

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**ENERGY DIVISION**

**RESOLUTION E-3542  
DECEMBER 17, 1998**

**RESOLUTION**

**RESOLUTION E-3542. SOUTHERN CALIFORNIA EDISON COMPANY (SCE) SEEKS COMMISSION APPROVAL OF PROPOSED REVISIONS TO ITS DISPUTED ARIZONA PROPERTY TAX (DAPT) MEMORANDUM ACCOUNT TO REFLECT CHANGES PURSUANT TO A SETTLEMENT. SCE ALSO SEEKS APPROVAL OF THE SETTLEMENT. SCE'S PROPOSED TARIFF REVISIONS ARE APPROVED. WE TAKE NO POSITION ON THE SETTLEMENT.**

**BY ADVICE LETTER 1230-E, FILED ON APRIL 4, 1997.**

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**SUMMARY**

1. By Advice Letter (AL) 1230-E, dated April 4, 1997, Southern California Edison Company (SCE) requests approval for proposed tariff changes related to its Disputed Arizona Property Tax (DAPT) Memorandum Account. The AL also transmits and requests approval of the Arizona Property Tax Settlement ("Settlement Agreement") as reasonable, consistent with law, and in the public interest.
2. The Settlement Agreement results in lower Arizona property taxes for SCE effective July 1, 1996. These lower property taxes have been recorded in the DAPT pursuant to Decision Number (D.) 91-12-076. SCE's electric rates were set using the higher property tax rates, but the higher rates were subject to refund, as ordered in D.91-12-076. This has resulted in an overcollection of about \$4 million for the period between July 1, 1996 and December 31, 1996.
3. On January 1, 1997, actual property taxes were reflected in rates due to the implementation of the Palo Verde ratemaking treatment established in D.96-12-083. No additional property tax overcollections occurred after that date.
4. In AL 1230-E, SCE proposes recording the overcollection for the period from July 1, 1996 through December 31, 1996 in its Electric Revenue Adjustment Mechanism (ERAM) Balancing Account, or a successor ratemaking mechanism. SCE asserts that its

DAPT overcollection is not an includable item in the Electric Deferred Refund Account (EDRA).

5. A protest was filed against AL 1230-E by the Office of Ratepayer Advocates (ORA).
6. ORA protested SCE's proposal to record the DAPT overcollection in the ERAM Balancing Account. ORA recommends that the overcollection be recorded in the EDRA.
7. In reply to the ORA protest, SCE states that, first, the overcollection of Arizona property taxes is not associated with a disallowance or settlement of a reasonableness dispute associated with SCE or with a Commission or FERC regulated gas utility, and therefore is not the type of item anticipated by D.96-12-025 to be included in the EDRA. Second, SCE states that its current tariff language for the DAPT Memo Account provides that the memo account balance would be transferred to the ERAM.
8. ORA's protest is denied. Our D.96-12-025 did not specifically provide for refunds of overcollections for the disputed Arizona property taxes, and it was not the intent of that decision to require that such refunds be recorded in the EDRA.
9. The DAPT refund will be recorded in the SCE's successor account to its ERAM Balancing Account, the Transition Cost Balancing Account (TCBA). In addition, should additional SCE claims against the State of Arizona be reinstated at some time in the future, before the termination date set forth in the Settlement Agreement, future refunds should also be made through the TCBA.
10. We take no position on the terms of the Settlement Agreement. No party opposed the Settlement Agreement. Analysis of the reasonableness of the Settlement Agreement would require considerable time and legal and technical resources, and it appears highly uncertain if such analysis would determine that the settlement's terms or its ultimate result for ratepayers should have been any different or were unreasonable. In addition, in D.91-12-076 we ordered that SCE should seek disposition of the DAPT balance by advice letter filing (rather than in a reasonableness review) after their lawsuit was finally resolved, so we did not anticipate a thorough analysis of the results of the lawsuit.

#### BACKGROUND

1. In 1989 and 1990, property tax rates were raised in certain school districts in the State of Arizona. SCE owns a portion of the Palo Verde Nuclear Generating Station in Arizona. SCE's property taxes increased as result of the 1989 and 1990 property tax rate increases.
2. In 1990, the Company and other Palo Verde participants filed a lawsuit challenging the constitutionality of the 1990 legislation which raised property tax rates.

