust and unreasonable rates" we must disallow imprudent expenditures. If the determination of a disallowance requires contract interpretation we cannot avoid interpreting the contract. Our interpretation is not binding on the QF.

This decision does not modify prior decisions discussing nameplate ratings as IEP asserts. We have said:

> "As a general principle, the nameplate rating stated in a QF's contract sets the level of capacity and associated energy that qualifies for forecasted payments. Minor differences between the stated nameplate rating and a facility's actual capacity should be accommodated in the ordinary course of commercial dealings between the contracting parties, and the utility may reasonably extend forecasted energy and capacity payments to excess generation resulting from such minor variations." (D.93-11-019, Findings of Fact 8 and 9.)

This general principle remains. It, however, is not germain to this case as the Mojave dispute does not involve "minor variations."

Edison's comments, in the main, merely repeat arguments made in its brief. It does, however, add to it argument by citing Merced Irrigation Dist. v San Joaquin Light & Power Co. (1929) 101 CA 153, accord Merced Irrigation Dist. v San Joaquin Light & Power Co. (1934) 220 Cal 196.

In Merced an electric generator (Merced Irrigation District) sued the power company for breach of a contract under which Merced sold to San Joaquin the "entire electric output" from a 25 MW nameplate capacity facility. The power delivered by Merced exceeded 25MW and the utility refused to pay for the excess.

In Merced the court discussed the practice of generator manufacturers to designate nameplace conservatively, thereby allowing for production above nameplate to occur when the generator is operated at a power factor higher than that used to establish the rating. In that case, a nameplate rating of 25 MW was established by the manufacturer at an 80% power factor. The court determined that the contract provided for purchase of the "entire electric output" from a 25 MW nameplate capacity facility, and therefore the utility was obligated to purchase the entire facility output, which at times exceeded even the 31.25 MW that was producible at unity (i.e., at 100% power factor). (101 CA at 155.) The court held that the contract provided that the utility was obligated to take the "entire electric output" and therefore did not cap deliveries at the 25,000 kilowatt nameplate level.

As we read Merced the essential point was that the contract specified the utility was to purchase the "entire electric output" of Merced.

We do not believe Merced is applicable. First, it was not known to the parties during the 1987-1988 negotiating period. Edison's counsel candidly stated in their comments to the PD (footnote 11) that the case had just come to their attention. Second, the regulations regarding construction of electric generators have changed substantially since the era of construction of the Merced generator, the mid-1920's. Specifically, the requirement that generators of a capacity of 50 MW must obtain CEC approval. We are not concerned with moderate deliveries in excess of nameplate capacity; we are concerned with substantial deliveries. It is as clear to us today, as it was to Edison in 1985, that Borax was contemplating a 40 MW facility which would avoid CEC jurisdiction. The dispute at issue involves what Edison should have done when faced with Borax's claim of contract ambiguity and intent to generate electricity up to 56 MW. We have resolved this issue in this decision on the basis of reasonableness, and the Merced case does not alter our resolution of the matter.

Findings of Fact

1. The Mojave Cogeneration Project is a 55 MW combined cycle cogeneration plant. All electric power generated by the plant is sold to Edison.

2. The Project was initially the subject of an as-available interim Standard Offer 4 energy payment Option 3 contract executed by Edison and Borax on April 12, 1985. The Original Contract provided for the sale of as-available capacity, estimated to be 35 MW and 300,000,000 kWh/yr. from a generating facility with a nameplate rating of 40 MW. The contract term was 20 years, the contract firm capacity was agreed to be 0 kW, construction to commence by June 1987 with firm operation in June 1988.

3. The Original Contract provided for an interconnection facilities contract for the Project to establish transmission requirements. The transmission requirement fee was $5,000 per megawatt of generation. Borax paid $200,000 based on 40 MW.

4. In September 1987, before construction started, Borax claimed that under the Original Contract it could sell power to Edison in excess of the 35 MW as-available capacity estimate and the 40 MW nameplate rating. Edison asserted that the 40 MW nameplate rating placed an upper limit on the amount of power Edison was required to purchase from the Project at contract prices; that if the Project delivered power above the nameplate rating Edison would pay for such excess delivery at a price equal to the then current delivery cost.

