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December 22, 2008

SDG&E ADVICE LETTER 2051-E
(U902-E)

PG&E ADVICE LETTER 3384-E
(U39-E)

SCE ADVICE LETTER 2304-E
(U338-E)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SUBJECT: CALCULATION OF INDIFFERENCE PAYMENTS IN COMPLIANCE WITH DECISION 08-11-056

PURPOSE

Pursuant to California Public Utilities Commission (Commission) Decision No. (D.) 08-11-056, San Diego Gas & Electric Company (SDG&E), Pacific Gas and Electric Company (PG&E), and Southern California Edison (SCE) hereby submit this compliance filing to implement the revised cost allocation methodology adopted in D.08-11-056. In particular, this compliance filing includes the calculation of the cost allocation indifference payments for each year from 2009 until the last Department of Water Resources (DWR) contract is scheduled to expire and includes the utilities' agreement on a shaping proposal for the indifference payments.[1]

BACKGROUND

The "Direct Access" suspension was implemented to address the energy crisis of 2000-2001 when extraordinary wholesale power costs threatened the solvency of California's major investor-owned utilities (IOUs) and their ability to maintain reliable electric service. Assembly Bill 1 from the First Extraordinary Session (AB1X) authorized DWR to become the electric power supplier of last resort for retail customers of the IOUs.[2] To meet this mandate, DWR

[1] *See* D.08-11-056, Appendix 2, ¶¶ 5, 9.

[2] DWR supplied the "net short," i.e., the shortfall in demand not supplied under existing power contracts of the IOU or generated by an IOU facility.

entered into a series of contracts for the procurement of electric power to serve customers in the service territories of the IOUs: PG&E, SCE, and SDG&E.[3]

Since then, the energy markets have stabilized, the IOUs have resumed responsibility for procuring electric power, and DWR is no longer authorized to enter into contracts for power. However, DWR continues to supply power to retail customers under contracts entered into prior to January 1, 2003. In D. 08-11-056, the Commission found it to be in the public interest to establish a process for seeking to expedite the final phase-out of DWR's remaining involvement in supplying electric power to retail IOU customers, and to return full procurement responsibility to the IOUs.[4]

Procedural Background

In February 2008, D.08-02-033 was issued in Phase I of R.07-05-025, finding that lifting the suspension of Direct Access was barred as long as DWR continues to supply power to retail customers as a party to its existing power contracts (Water Code § 80260). The Commission also concluded that there was value in considering ways to relieve DWR of its obligations to supply power on an expedited basis by supporting negotiations with DWR contract counterparties to enter into replacement agreements with the IOUs.

Phase II(a) of this proceeding was split into two segments: Phase II(a)(1) addressed the feasibility and design of a plan to support arrangements to implement replacement contracts, and led to D.08-11-056, and Phase II(a)(2) will be conducted to implement the plan that was adopted in Phase II(a)(1).

As part of D.08-11-056, the IOUs were directed to file an advice letter which includes: (1) the calculation of indifference payments for each year from 2009 until the last DWR contract is scheduled to expire; (2) a mutually acceptable shaping of the indifference payment schedule across multiple years; and (3) any appropriate modifications to the payment schedule for indifference payments. In addition, Ordering Paragraph 3a of D.08-12-006 directed the IOUs to state in this advice letter when each IOU will start to bill and collect the new DWR remittance rates resulting from the shaping of indifference payments. Therefore, the IOUs present their methodology and indifference payment schedules in response to the Commission's directives.

DISCUSSION

Cost Allocation Methodology and Indifference Payments

The IOUs have discussed the revised DWR cost allocation methodology and indifference payment calculations and agreed to a multiple-step methodology including establishing an indifference payment schedule, and implementing a new "costs-follows-contracts" (CFC) cost

[3] AB1X authorized DWR to recover its power costs from electric charges established by the Commission (Water Code § 80110). DWR entered into servicing agreements with the IOUs to collect money on its behalf for power that DWR sells to IOU customers.