3. In our decision on SCE's 1992 General Rate Case (GRC), D.91-12-076, we found that the outcome of the lawsuit was uncertain, and SCE's property tax obligations were too uncertain to adopt a reasonable forecast of property taxes. We ordered that SCE's rate recovery of disputed property taxes be subject to refund, and that SCE should record those expenses in an interest-bearing memorandum account pending the outcome of the lawsuit. Finally, we ordered that "After the lawsuit is finally resolved, Edison shall seek disposition of the account balance by advice filing. If Edison should prevail in the lawsuit, Edison shall return any property tax refunds to ratepayers." (D.91-12-076, 42 CPUC 2d 759)

4. On November 6, 1992, SCE filed AL 973-E which revised SCE's tariff language to reflect the establishment of the DAPT Memo Account. This advice letter went into effect on the date filed.

5. In D.96-12-025, the Commission established the EDRA for the three major California electric utilities to ensure that disallowances and certain refunds would be credited to electric customers directly rather than be used simply as an offset to electric transition costs.

6. On December 20, 1996, SCE filed AL 1208-E, which established an EDRA for SCE, in compliance with D.96-12-025. That AL went into effect on its own motion.

7. In D.96-12-083, we adopted a Palo Verde Settlement Agreement which established ratemaking treatment for SCE for its portion of Palo Verde. One of the terms of that settlement was the creation of the Palo Verde Incremental Cost (PVIC) Balancing Account. The PVIC Balancing Account records SCE's share of actual Palo Verde incremental operating costs during the five-year period January 1, 1997 through December 31, 2001. Palo Verde incremental operating costs include SCE's share of Arizona property taxes.

8. Arizona House Bill 2005 was approved by the Governor of Arizona in July 1996. HB 2005 reduced pertinent property taxes for the period beginning July 1, 1996.

9. Various decisions, appeals, and other events occurred related to the lawsuit filed by SCE and the other Palo Verde participants between 1990 and 1997, but in February 1997, SCE and the other Palo Verde participants entered into a Settlement Agreement with certain Arizona counties, the Arizona Department of Revenue, and the Arizona State Treasurer ("Defendants").

10. Pertinent terms of the Settlement Agreement include:

- the Palo Verde participants' property taxes would not be increased through mid-1999;
- the lawsuit would be placed in an "inactive" status but could be reinstated if the State of Arizona defaulted on the settlement;
- the lawsuit would be dismissed if not reinstated prior to 1999;

- the Participants' refund claims (for the period prior to July 1, 1996) would be waived at the rate of 20% in fiscal year 1996-97, 40% in fiscal year 1997-98; and 100% in fiscal year 1998-99, unless the State defaulted in any of those years.

11. In compliance with D.97-10-057, SCE filed AL 1254-E on November 3, 1997. Among other things, that AL proposed the elimination of the ERAM Balancing Account effective January 1, 1998, and transfer of the December 31, 1997 ERAM balance to the Interim TCBA (ITCBA). Resolution E-3514, issued December 16, 1997, approved the elimination of the SCE ERAM Balancing Account effective January 1, 1998, and the transfer of the ERAM balance to the ITCBA. The Commission also acknowledged that the balance would ultimately transfer to the TCBA. The Commission ordered SCE to file a supplemental AL to effect certain actions including the removal of any tariff references to ERAM for all continuing memo and balancing accounts. On December 24, 1997, SCE filed AL 1254-E-A in compliance with Resolution E-3514. We have not yet acted on SCE AL 1254-E-A.

### NOTICE

1. Public notice of AL 1230-E was made by publication in the Commission calendar, and by SCE mailing copies of the filing to interested parties on the mailing list attached to the advice letter.

### PROTESTS

1. A protest was filed by ORA to AL 1230-E on April 23, 1997. ORA protested SCE's proposal to record the property tax savings in its ERAM Balancing Account. ORA notes that ERAM's balancing account will become a component of Competition Transition Costs (CTC) and asserts that Edison ratepayers will not see the direct effect of the property tax savings that SCE has experienced.

2. ORA argues that, although D.96-12-025 did not specifically address refunds of overcollected Arizona property tax expense, ORA believes that the EDRA was established to refund directly this type of overcollection in Edison's rates to its ratepayers.

3. ORA recommends that SCE's EDRA be designated as the appropriate place to reflect the overcollection of Arizona property taxes.

4. SCE filed a reply to ORA's protest on April 30, 1997. SCE argues that ORA's protest should be rejected for two reasons. First, Ordering Paragraph 2 of D.96-12-025 described the types of credits which would be recorded in the electric utilities' EDRA's:

"The electric deferred refund account will accumulate credits for electric disallowances ordered by this Commission, utility electric generation (UEG) shares of

gas disallowances ordered by this Commission or FERC, and electric and UEG amounts resulting from the settlement of reasonableness disputes at this Commission or FERC."

