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Decision 98-04-043 April 23, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA EDISON COMPANY (U 338 E) for Authority to Increase its Authorized Level of Base Rate Revenue Under Electric Revenue Adjustment Mechanism for Service Rendered Beginning January 1, 1992 and to Reflect this Increase in Rates.	ORIGINAL Application 90-12-018 (Filed December 7, 1990)
Order Instituting Investigation into the rates, charges, and practices of Southern California Edison Company.	Investigation 91-02-079 (Filed February 21, 1991)

(See Appendix B for list of appearances.)

OPINION

Summary

The Settlement Agreement (Settlement) between Southern California Edison Company (Edison) and the Office of Ratepayer Advocates (ORA) is approved. The Settlement provides for Edison to return to ratepayers $9.9 million plus interest, and terminates the Investigation Memorandum Account (IMA). This proceeding is closed.

Background

On February 21, 1991, the Commission opened Investigation (I.) 91-02-079 and consolidated it with Application (A.) 90-12-018. I.91-02-079 is a procedural forum to investigate revenue requirement, rates, practices, and other aspects of Edison's operations which may lie outside the scope of A. 90-12-018.

The Commission established Phase 5 in this proceeding in Decision (D.) 92-07-077 dated July 22, 1992, to consider allegations of misappropriation of funds by Edison in its handling of demand-side management (DSM) and research,

development, and demonstration (RD&D) funds. The scope of Phase 5 was further clarified in D.93-01-024 dated January 8, 1993.

On November 18, 1996, Edison served its documents dealing with its investigation of alleged misconduct of its Western Division during 1991-1992, its investigation of transactions with Integrated Energy Group (IEG) and its affiliates during 1988-1992, and a review of costs recorded in the IMA established by D.92-07-077. The IMA was established to collect disputed costs associated with IEG, the Western Division and related investigations. The costs recorded in that IMA were subject to refund. Also served on November 18, 1996, was a motion to terminate the IMA and dismiss Phase 5, which was denied by the Commission on April 23, 1997.

On December 23, 1996, ORA served its report and the report of its consultant. These reports were not released to the public initially because of Edison's claims of confidentiality, but subsequently were served on parties to Phase 5.

Western Division

Edison

Edison began its investigation of the Western Division after it received an anonymous telephone tip that an energy services manager in the Customer Service department had misappropriated Edison funds for his own use. Edison conducted an internal investigation by its Audits Department and Corporate Security Department. Edison found that the manager had been intimidating and coercing employees subordinate to him, causing them to submit false or inflated expense claims and deliver cash to him. Edison also found that an assistant manager of Customer Energy Services had falsified expense claims for personal gain. Both the manager and assistant manager were terminated; the assistant manager made partial restitution, the manager did not. Edison did not prosecute either person, since it believed that the costs of litigation would exceed potential recovery.

Edison also investigated expense reports from other Customer Service Divisions and found practices that were inconsistent with Edison policy, but of a

relatively minor nature. Edison instituted improvements in its expense report handling and oversight.

IEG

Edison

Edison's investigation of the billing practices of IEG and its affiliates began as a routine audit triggered by the magnitude of the billings. Edison discovered that IEG's billings had widespread irregularities including inflated consultant hours, inflated airfares, and charges for services that were never performed. Edison refused to pay $1.5 million of the total billings from IEG of $11.2 million.

Also uncovered in its investigation was an undisclosed investment by an Edison manager in a travel agency that provided travel arrangements for IEG. This manager also received loans from, or arranged by, an IEG officer. The manager was allowed to resign in lieu of termination.

An outside law firm, Munger, Tolles & Olson, was retained by Edison to review both the Western Division investigation and the IEG matter and advised Edison in these matters.

The information from the investigation into both the Western Division and IEG was provided to the Los Angeles County District Attorney's Office. The District Attorney also conducted an investigation into the allegations underlying these matters, but closed the investigation after concluding that criminal prosecution of the individuals involved would likely be unsuccessful.

Edison believed that between deliverables produced by IEG, amounts billed by IEG but not paid by Edison, and amounts paid to IEG but written off below-the-line at shareholders' expense, the ratepayers had been adequately protected from overcharges by IEG.

ORA

ORA's report recommended that its investigation continue and that the Commission disallow recovery of approximately $17 million, that audits be ordered of $1.1 billion of RD&D and DSM balancing account funds, and that penalties of

unspecified amounts be imposed on Edison. At that time, $17 million was ORA's estimate of the IMA balance. Ultimately, through reviewing various expenditures relating to the Western Division and IEG investigations, ORA agreed with Edison that the IMA balance as of September 30, 1996 was $6,811,665, excluding interest.