[4] D.08-11-056 at 3.

allocation methodology using the indifference payment schedule, effective beginning in calendar year 2009, in accordance with D.08-11-056.

The revised DWR cost allocation methodology adopted in D.08-11-056 maintains the equity of the permanent cost allocation methodology adopted in D.05-06-060 by implementing a CFC methodology with indifference payments to keep each IOU's respective customers indifferent to the attempt to novate the DWR contracts. "Avoidable" DWR contract costs will continue to be allocated on a CFC basis as is currently required under D.05-06-060. "Unavoidable" DWR contract costs will also be allocated on a CFC basis to the customers of the IOU that administers the subject DWR contract. DWR costs included in the calculation of DWR's Power Charge Revenue Requirement that are not attributable to energy deliveries will remain allocated on the fixed percentage allocations required by D.05-06-060. Additionally, costs allocated pursuant to DWR's Bond Charge Revenue Requirement are not impacted by this revised DWR cost allocation methodology. The DWR annual Power Charge Revenue Requirement determination process will continue until all of the DWR contracts have expired, been novated, or otherwise terminated.

The indifference payment calculation includes the costs and revenues associated with unavoidable DWR contract energy deliveries, including unavoidable DWR contract costs, gas collateral costs, allocated Williams Gas Cost reductions, the previously-approved 2009-2010 Calpine Reduction Credit, and any other applicable categories of costs and/or revenues associated with unavoidable DWR contract energy deliveries. The City and County of San Francisco (CCSF)-DWR contract forecast of unavoidable DWR contract costs is not currently included in DWR's data. If this contract becomes effective, an indifference payment schedule will be developed at that time for the allocation of CCSF-DWR contract costs. The revised DWR cost allocation methodology does not in any way impact or affect the allocation of costs or benefits arising from or in connection with other claims, proceedings, or litigation.

Establishing the indifference (transfer) payment schedule required a determination of the annual difference between the unavoidable DWR contract costs that would have been allocated to each IOU's customers under D.05-06-060 and the unavoidable DWR contract costs that will be allocated to those customers under the CFC methodology. In order to calculate the indifference payments for the Coral and Sempra contracts, and Williams Gas Cost reduction, the utilities were required to develop gas price forward curves.[5] The IOUs developed their own gas price forward curves and submitted these forward curves to the Energy Division, along with confirmation from an independent evaluator that the independent evaluator had reviewed the gas price forward curves being submitted. Each IOU calculated its forward curve by using the NYMEX futures daily settlement prices and NYMEX Clearport "SoCal Basis Swap" daily settlement prices at the close of the trading days in the period December 12-18, 2008. Each IOU calculated the simple average of the daily settlement prices during this period for each delivery month during the remaining term of the Sempra and Coral contracts: January 2009 through July 2012. The IOUs' respective calculations were reviewed by Energy Division-approved Independent Evaluators. The Energy Division reviewed this information and confirmed the gas price forward curve on December 19, 2008. This gas price forward curve was then used to calculate the indifference payments associated with the Coral and Sempra contracts and the Williams Gas Cost reduction.

[5] D.08-11-056, Appendix 2, ¶ 7.

Attachment A includes the indifference payments for each year from 2009 until the last DWR contract is scheduled to expire.[6] The indifference payments made by an IOU, or received by an IOU, will equal the amount necessary to allocate the same amount of unavoidable DWR contract costs to the IOU's customers that would have been allocated under D.05-06-060.

Shaping and Levelized Payments

As directed by D.08-11-056, during the 30-day compliance period, the IOUs explored a mutually acceptable shaping of indifference payments across multiple years that would facilitate rate stabilization of DWR remittance rate changes, shown in the top section of Attachment A. As a result of those discussions, the IOUs have agreed upon a shaping proposal that should not adversely impact customers when compared to payments based on the annual difference between the existing D.05-06-060 cost allocation and the CFC methodology. The IOUs propose to accelerate the indifference payment schedule by one year with an interest adjustment, as shown in the middle section of Attachment A.[7] This proposal is intended to reduce the volatility of DWR remittance rates to customers as compared to the status quo. Attachment B provides a comparison of the 2009 DWR remittance rate and revenue requirement changes under the proposed shaped payment schedule relative to the status quo D.05-06-060 cost allocation methodology. However, the proposed shaping schedule is contingent upon timely Commission approval that permits the IOUs to implement necessary rate adjustments by the dates set forth below.