5. SCE argues that the overcollection of Arizona property taxes is not a disallowance or an amount related to a settlement of a reasonableness dispute, and therefore is not an amount anticipated to be recorded in the EDRA. SCE also notes that its EDRA tariff language, established in AL 1208-E, reflects only the three above categories of credits. SCE argues that the overcollection must not be credited to the EDRA.

6. Second, SCE states that the tariff language for its currently effective DAPT Memo Account provides that "If the Company prevails in the lawsuit, the memorandum account balance shall be transferred to the Electric Revenue Adjustment Account (ERAM Balancing Account) and the memorandum account shall be terminated." SCE argues that, consistent with the DAPT Memo account, the overcollection must be transferred to the ERAM Balancing Account.

7. SCE recommends that the Commission reject ORA's recommendation and instead authorize SCE to reflect the overcollection of Arizona property taxes in SCE's ERAM Balancing Account.

#### DISCUSSION

1. On April 4, 1997, SCE filed AL 1230-E in compliance with D.91-12-076. AL 1230-E proposes revisions to SCE's Preliminary Statement to reflect changes in its DAPT Memo Account pursuant to the Settlement Agreement, signed in February 1997 between the Palo Verde Participants and the Defendants.

2. SCE also requests approval of its Settlement Agreement.

3. The Settlement Agreement would result in roughly a \$4 million overcollection in Arizona property taxes for the period from July 1, 1996 through December 31, 1996.

4. After 1996, the Palo Verde ratemaking treatment established in D.96-12-083 took effect so actual property taxes were being recorded and recovered from ratepayers.

5. Prior to July 1, 1996, the Settlement Agreement provides that SCE would waive its claims for any relief provided its Arizona property taxes are not raised by the end of the 1998/99 fiscal year.

6. SCE's electric rates for the period July 1, 1996 through December 31, 1996 were based on property taxes which were higher than actual property taxes. D.91-12-076 provided that SCE's rate recovery of the disputed property taxes would be subject to

refund, and that if SCE should prevail in its lawsuit, it shall return any property tax refunds to ratepayers.

7. The currently effective DAPT Memo Account established by SCE provides that any overcollection would be transferred to the SCE ERAM Balancing Account. In AL 1230-E, SCE proposes that the overcollection be transferred to the ERAM Balancing Account, or a successor ratemaking mechanism for return to ratepayers.

8. Our D.96-12-025 cited three categories of costs which would be recorded in the EDRA. The overcollection of Arizona property taxes does not clearly fall into one of the three categories.

9. The SCE EDRA tariff language specifically cites the same three categories of costs which would be recorded in the account.

10. ORA filed a protest, arguing that the overcollection should be refunded directly to ratepayers by being recorded in SCE's EDRA.

11. SCE filed a reply to ORA's protest, stating that:

- D.96-12-025 does not include a specific provision that the overcollection of Arizona property taxes be recorded in the EDRA;
- SCE's EDRA tariff language does not include the overcollection of Arizona property taxes as a category of costs which should be recorded in the EDRA, and;
- the DAPT Memo Account tariff language requires that the overcollection be recorded in the ERAM Balancing Account.

12. We agree with SCE. The overcollection of about \$4 million of Arizona property taxes should be recorded in SCE's successor account to its ERAM Balancing Account. The overcollection of Arizona property taxes is not specifically cited in D.96-12-025 as one of the categories of costs which should be credited to the electric utilities' EDRA in Ordering Paragraph 2. We intended that electric utilities would record in the EDRA amounts associated with disallowances or refunds associated with actual or alleged unreasonable actions.

13. In D.96-12-025, we specifically clarified our intention that certain "unanticipated refunds" should be included in the EDRA. We stated "...we find that the direct refund policy should apply to all utility cost disallowances, whether based on our findings of imprudence or upon settlements of imprudence allegations, such as in reasonableness reviews, and to all refunds made to the utilities on the basis of a decision by a regulatory agency, again regardless of whether that agency was acting on a settlement or a litigated matter." (slip op, pg. 7)

14. Later in that decision we stated "The accounts will not cover ordinary ECAC and ERAM forecasting errors, other operating revenues forecast in base rate proceedings, or

revenues specifically assigned to shareholders in Commission-approved performance-based ratemaking mechanisms." (slip op, pg. 8)

15. In the past, property taxes would normally be forecast in a GRC. Errors in forecasting such property taxes, and any typical reductions of property taxes, would not have been subject to refund to ratepayers. However, in the case of the disputed Arizona property taxes, we specifically found that an accurate forecast could not be made, and ordered that a special memo account be established in order to assure that SCE ratepayers would receive a refund if actual property taxes turned out to be lower.