5. Edison and Borax settled their claim by entering into a new contract which revises the contract capacity limits from 0 kW to 55 MW for on-peak periods, 48 MW for mid-peak periods, and 37 MW for off-peak periods. The expected annual production was increased from 300,000,000 kWh to 380,000,000 kWh. The nameplate rating was increased from 40,000 kW to 56,850 kW. Edison signed the Restated Contract September 13, 1988, made effective as of March 4, 1988.

6. The Restated Contract converted the parties' agreement from an as-available capacity basis to a firm capacity basis, and provided for an increase in the nameplate rating of the Project.

7. Edison's decision to enter into negotiations with Borax was reasonable, because there was an ambiguity in the interpretation of the nameplate rating of the Project.

8. Using reasonable assumptions known at the time, it should have projected that the modifications to the Original Contract should have been expected to result in a net cost to ratepayers in excess of $14 million over the life of the contract.

9. Edison knew it was facing an overcapacity situation and knew it had no need for more firm capacity.

10. Borax provided information to the CEC in 1985 based on a project of approximately 40 MW of generation.

11. Borax's application for authority to construct with the county Air Pollution District and the Environmental Protection Agency specified a capacity of 41-45 MW.

12. Borax paid a transmission interconnection facilities fee of $200,000 based on a 40 MW project.

13. If Edison had acceded to Borax's interpretation of the Original Contract-- i.e., Edison was obligated to take all energy Mojave could produce and pay contract prices—ratepayers would $17 million better off than under the Restated Contract over the life of the contract. The cost of delivered kWhs of electricity under the Restated Contract is $17 million more than if those exact same kWhs had been delivered under the Original Contract.

14. The benefit of dispatch obtained by Edison under the Restated Contract is minimal as compared to the excessive cost of the Restated Contract.

15. The Commission had suspended the terms and conditions of Payment Option #3 of Edison's Interim Standard Offer 4 for QF projects over 50 MW before Edison signed the Original Contract with Borax.

16. Edison's decision to sign a Restated Contract with Borax for more than 50 MW was unreasonable.

17. Application of the force majeure clause by Edison was reasonable.

18. Based on this record, the disallowance for entering into the Restated Contract is $46,000 for the record period.

19. D.96-12-023 requires disallowances to be credited to the utility's EDRA account.

Conclusions of Law

1. Edison acted reasonably when it entered into negotiations with Borax, but acted unreasonably when it executed the Restated Contract.

2. Ratepayers should not be expected to bear the burden of Edison's unreasonable conduct.

3. For the record year April 1, 1990 through March 31, 1991, Edison should be required to refund $46,000 for record period to ratepayers as a disallowance and this refund should be credited to the EDRA account.

ORDER

IT IS ORDERED that:

1. Southern California Edison Company (Edison) shall credit its Electric Deferred Refund Account (EDRA) in the amount of $46,000, 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.

2. Interest on the $46,000 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, until such amounts are refunded to Edison's ratepayers.

3. This docket is closed.

This order is effective today.

Dated April 9, 1998, at San Francisco, California.

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

I will file a concurring opinion.

/s/ P. GREGORY CONLON
Commissioner

MOJAVE REASONABLESNESS REVIEW

TABLE 1

SCENARIO	CONTRACT TERMS	AVOIDED COST	DELIVERY LIMIT/ DISPATCH	RATEPAYER COST	NPV EXPECTED BENEFIT (CST) (1997 $000)***	90/91 RECORD BENEFIT (CST) Nominal $000)***	91/92 RECORD PD BENEFIT (CST) (Nominal $000)****	92/93 RECORD P BENEFIT (CST) (Nominal $000)****	93/94 RECORD PD BENEFIT (CST) (Nominal $000)****	94/95 RECORD PD BENEFIT (CST) (Nominal $)****	95/96 RECORD PD. BENEFIT (CST) (Nominal $)****
NEW CONTRACT *	$163,434	$2,351	($120)	$163,313							
ORIGINAL @ 43.9 MW **	$146,964	$2,350		$146,984	($16,329)	($46)	($4,692)	($3,518)	($3,303)	($2,802)	($2,163)
ORIGINAL @ CURRENT DELIVERY *	$146,106	$2,351	$113	$146,219	($17,094)	($2,943)	($5,358)	($3,737)	($3,320)	($3,306)	($2,516)