If this accelerated payment schedule is approved by the Commission, SDG&E will consolidate this rate adjustment with its annual ERRA rate adjustment, tentatively expected April 1, 2009. This date is dependent on when SDG&E's ERRA forecast application (A.08-10-004) is approved.

Similarly, if this accelerated payment schedule is approved, PG&E and SCE will consolidate this rate adjustment on March 1, 2009 coincident with other anticipated rate changes approved by the Commission and the Federal Energy Regulatory Commission. Since the 2009 revised annual transfer payment schedule for PG&E and SCE will be implemented on March 1, 2009, PG&E and SCE will calculate their revised 2009 DWR Power Charge such that the revised transfer payment schedule to their customers will be realized over a ten-month period (i.e., March through December). This will set the revised DWR Power Charge for PG&E and SCE at the appropriate level so that DWR is able to recover its total annual revenue requirement by December 31, 2009.[8]

[6] The indifference payments are in the first section of Attachment A, under the heading "Base Indifference Payments (Receipts)".

[7] The shaping proposal is in the second section of Attachment A, under the heading "Accelerated Indifference Payments (Receipts)".

[8] The "REVISED" remittance rates shown on Line No. 35 of Attachment B are based on annual revenue requirements and are therefore annual remittance rates. Because the impact of indifference payment and shaping adjustment shown on Lines Nos. 25.a and 25.b will be reflected in the "REVISED" remittance rates over a shorter time period (i.e., 9 or 10 months) as discussed in the foregoing paragraphs, the actual "REVISED" remittance rate for each utility will be modified to reflect that shorter time period. The actual "REVISED" remittance rate for each utility will be identified in each utility's subsequent advice filing implementing the new rate.

DWR's true-ups of actual DWR contract costs and remittances for contract deliveries in 2009 and beyond, reflected in the IOUs' respective utility-specific balancing accounts, will correspond to each IOU's allocated contracts. For true-ups of costs and remittances for pre-2009 deliveries, the D.05-06-060 cost allocation methodology will be used to calculate true-up amounts.

EFFECTIVE DATE

The IOUs believe this Advice Letter is subject to Energy Division disposition and should be classified as Tier 2 (effective after staff approval) pursuant to GO 96-B. As directed in Appendix 2 of D.08-11-056, this filing is to be effective 20 calendar days from the date filed. Therefore, SDG&E, PG&E and SCE respectfully request that this filing be made effective January 12, 2009, twenty days from the date filed. Revised tariffs to reflect the new DWR remittance rates using the CFC allocation methodology will be implemented by each utility filing Tier 1 advice letters pursuant to GO 96-B.

PROTEST

Anyone may protest this Advice Letter to the California Public Utilities Commission. The protest must state the grounds upon which it is based, including such items as financial and service impact, and should be submitted expeditiously. **As directed in D.08-11-056, protests must be received within 15 days of the date this Advice Letter was filed with the Commission.** There is no restriction on who may file a protest. The address for mailing or delivering a protest to the Commission is:

CPUC Energy Division
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102

In addition, protests and all other correspondence regarding this advice letter should also be sent by letter and transmitted via facsimile or electronically to the attention of both Honesto Gatchalian (jnj@cpuc.ca.gov) and Maria Salinas (mas@cpuc.ca.gov) of the Energy Division. A copy of the protest should also be sent via both e-mail and facsimile to the address shown below on the same date it is mailed or delivered to the Commission.