16. The DAPT overcollection has occurred simply because we admittedly could not accurately forecast the actual amounts of Arizona property taxes which would be ultimately due. The overcollection has not occurred due to any unreasonable action on SCE's part, or due to any refund made to SCE on the basis of some actual or alleged unreasonable action, or due to any settlement related to such actual or alleged actions. Since the DAPT overcollection is associated with a forecast inaccuracy, and not with any disallowance, refund related to some unreasonable action, or settlement of some actual or alleged unreasonable utility action, the overcollection should be recorded in the TCBA.

17. The SCE ERAM Balancing Account was terminated on January 1, 1998. The successor account to the ERAM Balancing Account is the TCBA. The overcollection should be recorded in the TCBA in accordance with our "streamlining guidelines".

18. SCE has also requested that we approve the Settlement Agreement as reasonable, consistent with law, and in the public interest. To realistically analyze the reasonableness of the Settlement Agreement would require considerable legal and technical time and resources. It is highly uncertain whether the Commission would determine that any other outcome for ratepayers was reasonably possible, and no party has opposed the Settlement Agreement. We take no position on the outcome of the Settlement Agreement.

19. Should the State of Arizona default on its agreement not to raise property taxes for SCE by the end of the fiscal year, and SCE reinstates its claims for additional property tax relief for the period prior to 1997, SCE's DAPT Memo Account should indicate that any additional relief which may be forthcoming would be recorded in the TCBA.

#### FINDINGS

1. SCE filed AL 1230-E on April 4, 1997 proposing revisions to the tariff language for its DAPT Memo Account and requesting approval of its Settlement Agreement.

2. SCE's rate recovery for disputed Arizona property taxes was made subject to refund by D.91-12-076. The Settlement Agreement results in an overcollection of Arizona property taxes of about \$4 million for the period July 1, 1996 through December 31, 1996.

3. In AL 1230-E, SCE proposes that the \$4 million overcollection be recorded in its ERAM Balancing Account, or its successor.
4. ORA filed a protest of AL 1230-E. ORA recommended that the overcollection be recorded in the EDRA, rather than the ERAM Balancing Account.
5. In reply to ORA's protest, SCE argues that the overcollection is not one of the types of costs which D.96-12-025 requires to be recorded in the EDRA, and therefore the overcollection should be recorded in the ERAM Balancing Account. SCE also states that the overcollection is not one of the types of costs which the tariff language for its EDRA requires to be recorded in that account. Finally, SCE notes that its DAPT Memo Account tariff language provides that the overcollection would be recorded in the ERAM Balancing Account.
6. The ORA protest should be denied.
7. We ordered in D.91-12-076 that the DAPT Memo Account be established so that ratepayers would not overpay for Arizona property taxes which were in dispute and could not be accurately forecast at the time of the 1992 GRC, if SCE were able to prevail in its lawsuit. The DAPT overcollection has occurred simply because rates were set using property tax amounts which we acknowledged might be too high, and we acknowledged we could not accurately forecast the amounts which would be actually paid.
8. The EDRA is not intended to capture amounts associated with forecast errors. It is intended to capture amounts associated with disallowances, and refunds and settlements associated with actual or alleged unreasonable utility actions.
9. The TCBA is essentially the "successor account" to SCE's ERAM Balancing Account. SCE should record in its TCBA the overcollection of Arizona property taxes for the period from July 1, 1996 through December 31, 1996, including interest.
10. Since SCE will record these amounts in its TCBA, SCE's ratepayers will be provided with the benefit of the increase in the amount of CTC headroom. CTC will therefore be paid off faster.
11. It is reasonable to take no position on the terms of the Settlement Agreement.
12. SCE's tariff language should also provide that if any additional overcollections are recorded in the DAPT Memo Account before its termination, the additional overcollections or refunds should also be recorded in the TCBA.



**THEREFORE, IT IS ORDERED THAT:**

1. SCE shall record the overcollection of Arizona property taxes for the period July 1, 1996 through December 31, 1996, including interest, in its TCBA, and shall revise its tariff language for the DAPT Memo Account accordingly.
2. The protest of ORA is denied.
3. SCE shall revise the tariff language for its DAPT Memo Account to provide that any additional refunds of disputed Arizona property taxes shall be recorded in the SCE TCBA.
4. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on December 17, 1998, the following Commissioners voting favorably thereon:

  
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WESLEY M. FRANKLIN  
Executive Director

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