Settlement

Edison and ORA eventually reached a Settlement Agreement Resolving all Issues in Application No. 90-12-018, Phase 5, dated September 1997 and filed a joint motion for Commission adoption of it. The parties allege that the Settlement meets the criteria set forth in Rule 51.1(e) of the Commission's Rules of Practice and Procedure, and that it satisfies the criteria set forth in Commission decisions on all-party settlements. Rule 51.1 states, "The Commission will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest."

D.92-12-019 dealt with a settlement of San Diego Gas & Electric Company's (SDG&E) 1993 General Rate Case. In that decision the Commission outlined four criteria that must be satisfied in order for the Commission to approve an all-party settlement. The proposal settlement must specify:

> "a. that it commands the unanimous sponsorship of all active parties to the instant proceeding;
>
> "b. that the sponsoring parties are fairly reflective of the affected interests;
>
> "c. that no term of the settlement contravenes statutory provisions or prior commission decisions; ...and
>
> "d. that the settlement conveys to the commission sufficient information to discharge our future regulatory obligations with respect to the parties and their interests." (D.92-12-019, 46 CPUC 2d 538, 500-551 (1992).)

Regarding paragraph a., Edison and ORA state that they are the only active parties to the proceeding, thus the Settlement commands unanimous sponsorship of all active parties.

Paragraph b. is satisfied since ORA represents the long-term interests of all California utility customers, and Edison represents the interests of the utility.

The parties state that paragraph c. is satisfied since to their knowledge, the terms of the Settlement do not contravene any statutory provisions or Commission decision.

Regarding paragraph d., the parties state that the extensive testimony served in Phase 5 by the settling parties provides sufficient information to the Commission to properly judge the reasonableness of the Settlement and to discharge its future regulatory responsibilities.

The terms of the Agreement may be summarized as follows:

- Edison will credit its Electric Deferred Refund Account (EDRA) with $9.9 million plus accrued interest from June 3, 1997 at the EDRA interest rate;
- The parties recommend that concurrent with Edison's credit to the EDRA, Phase 5 of this proceeding and the IMA should be automatically terminated;
- The parties shall recommend to the Commission proposed findings of fact and conclusions of law, as a necessary part of the consideration agreed to by Edison in support of the Settlement;
- The parties agree that no reasonableness review of Edison's RD&D and DSM activities for the 1988 through 1996 period is necessary, and recommend that the Commission find that no expenditures recorded in the RD&D and DSM One-Way Balancing Accounts for those years are unreasonable.
- The parties agree on certain specified conditions and limitations on Edison's future participation in energy efficiency programs.
- Neither Edison nor its affiliates will bid on or contract for energy efficiency administrative funds within Edison's service territory.
- Edison or its affiliates may bid on or contract for energy efficiency administrative funds if the Commission allows the administrator to deliver energy efficiency solutions such as market transformation programs and customer education and information programs.
- Edison or its affiliates may bid on or contract for energy efficiency implementation funds.

The settlement agreed to by the parties must be approved in the form submitted without change in order for it to have their support.

Hearings

Evidentiary hearings were held with policy witnesses from both parties testifying on the reasonableness of the Settlement and on why each party entered into it as an appropriate resolution or the dispute.

Testifying for ORA was David Morse, Chief of the Transition and Public Purpose Branch of ORA, who supervised the preparation of the staff and consultant's reports. Morse testified that the total amount of $9.9 million that the Settlement would credit to the ratepayers is the total of $9.6 million of IEG expenses attributable to the IMA, which consist of $6,811,665 actually accrued, plus $300,000 to provide compensation for the abuses found in the Western Division, plus interest.

While Edison's internal audit identified only $43,637 of expense account abuses by Western Division managers, ORA believes that the abuses were probably higher, but are not quantifiable. Thus the $300,000 represents a reasonable settlement of this matter in lieu of litigation.

ORA was prepared to recommend that the Commission impose a penalty in the total amount of $9.9 million. ORA believes that the settlement is reasonable for the ratepayers because the Commission may have imposed a disallowance or penalty in an amount less than $9.9 million.

Charles Wong, a manager who was the auditor in charge of the IEG investigation that began in 1990, testified for Edison. In mid-1991 the investigation uncovered questionable charges by IEG of approximately $500,000. This amount was deducted from the IEG billings. When in June 1991 Edison identified falsified airline tickets, IEG's engagement was terminated and all airline charges were disallowed. In November 1991 Edison determined that hours billed by IEG were inflated; all payments to IEG were frozen, with about $1 million unpaid. Thus, in total, Edison withheld about $1.5 million from IEG.