Attn: Todd Cahill
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Senior Vice President, Regulatory Operations
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San Francisco, California 94102
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E-mail: Karyn.Gansecki@sce.com

NOTICE

A copy of this filing has been served on the utilities and interested parties shown on the attached list, which includes R.07-05-025, by providing them a copy hereof either electronically or via the U.S. mail, properly stamped and addressed.

Address changes should be directed to SDG&E Tariffs by facsimile at (858) 654-1788 or by e-mail at SDG&ETariffs@semprautilities.com.

KEN DEREMER
Director – Tariffs & Regulatory Accounts

(cc list enclosed)

Attachment A
Indifference/Transfer Payments
and Accelerated Schedule of Indifference/Transfer Payments
(Dollars)

Line			PG&E			SCE			SDG&E		
			Principal	Interest	Total	Principal	Interest	Total	Principal	Interest	Total
1	Base Indifference / Transfer Payments or (Receipts)	2009	(99,296,326)	-	(99,296,326)	6,223,651	-	6,223,651	93,072,674	-	93,072,674
2		2010	505,977,692	-	505,977,692	(512,602,145)	-	(512,602,145)	6,624,452	-	6,624,452
3		2011	413,736,884	-	413,736,884	(461,139,235)	-	(461,139,235)	47,402,352	-	47,402,352
4		2012	(39,511,374)	-	(39,511,374)	64,863,178	-	64,863,178	(25,351,805)	-	(25,351,805)
5		2013	959,945	-	959,945	11,550,975	-	11,550,975	(12,510,920)	-	(12,510,920)
6		2014	(1,975,428)	-	(1,975,428)	2,215,759	-	2,215,759	(240,331)	-	(240,331)
7		2015	(1,191,018)	-	(1,191,018)	978,778	-	978,778	212,240	-	212,240
8		Total	778,700,375	-	778,700,375	(887,909,038)	-	(887,909,038)	109,208,663	-	109,208,663
10											
11	Accelerated Indifference / Transfer Payments or (Receipts)	2009	406,681,366	(10,119,554)	396,561,813	(506,378,493)	10,252,043	(496,126,450)	99,697,127	(132,489)	99,564,638
12		2010	413,736,884	(8,274,738)	405,462,146	(461,139,235)	9,222,785	(451,916,451)	47,402,352	(948,047)	46,454,305
13		2011	(39,511,374)	790,227	(38,721,146)	64,863,178	(1,297,264)	63,565,915	(25,351,805)	507,036	(24,844,769)
14		2012	959,945	(19,199)	940,746	11,550,975	(231,020)	11,319,956	(12,510,920)	250,218	(12,260,702)
15		2013	(1,975,428)	39,509	(1,935,920)	2,215,759	(44,315)	2,171,444	(240,331)	4,807	(235,524)
16		2014	(1,191,018)	23,820	(1,167,198)	978,778	(19,576)	959,202	212,240	(4,245)	207,995
17		2015	-	0	0	-	(0)	(0)	-	0	0
18		Total	778,700,375	(17,559,934)	761,140,441	(887,909,038)	17,882,654	(870,026,385)	109,208,663	(322,720)	108,885,943
20											
21	Difference in Negative or (Positive) Cash Flow	2009	505,977,692	(10,119,554)	495,858,138	(512,602,145)	10,252,043	(502,350,102)	6,624,452	(132,489)	6,491,963
22		2010	(92,240,809)	(8,274,738)	(100,515,546)	51,462,909	9,222,785	60,685,694	40,777,899	(948,047)	39,829,852
23		2011	(453,248,257)	790,227	(452,458,030)	526,002,414	(1,297,264)	524,705,150	(72,754,156)	507,036	(72,247,120)
24		2012	40,471,318	(19,199)	40,452,119	(53,312,203)	(231,020)	(53,543,222)	12,840,885	250,218	13,091,103
25		2013	(2,935,373)	39,509	(2,895,864)	(9,335,216)	(44,315)	(9,379,531)	12,270,589	4,807	12,275,396
26		2014	784,410	23,820	808,230	(1,236,981)	(19,576)	(1,256,557)	452,571	(4,245)	448,326
27		2015	1,191,018	0	1,191,018	(978,778)	(0)	(978,778)	(212,240)	0	(212,240)
28		Total	(0)	(17,559,934)	(17,559,934)	0	17,882,654	17,882,654	(0)	(322,720)	(322,720)