* Actual start date. New Contract reflects benefits of dispatch. Original @ current delivery reflects benefits of delivery limitation.
** Start date Jan 30, 1990. Includes cost of replacement power up to current delivery levels.
*** Discount rate equal to Edison's authorized rate of return
**** Energy savings included relative to 40 MW due to IER ceiling

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10.0% NEW CONTRACT SCENARIO

	Bonus ($000)	Total Capacity Pmt (000)	SO#1 Forecast ($/KWY)	A/C Capacity	Exposure ****	Dispatch Benefit Actual (thru 1996 ($000)	Delivery Lmt Benefit Actual (thru 1996) #
1988							
1989							
1990	$375	$5,689	$0.00	$0	$5,689	$12	41
1991	$1,150	$10,837	$0.00	$0	$10,851	$2	8
1992	$1,085	$10,378	$8.00	$376	$9,994	$3	8
1993	$1,435	$10,783	$8.00	$406	$10,355	$55	11
1994	$1,435	$10,908	$8.00	$406	$10,502	$4	7
1995	$1,378	$10,871	$8.68	$420	$10,451	$1	2
1996	$1,471	$10,979	$5.24	$269	$10,710	$6	2
1997	$1,435	$10,887	$5.24	$263	$10,624	$12	$10
1998	$1,435	$10,887	$0.00	$0	$10,887	$12	$10
1999	$1,435	$10,887	$0.00	$0	$10,887		
2000	$1,435	$10,887	$0.00	$0	$10,887		
2001	$1,435	$10,837	$0.00	$0	$10,887		
2002	$1,435	$10,887	$0.00	$0	$10,887		
2003	$1,435	$10,887	$0.00	$0	$10,887		
2004	$1,435	$10,887	$0.00	$0	$10,887		
2005	$1,435	$10,887	$0.00	$0	$10,887		
2006	$1,435	$10,887	$0.00	$0	$10,887		
2007	$1,435	$10,887	$0.00	$0	$10,887		
2008	$1,435	$10,987	$0.00	$0	$10,887		
2009	$1,435	$10,887	$0.00	$0	$10,887		
2010	$717	$5,443	$0.00	$0	$5,443		

1993 NPV

A/C Contract

	Cap.	Cap
	$2,351	$163,434

Contract Terms:	$163,434
Less Dispatch	($120)
Total	$163,313
Avoided Cost	$2,351
Exposure	$160,962

ORIGINAL CONTRACT @ 40 MW SCENARIO

	As Available Capacity Price ($/kW/yr)	Capacity*** Pmt (000) ($000)	SO#1 Forecast** ($/kW/yr)	A/C Capacity	PARCs Exposure
1988					
1989					
1990	$117	$5,956	$0.00	$0	$5,956
1991	$126	$6,436	$0.00	$0	$6,436
1992	$148	$7,239	$8.00	$391	$6,848
1993	$158	$7,758	$8.00	$391	$7,367
1994	$169	$8,433	$8.00	$399	$8,034
1995	$180	$8,582	$4.68	$433	$8,549
1996	$194	$9,704	$5.24	$261	$9,442
1997	$206	$10,271	$5.24	$259	$10,012
1998	$221	$11,019	$0.00	$0	$11,019
1999	$235	$11,717	$0.00	$0	$11,717
2000	$235	$11,717	$0.00	$0	$11,717
2001	$235	$11,717	$0.00	$0	$11,717
2002	$235	$11,717	$0.00	$0	$11,717
2003	$235	$11,717	$0.00	$0	$11,717
2004	$235	$11,717	$0.00	$0	$11,717
2005	$235	$11,717	$0.00	$0	$11,717
2006	$235	$11,717	$0.00	$0	$11,717
2007	$235	$11,717	$0.00	$0	$11,717
2008	$235	$11,717	$0.00	$0	$11,717
2009	$235	$11,717	$0.00	$0	$11,717
2010	$235	$976	$0.00	$0	$976