The investigation of IEG identified undocumented labor charges of $193,000, unfair charges of $114,000, video work overbilling of $35,000, and other miscellaneous overcharges in the amount of $225,000, for a total of $560,000.

Based on the investigation, the $1.5 million amount Edison withheld from IEG exceeded the actual amount of overcharges identified.

Wong also investigated the Western Division matter with Jack Truax of Edison's corporate security. An employee hotline tip in July 1991 that an energy service manager misappropriated company funds for personal gain was the impetus for this

investigation. The investigation revealed that an energy service manager and an assistant manager had falsified expense reports in the amounts of approximately $15,000 and $7,800 respectively. Both employees were terminated, and partial restitution was made by the assistant manager. Neither person was prosecuted in criminal or civil court. The district attorney felt that criminal prosecution would not be successful, while Edison felt that a civil lawsuit against the energy service manager would cost more than the potential benefits. The manager had been severely penalized, in Edison's opinion, by losing his job as well as retirement and medical benefits after over 20 years of service with Edison. Since the assistant manager made substantial restitution, Edison would not pursue civil litigation against him.

Corrective measures were taken to prevent recurrence of consultant abuses and of expense account abuses. Very stringent requirements were imposed on purchase orders to engage outside consultants. Training programs were held in the consumer service departments company-wide to fully explain policies for expense claims and to clarify what items are reimbursable.

Also testifying for Edison as a policy witness was Ronald Daniels, retired vice-president of Regulatory Affairs at Edison, now practicing as a consultant in regulatory matters. Edison felt the need to hire consultants such as IEG because the environment of the electric industry was changing from an emphasis on large generation to energy efficiency, and how to best use electric services. The company's management felt a need to move quickly to address this change, and to do so required outside services, especially in the marketing area where Edison's personnel had little expertise.

Daniels believes that the changes implemented at Edison will prevent a recurrence of the problems experienced with both IEG and the Western Division management.

Discussion

Edison and ORA are the only active participants in Phase 5. Phase 5 of this proceeding has generated a large volume of reports and testimony by both parties.

Since the Phase 5 issues were not litigated we cannot determine whether ORA or Edison had a stronger position. We summarize the parties' positions here for clarification and as they relate to the Settlement.

Edison's position was that the ratepayer benefited from the IEG consultants' work, and that any irregularities were routinely discovered by its internal audit that was automatically triggered based on the magnitude of the consultant contracts.

Edison also noted that it investigated the Western Division allegations promptly and took steps to both correct the problems and to avoid recurrence of them in the future, by providing company-wide training.

ORA, on the other hand, concluded in its reports that the Western Division problems were likely due to a company-wide mentality that either fostered or at least neglected such abuses by its management.

ORA further concluded that the vast amounts billed by and paid to IEG were primarily wasted and indicated obvious self-enrichment. Edison's internal controls were either disregarded or overridden in its haste in dealing with IEG.

The Settlement is the result of the parties compromising and reaching agreement on their widely divergent positions, resulting in agreement on the following four main issues:

1. The appropriate balance for the IMA;
2. The portion of the IMA balance, if any, that is reasonable and should be allowed recovery in rates by the Commission;
3. The magnitude of penalties, if any, that should be assessed against Edison; and
4. Whether any audits of Edison's RD&D and DSM activities should be ordered for any portion of the period of 1988 through 1996.

We agree with the parties that the Settlement satisfies the four criteria for all-party settlements, as we outlined in D.92-12-019.

We believe that the Settlement adequately protects the ratepayers against possible unjustified charges by IEG, since Edison has essentially agreed to not seek recovery of the total amount of the IMA, including accrued interest. If ORA had prevailed and we adopted its recommendation that the $9.9 million not be assigned to

ratepayers, the ratepayers would receive the same benefit as they receive with the Settlement. Thus there is no basis for us to conclude that the Settlement does not adequately protect the ratepayers.

Edison's apparent willingness to settle was due to its desire to avoid potentially protracted litigation of these issues. During these busy times of phasing into deregulation of energy utilities, Edison indicated that it believes its staff can be more effectively utilized to benefit both its ratepayers and stockholders by avoiding this litigation and concentrating on its markets. We believe that this is an appropriate response by Edison, since the transition to the free market for electricity will require its utmost attention.