Attachment B
Allocation of 2009 CDWR Revenue Requirement Among Utilities
Both Original and Revised
(Dollars in millions)

Line	Description	ORIGINAL Remittance Rate Calculation Table — Using Permanent Allocation Only — PG&E	SCE	SDG&E	Total	Reference	REVISED Remittance Rate Calculation Table — Using Indifference/Transfer Payments with Acceleration — PG&E	SCE	SDG&E	Total
1	Allocation Percentages	42.20%	47.50%	10.30%	100.00%	Decision 05-06-060	42.20%	47.50%	10.30%	100.00%
2										
3	2004-2007 Expenses	8,125	8,849	2,770	19,744	Actuals	8,125	8,849	2,770	19,744
4	2004-2007 Revenues	7,984	9,007	2,929	19,920	Actuals	7,984	9,007	2,929	19,920
5	Amount to be collected from /(returned to) the IOU USBA	$ 141	$ (158)	$ (159)	$ (175)	Line 3 - Line 4	$ 141	$ (158)	$ (159)	$ (175)
6										
7	2008 Expenses	1,662	1,932	589	4,183	actuals through Sep-08 the	1,662	1,932	589	4,183
8	2008 Revenues	1,126	2,108	531	3,765	actuals through Sep-08 the	1,126	2,108	531	3,765
9	Amount to be collected from /(returned to) the IOU USBA	$ 536	$ (177)	$ 58	$ 418	Line 7 - Line 8	$ 536	$ (177)	$ 58	$ 418
10										
11	**Balancing Calculation**									
12	December 31, 2009 Projected PCA Balance: Desired Allocation	566	637	138	1,341		566	637	138	1,341
13	January 1, 2004 Starting PCA Balance: Desired Allocation	701	789	171	1,660		701	789	171	1,660
14	Amount to be collected from /(returned to) the IOU USBA	$ (135)	$ (151)	$ (33)	$ (319)	Line 12 - Line 13	$ (135)	$ (151)	$ (33)	$ (319)
15										
16	Prior True-ups (2001/02, 2003, 2008 Calpine2)	(529)	394	135	0		(529)	394	135	0
17	2004-2007 True-up	677	(334)	(100)	243	Line 5 + Line 9	677	(334)	(100)	243
18	Starting and Ending balance True-up	(135)	(151)	(33)	(319)	Line 14	(135)	(151)	(33)	(319)
19	Cumulative True-up to be collected from/(returned to) IOU USBA	$ 14	$ (92)	$ 2	$ (76)	Subtotal	$ 14	$ (92)	$ 2	$ (76)
20										
21	**2009 Revenue Requirement Determination**									
22	Avoidable Costs	77	300	203	580	2009RptRR	77	300	203	580
23	Net Non-Avoidable Costs	1,539	1,732	376	3,647	2009RptRR	1,055	1,828	245	3,129
24	Los Esteros Contract Cost	4			4					
25	Calpine 2 Contract Cost Reduction Credit	(522)	0	0	(522)					
25.a	**Indifference/Transfer Payment (Attachment A, Line 1)**	0	0	0	0		(99)	6	93	0
25.b	**Shaping/Acceleration Adjustment (Attachment A, Line 21)**	0	0	0	0		496	(502)	6	0
26	Gas Collateral Cost	(8)	(9)	(2)	(18)	2009RptRR	(8)	(9)	(2)	(18)
27	Administrative and General	12	13	3	28	2009RptRR	12	13	3	28
28	Other Non-Allocated Costs	0	0	0	0	2009RptRR	0	0	0	0
29	Surplus Revenue	(0)	(50)	(5)	(55)	2009RptRR	(0)	(50)	(5)	(55)
30	Interest Earnings on Fund Balance	(15)	(17)	(4)	(36)	2009RptRR	(15)	(17)	(4)	(36)
31	Balancing Transfer between IOUs	14	(92)	2	(76)	Line 18	14	(92)	2	(76)
32		$ 1,109	$ 1,877	$ 573	$ 3,551		$ 1,531	$ 1,477	$ 543	$ 3,551
		ORIGINAL Remittance Rate Calculation Table					**REVISED Remittance Rate Calculation Table**			
33	**Revenue Requirement Allocated to IOU's Customers**	$ 1,100	$ 1,877	$ 573	$ 3,551		$ 1,531	$ 1,477	$ 543	$ 3,551
34	DWR Delivered Energy (GWh)	12,736	22,059	5,211	40,005		12,736	22,059	5,211	40,005
35	Calendar Year Remittance Rates*	0.08640	0.08510	0.11004	0.08877		0.12022	0.06697	0.10416	0.08877
1	Sum of table lines 23, 24, 25, 25a	1,021	1,732	376	3,129		956	1,835	338	3,129
2	CFC contract costs--assuming 100% market price gas	1,085	1,862	253	3,200		998	1,588	253	2,839
3	Difference between market gas price and Williams gas price	(30)	(34)	(7)	(71)		(9)	(10)	(2)	(21)
4	Plug for 2009 only to keep DWR revenue requirement the same (difference between DWR gas price forecast and new gas price)	0	0	0	0		66	250	(5)	311
5	**Net Cost Follows Contracts**	1,055	1,828	245	3,129		1,055	1,828	245	3,129
6	Permanent allocation of non-avoidable costs	1,321	1,486	322	3,129		1,189	1,339	290	2,818
7	Difference between permanent allocation and CFC	265	(342)	77	0		200	(240)	40	0
8	Calpine 2 adjustment	(299)	246	53	-		(299)	246	53	-
9	**Indifference/Transfer Payment**	(34)	(96)	130	0		(99)	6	93	0