1993 NPV

	A/C Cap	Contract Cap
	$2,350	$146,984

Contract Terms:	$146,984
Avoided Cost	$2,350

Modifies Scenario on ORA Spreadsheet

Mojave Disallowance Forecast
(A.91-05-050)

Exposure: $144,634

Benefit (Cost) ($16,329)

ORIGINAL CONTRACT, CURRENT DELIVERY SCENARIO

	As-Available Capacity Price ($/kW/yr)	Capacity Pmt (000) ($000)	SO#1 Forecast ($/kW/yr)	A/C Capacity	Exposure
1988					
1989					
1990	$117	$3,158	$0.00	$0	$3,158
1991	$126	$6,248	$0.00	$0	$6,248
1992	$148	$7,336	$8.00	$376	$6,960
1993	$158	$8,142	$8.00	$406	$7,736
1994	$169	$8,707	$8.00	$406	$8,301
1995	$180	$8,973	$8.68	$420	$8,553
1996	$194	$9,852	$5.24	$269	$9,584
1997	$206	$10,408	$5.24	$263	$10,145
1998	$221	$11,165	$0.00	$0	$11,165
1999	$235	$11,873	$0.00	$0	$11,873
2000	$235	$11,873	$0.00	$0	$11,873
2001	$235	$11,873	$0.00	$0	$11,873
2002	$235	$11,873	$0.00	$0	$11,873
2003	$235	$11,873	$0.00	$0	$11,873
2004	$235	$11,873	$0.00	$0	$11,873
2005	$235	$11,873	$0.00	$0	$11,873
2006	$235	$11,873	$0.00	$0	$11,873
2007	$235	$11,873	$0.00	$0	$11,873
2008	$235	$11,873	$0.00	$0	$11,873
2009	$235	$11,873	$0.00	$0	$11,873
2010	$235	$5,936	$0.00	$0	$5,936

1993 NPV

A/C Cap.	Contract Cap.
$2,351	$146,106

Contract Terms: $146,106

Avoided Cost: $2,351

Exposure: $143,755

Benefit (Cost) ($17,206)

Mojave Disallowance Forecast
(A.91-05-050)

Modifies Scenario on ORA Spreadsheet

Period	Energy	Energy $	Capacity $	Total $
4/1/90 - 3/31/91	178,159,500	$5,729,331	$6,141,481	$11,870,811