Regarding avoiding recurrence of the problems that are the subject of Phase 5, we observe that Edison has taken significant steps to tighten its procedures to avoid a recurrence of the situation that allowed IEG to bill large sums for consultant time and travel without adequate substantiation. Although the IEG problem occurred for some time, it nevertheless was Edison's own investigation, automatically triggered by the magnitude of the billings from IEG, that uncovered the problems. We are troubled by the indication that these problems may have occurred in some instances because Edison's high-level people allowed violations of company policies. But we are satisfied that Edison has quickly reacted and tightened its internal review procedures in an attempt to prevent such occurrences in the future, or to uncover them sooner before a problem can reach such a substantial magnitude.

We are also satisfied that Edison has taken adequate steps to prevent recurrence of the Western Division problems. The managers who violated company policies and falsified expense claims or pressured subordinates to falsify expense claims were terminated, and substantial restitution was obtained from one of them. Company-wide training was given in an attempt to assure that in the future any such violations will be promptly reported and corrected. This problem apparently occurred only in the Western Division, but it is important to react company-wide, since it could occur in other divisions. Edison trained its people on proper procedures for expense claims, and clarified reimbursable expenses. This effort attempts to avoid a repeat of subordinates

being intimidated by their superiors into submitting fraudulent expense claims. The training attempts to alert them and cause them to promptly bring violations to the attention of the company, which can be done anonymously. Notably, a significant deterrence to other Edison employees is the example of the energy manager losing over 20 years of seniority along with the retirement and health benefits that career employees look forward to. Additionally, this person's reputation was significantly tarnished in front of his family, peers, and neighbors.

Comments

Comments on the proposed decision of Administrative Law Judge Stalder were filed by ORA, suggesting no changes to the language, but requesting that the Settlement be attached to the proposed decision. ORA believes that this will make the terms of the Settlement clear and facilitate its understanding.

We agree with this suggestion and have attached the Settlement to the proposed decision as Appendix A, with a corresponding change to Ordering Paragraph 1.

Findings of Fact

1. Phase 5 was established to consider allegations of misappropriation of funds by Edison in handling of demand-side management and research, development, and demonstration funds.

2. Edison investigated transactions with IEG and its affiliates during 1988 to 1992.

3. Edison investigated alleged misconduct by managers in its Western Division during 1991 to 1992, and terminated two managers for expense account misconduct.

4. Edison and ORA agree that the amount in the IMA subject to reasonableness review is $6,811,665 plus accrued interest.

5. Edison and ORA filed a joint motion seeking Commission approval of a Settlement resolving all issues in Phase 5.

6. There is no opposition to the Settlement.

7. The Settlement satisfies the Commission criteria for an all-party settlement, as set forth in D.92-12-019.

8. Edison and ORA are the only active parties in Phase 5.

9. The Settlement requires Edison to credit ratepayers with the total IMA balance of $9.6 million, plus $300,000 for the Western Division abuses, plus interest.

10. ORA has withdrawn its recommendations that penalties be assessed against Edison and that audits be conducted of Edison's Research, Development & Demonstration and the Demand-Side Management expenditures made during 1988 through 1996.

11. The Settlement renders the reports of ORA and its consultant moot for further ratemaking consideration by the Commission.

12. Edison has implemented more stringent controls to prevent a recurrence of consultant abuses in undocumented or unjustified billings.

13. Edison has undertaken training to better educate personnel on legitimate expense items, and on reporting such violations.

Conclusions of Law

1. The Settlement is beneficial to and adequately protects Edison's ratepayers.

2. The Settlement is reasonable and beneficial to Edison's stockholders.

3. Edison has taken adequate steps to prevent recurrence of the abuses uncovered in Phase 5.

4. Edison's RD&D and DSM activities for the period 1988 through 1996 and its expenditures recorded in the RD&D and DSM One-Way Balancing Accounts for that period are not unreasonable, and no audits of them should be undertaken.

5. The Settlement is reasonable in light of the record, consistent with law, and in the public interest.

6. The Settlement should be approved.

7. Within 30 days after this decision becomes final, Edison should return to ratepayers through operation of the EDRA, the Settlement amount of $9.9 million plus accrued interest from June 3, 1997.

8. Phase 5 should be terminated.

9. The IMA and Edison's proposed scheme of tracking and memorandum accounts should be terminated.

10. The base rates related to the costs listed in Finding of Fact 9 in D.92-07-077 should no longer be subject to refund.

11. Edison should file an Advice Letter terminating the IMA within 30 days after this decision becomes final.

12. This application should be closed.

13. This investigation should be closed.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement Resolving All Issues in Application No. 90-12-018, Phase 5 between Southern California Edison Company (Edison) and the Office of Ratepayer Advocates (ORA), dated September 1997 (Settlement), attached as Appendix A, is approved, and the parties shall comply with its terms.

2. Edison shall, within 30 days after the effective date of this decision, return to ratepayers through operation of the Electric Deferred Refund Account, the Settlement amount of $9.9 million plus accrued interest from June 3, 1997 at the Electric Deferred Refund Account interest rate.

3. Edison shall file an Advice Letter terminating the Investigation Memorandum Account within 30 days after the effective date of this decision.

4. Upon completion of Ordering Paragraph 2 above, the base rates related to the costs listed in Finding of Fact 9 in Decision 92-07-077 are no longer subject to refund.

5. Application 90-12-018 and Investigation 91-02-079 are closed.

This order is effective today.

Dated April 23, 1998, at Sacramento, California.

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

APPENDIX A

SETTLEMENT AGREEMENT RESOLVING ALL ISSUES IN APPLICATION NO. 90-12-018, PHASE 5

Between

Southern California Edison Company

And

The Office Of Ratepayer Advocates

September 1997

APPENDIX A

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APPENDIX A

SETTLEMENT AGREEMENT RESOLVING ALL ISSUES IN APPLICATION NO. 90-12-018, PHASE 5

1. INTRODUCTION

1.1 The Parties to this "Settlement Agreement Resolving All Issues In Application No. 90-12-018, Phase 5" ("Settlement") are the Office of Ratepayer Advocates of the California Public Utilities Commission ("ORA") and Southern California Edison Company ("Edison"). ORA and Edison are sometimes referred to herein individually as a "Party" and jointly as the "Parties."

1.2 The Parties intend this Settlement to resolve all open issues in Application No. 90-12-018, Phase 5. Such issues are defined as falling into the following four general categories for purposes of this Settlement:

(1) What is the appropriate balance for the Investigation Memorandum Account ("IMA")?[1]

(2) What portion of the IMA balance, if any, is reasonable and therefore should be authorized by the Commission for reflection in rates?

(3) Should any penalties be assessed against Edison?[2]

(4) Should any audits of Edison's Research, Development & Demonstration ("RD&D") and Demand Side

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[1] The IMA was established by Edison pursuant to D.92-07-077 dated July 22, 1992.

[2] In the ORA Staff Report (See Section 2.6 of this Settlement), the ORA suggested that penalties be imposed on Edison but did not quantify the penalties. At the January 29, 1997 Phase 6 Prehearing Conference, the Administrative Law Judge directed the ORA to serve testimony on the amount of the penalty recommendation. However, this Settlement was entered into by the Parties prior to the ORA penalty testimony being served. Therefore, there is no recommendation for a specific dollar penalty to address.

APPENDIX A

Management ("DSM") activities be ordered for any part of the period 1988 through 1996?

2. BACKGROUND

2.1 In July 1991, Edison commenced an internal investigation of its Customer Service Western Division to ascertain whether an employee or employees had misappropriated Edison funds for their own benefit ("Edison Western Division Investigation").

2.2 In February 1992, Edison notified the Commission of an investigation into the billing practices of Integrated Energy Group ("IEG"), a consulting firm headed by R. Quinn Gardner, and its affiliated businesses ("Edison IEG Investigation"). The Edison IEG Investigation began as a routine audit of IEG's billings in July 1990. Edison discovered irregularities in IEG's billings, including inflated consultant hours and airfare, and charges for services which were never provided. Of $11.2 million in total IEG invoices, Edison refused to pay $1.5 million, leaving $9.7 million paid.

2.3 The ORA initiated its own investigation of the Western Division matter in September 1991, and of the IEG matter in January 1992.

2.4 On July 22, 1992 the Commission ordered Edison to establish an Investigation Memorandum Account ("IMA") pursuant to Decision No. 92-07-077 to track Edison IEG Investigation related expenses and Edison Western Division Investigation related expenses.

APPENDIX A

2.5 On November 18, 1996 Edison filed the "Motion of Southern California Edison Company (U 338-E) To Terminate Investigation Memorandum Account and Dismiss 1992 General Rate Case Phase V." This Motion was denied by the Commission on February 5, 1997. The evidence supporting this Motion (which also would have been offered at hearings) consisted of the following items, which collectively are referred to as the "Edison Reports and Testimony:"

- Report entitled "Edison Investigation Of Allegations Of Misconduct In The Western Division Conducted During 1991-1992," including supporting Exhibits, sponsored by Charles L. Wong and John E. Truax who were the primary Edison investigators who conducted the Edison Western Division Investigation.