ACTUAL RATEPAYER HARM UNDER RESTATED CONTRACT

	RESTATED CONTRACT Capacity Payments	Bonus Pmts	Total	Avoided Cost	ORIG CONTRACT @49.9 MW	Total	Avoided Cost	Energy Benefit****	Dispatch Savings	ORIGINAL CONTRACT CURRENT DELIVERY Capacity	Avoided Cost
1/30-3/1/90					$114		$0				
3/1-4/1					$114		$0				
4/1-5/1				1.95%	$114		$0				
5/1-6/1				21.10%	$114		$0				
6/1-7/2					$1,232		$0				
7/2-8/1	$340,966	$20,562		$0	$1,232		$0			$333	0
8/1-8/31	$2,045,916	$84,752		$0	$1,232		$0			$1,218	$0
8/31-10/1	$2,045,766	$58,237		$0	$1,232		$0			$1,058	$0
10/1-10/30	$554,088	$89,502		$0	$345		$0			$375	$0
10/30-11/30	$164,916	$91,865		$0	$114		$0		$7	$102	$0
11/30-1/2/91	$162,481	$30,139		$0	$114		$0		$5	$73	$0
1990 Total	$5,314	$375	$5,689	$0		$5,956	$0	$0	$12	$3,158	$0
1/2-1/31	$164,626	$27,403		$0	$123		$0		$1	$97	$0
1/31-3/4	$164,899	$95,342		$0	$123		$0		$0	$110	$0
3/4-4/2	$158,016	$94,572		$0	$123		$0			$32	$0
Record Period Total			$6,394	$0		$6,324	$0	$11	$13	$3,397	$0
4/2-5/1	$164,916	$24,271		$0	$123		$0			$96	$0
5/1-5/31	$160,537	$106,243		$0	$123		$0			$58	$0
5/31-7/1	$1,924,538	$114,578		$0	$1,249		$0			$1,258	$0
7/1-8/1	$2,045,916	$112,217		$0	$1,327		$0			$1,370	$0
8/1-8/29	$2,045,916	$124,097		$0	$1,327		$0			$1,260	$0
8/29-9/30	$2,045,916	$135,638		$0	$1,327		$0			$1,343	$0
9/30-10/30	$541,116	$60,131		$0	$363		$0			$390	$0
10/30-12/2	$164,916	$129,125		$0	$123		$0			$118	$0
12/2-1/2/92	$164,916	$126,857		$0	$123		$0			$116	$0
1991 Total	$9,746	$1,150	$10,897	$0		$8,451	$0	$46	$2	$6,248	$0
1/2-1/31	$164,916	$96,228		$0	$144		$8			$125	$0
1/31-3/3	$158,344	$23,443		$0	$144		$8			$50	$0
3/3-4/1	$156,534	$90,605		$2	$144		$8			$35	$2
Record Period Total			$11,587	$2		$6,86[illegible]	$23	$34	0	$6,220	$2
4/1-5/1	$164,763	$67,428		$6	$144		$8		$1	$124	$6
5/1-6/1	$161,796	$68,911		$4	$144		$8			$87	$4
6/1-7/1	$1,669,716	$139,696		$75	$1,275		$69		$2	$1,382	$75
7/1-8/1	$2,045,916	$133,097		$97	$1,558		$84			$1,806	$97
8/1-9/1	$2,045,916	$124,633		$88	$1,558		$84			$1,626	$88

Mojave Disallowance Forecast
(A.91-05-050)