- Report entitled "Edison Investigation Of Transactions With IEG And Its Affiliates During the Period 1988-1992," including supporting Exhibits, sponsored by Charles L. Wong who was the primary Edison auditor who conducted the Edison IEG Investigation.

- Report entitled "Reasonableness Of The IEG Engagement And Consulting Services," including supporting Exhibits, sponsored by consultant Martin J. Blake.

- Testimony of Robert H. Bridenbecker, a retired Edison Senior Vice President, sponsoring a document entitled "Consulting Services Provided By IEG To The Customer Service Department And Its Energy Services Division."

APPENDIX A

• Testimony of Ronald Daniels, a retired Edison Vice President, sponsoring a document entitled "Review of Costs Recorded In The Investigation Memorandum Account Established Pursuant To Decision No. 92-07-077."[3]

2.6 The ORA's investigation culminated in the ORA's issuance of the following two reports on December 24, 1996, which are collectively referred to as the "ORA Reports:"

• The "Report on ORA Investigation of Southern California Edison Company's RD&D and DSM Programs," sponsored by Scott Logan and Meri J. Levy ("ORA Staff Report").

• The "Consultant's Report on Southern California Edison Company's RD&D and DSM Programs," sponsored by Margaret C. Felts ("ORA Consultant's Report").

In the ORA Reports the ORA recommends that (1) the balance in the IMA be disallowed, (2) penalties be imposed on Edison, and (3) audits of the RD&D and DSM One-Way Balancing Accounts for the years 1988-1996 be ordered.

2.7 On February 21, 1997 Edison filed the "Motion Of Southern California Edison Company (U 338-E) Seeking Commission Confirmation Of Scope Of Phase 5 Hearings." The Commission denied the Motion on April 23, 1997.

2.8 On June 2, 1997 Edison served testimony rebutting the allegations contained in the ORA Reports. The rebuttal

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[3] The Parties have agreed in the document entitled "Joint ORA/Edison Investigation Memorandum Account Balance Stipulation," dated June 1997, that the IMA balance is $6,811,665.

testimony consisted of the following documents, which are collectively referred to as the "Edison Rebuttal Testimony:"

- Edison Rebuttal Testimony Opposing The ORA RD&D And DSM Audit Recommendation," including supporting Exhibits, and the "Prepared Rebuttal Testimony Of Frederick R. Nandy And William H. Reinhold."

- "Reasonableness of the IEG Engagement and Consulting Services," Rebuttal Testimony of Martin J. Blake.

- "Summary Of Edison's Cooperation With The ORA During Its Western Division and IEG Investigations," Rebuttal Testimony of Charles L. Wong.

2.9 The Parties engaged in settlement discussions in May 1997 which resulted in this Settlement.

2.10 The Parties believe that the agreements and understandings reflected in this Settlement are reasonable in light of the whole record, are consistent with the applicable law, and are in the public interest.

3. AGREEMENT TO RESOLVE ALL ISSUES IN APPLICATION NO. 90-12-018, PHASE 5

3.1 As a compromise between their litigation positions,[4] the Parties agree that Edison shall, within 30 calendar days of a final Commission decision approving this Settlement as provided in Section 4.3, credit its Electric Deferred Refund Account

[4] The litigation positions of the Parties will be described in the "Joint Motion" referred to in Section 4.2.

("EDRA"), as authorized by D.96-12-025, in the amount of $9.9 million, plus accrued interest on the $9.9 million beginning on June 3, 1997 and computed at the interest rate defined in the EDRA Preliminary Statement (1/12 of the most recent month's interest rate on Commercial Paper (prime, 3 months) published in the Federal Reserve Statistical Release, G.13). Within 30 days after the credit has been made, Edison shall so notify the ORA by letter addressed to the Director of the Office Of Ratepayer Advocates. It is the intention of the Parties that such credit shall be refunded directly to Edison's ratepayers rather than as a credit to Edison's transition costs.

3.2 The Parties shall recommend to the Commission by a Joint Motion that Phase 5, including the IMA and Edison's proposed scheme of tracking and memorandum accounts, be automatically terminated on the date Edison makes the credit to the EDRA as provided for in Section 3.1. The balance in the IMA, excluding interest, is $6,811,665. The Joint Motion shall also recommend to the Commission that, effective on the date Phase 5 is terminated, the base rates related to the costs listed in Finding of Fact 9 in D.92-07-077 no longer be subject to refund.

3.3 The Parties shall recommend to the Commission that the proposed Findings of Fact and Conclusions Of Law set forth in Appendix A, Proposed Findings of Fact & Conclusions of Law, which is attached to this Settlement and by this reference made a part hereof, be adopted in their entirety. Adoption of such proposed Findings of Fact and Conclusions of Law is a material

part of the consideration agreed to by Edison in support of the Settlement.

3.4 The Parties agree that no reasonableness review of Edison's RD&D and DSM activities for the period 1988 through 1996 is necessary, and recommend that the Commission find that no expenditures recorded in the RD&D and DSM One-Way Balancing Accounts for the years 1988-1996 are unreasonable. The ORA withdraws its recommendations that (1) penalties be assessed against Edison, and (2) the Commission order an audit of the RD&D and DSM One-Way Balancing Accounts for the years 1988-1996. Further, the ORA shall not, in any Commission proceeding, recommend any audits of the RD&D and/or the DSM One-Way Balancing Accounts for any of the years 1988 through 1996. However, the provisions of this Section 3.4 do not apply to Annual Earnings Assessment Proceeding ("AEAP") Application No. 97-05-004 or to any review of the ENVEST Balancing Account.

3.5 The Parties have agreed in this Settlement to certain specified conditions and limitations on Edison's future participation in energy efficiency programs. For the purposes of this Settlement, the Parties agree that the functions to be performed by the administrator(s) of energy efficiency funds allocated by the independent Energy Efficiency Board ("EEB") as described in D.97-02-014, page 35, are as follows:

A. Assists the EEB in selecting various projects.

B. Pays moneys to and verifies program milestones/performance indicators.

C. Manages any Standard Offers.

D. Collects the funds and manages the bank account.

E. Provides administrative support to the EEB.

F. Will not deliver energy efficiency solutions.

The Parties further agree, as follows:

- Neither Edison nor its affiliates will bid and/or contract for energy efficiency administrative funds within Edison's service territory, where administration is defined as being strictly limited to the activities listed in Items A. through E. above.

- Edison and/or its affiliates reserve the right to bid and/or contract for energy efficiency administrative funds if the Commission allows the administrator to deliver energy efficiency solutions such as market transformation programs and customer education and information programs.

- Edison and/or its affiliates reserve the right to bid and/or contract for energy efficiency implementation funds.

3.6 Effective on the date of a final Commission decision approving this Settlement as provided in Section 4.3, the Parties agree that no records related to the Edison Western Division Investigation and the Edison IEG Investigation need to be retained for the purposes of Phase 5. The Parties do not comment in this Settlement on disposal or retention of such records for any purpose other than Phase 5.

3.7 Subject to the condition precedent that this Settlement shall have been approved by the Commission as provided in Section 4.3, the ORA shall not make, in any Commission proceeding, any further recommendations for disallowances,

penalties, sanctions or audits of the RD&D and/or DSM One-Way Balancing Accounts relating to, concerning or based on (1) any of the facts, circumstances, theories or allegations contained in the ORA Reports, and/or (2) any allegations by third parties relating to, concerning or based on any of the facts, circumstances, theories or allegations contained in the ORA Reports. This Settlement shall completely resolve all claims, allegations and contentions made by the ORA in the ORA Reports concerning both the Western Division and IEG matters.

3.8 The Parties intend that the ORA Reports, the Edison Reports and Testimony, and the Edison Rebuttal Testimony be made exhibits in this proceeding and provide an evidentiary basis for the reasonableness of this Settlement.

4. ADDITIONAL AGREEMENTS

4.1 This Settlement, which was reached as a result of negotiations, represents a compromise of the disputed positions of the Parties. The Parties have reached this Settlement after taking into account the possibility that each Party may or may not prevail on any given issue in the litigation of this case. The Parties agree and assert that this Settlement is fundamentally fair, reasonable in light of the whole record, consistent with law, and in the public interest. Nothing in this Settlement represents an admission by Edison of any liability, negligence or unreasonable behavior of any kind, or any agreement with positions taken or characterizations made in the ORA Staff Report or in the ORA Consultant's Report, nor any indication by ORA of any agreement with positions taken or characterizations made in the

Edison Reports and Testimony or in the Edison Rebuttal Testimony. In addition, the provisions of this Settlement are not intended to serve as precedent in any other proceeding or settlement.