Modifies Scenario on ORA Spreadsheet

9/1-10/1	$2,045.916	$146.834		$90	$1,558		$84			$1,674	$90
10/1-11/1	$346.756	$57.049		$5	$281		$15			$257	$5
11/1-12/1	$164.916	$90.130		$6	$144		$8		$0	$114	$6
12/1-1/1/93	$159.223	$46.930		$3	$144		$8			$54	$3
1992 Total	$9,285	$1,085	$10,370	$376		$7,239	$391		$3	$7,336	$376
1/-2/1	$164.817	$128.786		$5	$154		$8		$0	$109	$5
2/1-3/1	$164.916	$125.050		$6	$154		$8			$127	$6
3/1-4/1	$163.285	$89.050		$5	$154		$8			$109	$5
Record Period Total			$11,206	$392		$7,700	$415	$7	$3	$7,471	$392
4/1-5/1	$164.916	$124.992		$7	$154		$8		$1	$146	$7
5/1-6/1	$159.973	$93.355		$3	$154		$8		$0	$62	$3
6/1-7/1	$1,732.416	$144.438		$80	$1,412		$71			$1,581	$80
7/1-8/1	$2,045.916	$148.500		$91	$1,664		$84			$1,818	$91
8/1-9/1	$2,045.916	$148.500		$96	$1,664		$84			$1,904	$96
9/1-10/1	$2,045.916	$148.500		$91	$1,664		$84			$1,817	$91
10/1-11/1	$286.271	$119.713		$9	$251		$13			$194	$9
11/1-12/1	$164.916	$127.505		$6	$154		$8		$53	$135	$6
12/1-1/1/94	$164.916	$86.494		$7	$154		$8			$141	$7
1993 Total	$9,304	$1,485	$10,789	$406		$7,730	$391	$28	$55	$8,142	$406
1/-2/1	$164.916	$103.550		$6	$164		$8		$1	$148	$6
2/1-3/1	$164.916	$126.396		$6	$164		$8		$0	$139	$6
3/1-4/1	$164.916	$123.840		$7	$164		$8		$0	$167	$7
Record Period Total			$11,638	$425		$8,223	$391	$21	$56	$8,250	$425
4/1-5/1	$164.916	$129.600		$7	$164		$8		$1	$154	$7
5/1-6/1	$164.916	$113.450		$3	$164		$8		$1	$64	$3
6/1-7/1	$2,045.916	$148.500		$93	$1,779		$84		$0	$1,959	$93
7/1-8/1	$2,045.916	$146.784		$84	$1,779		$84			$1,780	$84
8/1-9/1	$2,045.916	$125.986		$94	$1,779		$84			$1,990	$94
9/1-10/1	$2,045.916	$143.096		$88	$1,779		$84			$1,858	$88
10/1-11/1	$164.916	$15.301		$6	$164		$8			$153	$6
11/1-12/1	$164.916	$109.217		$6	$164		$8			$144	$6
12/1-1/1/95	$164.916	$119.441		$6	$164		$8			$152	$6
1994 Total	$9,503	$1,405	$10,908	$406		$8,433	$399		$4	$8,707	$406
1/-2/1	165.78	116.647		$8	$175		$8			161.915	$8
2/1-3/1	165.367	121.702		$1	$175		$8			23.229	$1
3/1-4/1	153.792	119.263		$0	$175		$8			0	$0
Record Period Total			$11,751	$415		$8,959	$425			$8,438	$415
4/1-5/1	161.118	23.234		$4	$175		$8			77.569	$4
5/1-6/1	165.78	93.06		$8	$175		$8		$1	160.963	$8
6/1-7/1	2045.916	147.279		$102	$1,895		$91		$0	2111.616	$102
7/1-8/1	2045.916	146.446		$92	$1,895		$91			1918.405	$92
8/1-9/1	2045.916	121.358		$102	$1,895		$91			2120.61	$102
9/1-10/1	2045.916	148.5		$92	$1,895		$91			1915.156	$92
10/1-11/1	165.78	113.335		$8	$175		$8			168.675	$8
11/1-12/1	165.78	107.914		$8	$175		$8			159.566	$8
12/1-1/1/96	165.78	119.477		$7	$175		$8			155.338	$7

Mojave Disallowance Forecast
(A.91-05-050)

Modifies Scenario on ORA Spreadsheet

1995 Total	$9,493	$1,378	$10,871	$420		$8,062	$433		$1	$8,973	$420
1/-2/1	165.78	121.147		$8	$189		$5			180.902	$8
2/1-3/1	164.33	106.531		$4	$189		$5			95.921	$4
3/1-4/1	165.78	128.16		$3	$189		$5		$0	139.411	$3
Record Period Total			$11,723	$435		$9,548	$423	($1)		$9,204	$435
4/1-5/1	165.78	118.346		$4	$189		$5			179.243	$4
5/1-6/1	165.78	101.974		$4	$189		$5			175.173	$4
6/1-7/1	2045.916	136.587		$56	$2,043		$55		$3	2062.15	$56
7/1-8/1	2045.916	118.602		$60	$2,043		$55		$1	2216.151	$60
8/1-9/1	2045.916	123.148		$61	$2,043		$55		$1	2223.929	$61
9/1-10/1	2045.916	138.74		$56	$2,043		$55		$1	2057.308	$56
10/1-11/1	165.78	119.758		$4	$189		$5			189.186	$4
11/1-12/1	165.78	129.6		$3	$189		$5			156.659	$3
12/1-1/1/97	165.78	127.915		$4	$180		$5		$0	176.172	$4
1996 Total	$9,508	$1,471	$10,979	$269		$9,681	$261	$20	$6	$9,852	$269

(END OF APPENDIX A)

STATE OF CALIFORNIA

PETE WILSON, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

April 15, 1998

TO: PARTIES OF RECORD IN APPLICATION 91-05-050

Decision 98-04-023 was signed on April 9, 1998 with a concurrence from Commissioner Conlon. However, the concurrence is not available at the time of mailing the enclosed decision. It will be mailed at a later date.

Lynn T. Carew

Lynn T. Carew, Chief
Administrative Law Judge

LTC:sid

Enclosure