4.2 The Parties agree to file a Joint Motion seeking Commission approval of this Settlement and shall use their best efforts to obtain Commission approval of the Settlement. Such efforts shall include each Party (1) supporting the reports and testimony previously served in Phase 5, (2) providing a witness to sponsor joint and/or separate testimony in support of this Settlement and the document entitled "Joint ORA/Edison Investigation Memorandum Account Balance Stipulation," and (3) making legal arguments as may be necessary and proper to enable the Commission to find this Settlement reasonable. In the Joint Motion, the Parties shall, consistent with Section 4.3 of this Settlement, jointly request that the Commission (1) adopt this Settlement in its entirety without change, and (2) issue an order authorizing Edison to take all actions necessary to effectuate the terms of this Settlement.

4.3 The Commission approval contemplated by this Settlement is that the Commission issue a final decision which approves this Settlement in full and in the form presented without change.

4.4 If the Commission does not adopt this Settlement in its entirety and without change, neither Party shall be bound by the Settlement or any portion of the Settlement, and the Parties may proceed to litigation of the issues.

APPENDIX A

4.5 The Parties agree that they will not enter into any ex parte discussions with any Commission decisionmaker regarding the recommendations contained in this Settlement, irrespective of whether such discussions are reportable under the Commission's Rules, except in the presence of the other Party, or unless otherwise agreed to in advance by both Parties. For purposes of this Section 4.5, "decisionmaker" shall have the same meaning as set forth in Rule 1.1(e) of the Commission's Rules of Practice and Procedure.

4.6 The Parties agree to actively defend this Settlement and to develop a mutually acceptable defense if its approval is opposed by non-parties to this Settlement.

4.7 Except as expressly provided for in this Settlement, none of the principles or methodologies underlying this Settlement shall be deemed as precedent in any proceeding or in any litigation, except in order to implement in this proceeding the agreements contained in this Settlement. The Parties reserve the right to advocate different principles or methodologies from those underlying this Settlement in other proceedings.

4.8 The Parties agree not to contest this Settlement before any regulatory agency or court of law where this Settlement, its meaning or effect is an issue. No Party shall take or advocate, either directly, or indirectly through another entity, any action inconsistent with the terms of this Settlement.

4.9 The Parties agree that the Commission shall have exclusive jurisdiction over any issues related to this Settlement and that no other court, regulatory agency, or other governing body shall

have jurisdiction over any issue related to the interpretation of this Settlement, the enforcement of this Settlement, or the rights of the Parties to the Settlement (with the exception of the California Supreme Court or any other state or federal court that may now or in the future, by statute or otherwise, have jurisdiction to review Commission decisions). The Parties further agree that no signatory to this Settlement, officer, director, or employee of either Party, or any member of the staff of the Commission assumes any personal liability as a result of this Settlement. The Parties agree that no legal action related to this Settlement may be brought in any state or federal court, or in any other forum with the exception of the Commission, against ORA or Edison, or any individual representing ORA or Edison, or any officer, director or employee of either Party.

4.10 This Settlement Agreement contains the entire agreement and understanding between the Parties as to the subject matter of this Settlement, and supersedes all prior agreements, commitments, representations and discussions between the Parties with respect to the subject matter of this Settlement.

4.11 None of the provisions of this Settlement shall be considered waived by either Party unless such waiver is given in writing. The failure of a Party to insist in any instance upon strict performance of any of the provisions of this Settlement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future.

4.12 It is the intent of the Parties that this Settlement be interpreted, governed and construed under the laws of the State of California. This Settlement is to be deemed to have been jointly prepared by ORA and Edison, and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that such Party drafted or prepared this Settlement.

4.13 Unless specifically set forth in this Settlement, neither Party intends to alter or change its obligations imposed by the orders, rules, regulations or decisions of the Commission.

5. EXECUTION

5.1 Subject to the condition of final Commission approval pursuant to Section 4.3, this Settlement shall become binding upon the date it is signed by both Parties.

5.2 Each of the undersigned Parties agrees to abide by the

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APPENDIX A

conditions and recommendations set forth in this Settlement. The Parties agree that this Settlement may be executed in counterparts.

SOUTHERN CALIFORNIA EDISON COMPANY

Dated: Sept. 8, 1997 By: Bruce Foster
Bruce Foster
Vice President

OFFICE OF RATEPAYER ADVOCATES

Dated: Sept. 5, 1997 By: Elaine Schmid
~~David E. Morse~~ Elaine Schmid
~~Program~~ Director

(END OF APPENDIX A)

MASTER LIST
A90-12-018/I89-12-025/I91-02-079
CREATED: 11/12/96 REV:1-27-98 smj
CORR:1-27-98 smj
DOC. I.D. K04453

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A90-12-018/I89-12-025
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(END OF APPENDIX B)