* Revised remittance rates for PG&E, SCE and SDG&E represent an estimate of the average remittance rate for 2009 under the accelerated transfer payment schedule. Actual remittance rates for 2009 will start at the rates shown as the calendar year remittance rates using the permanent allocation only, and will be adjusted prospectively for each IOU upon implementation of customer rate changes as described in this compliance filing.

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY
ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No. **SAN DIEGO GAS & ELECTRIC (U 902)**

Utility type:
☒ ELC ☐ GAS
☐ PLC ☐ HEAT ☐ WATER

Contact Person: Megan Caulson
Phone #: (858) 654-1748
E-mail: MCaulson@SempraUtilities.com

EXPLANATION OF UTILITY TYPE

ELC = Electric GAS = Gas
PLC = Pipeline HEAT = Heat WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: 2051-E

Subject of AL: Calculation of Indifference Payments in Compliance with D.08-11-056

Keywords (choose from CPUC listing): Compliance

AL filing type: ☐ Monthly ☐ Quarterly ☐ Annual ☒ One-Time ☐ Other

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #:
D.08-11-056

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL N/A

Summarize differences between the AL and the prior withdrawn or rejected AL[1]: N/A

Does AL request confidential treatment? If so, provide explanation:

Resolution Required? ☐ Yes ☒ No Tier Designation: ☐ 1 ☒ 2 ☐ 3

Requested effective date: 1/12/09 No. of tariff sheets:

Estimated system annual revenue effect: (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: N/A

Service affected and changes proposed[1]: N/A

Pending advice letters that revise the same tariff sheets: N/A

Protests and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:

CPUC, Energy Division
Attention: Tariff Unit
505 Van Ness Ave.,
San Francisco, CA 94102
mas@cpuc.ca.gov and jnj@cpuc.ca.gov

San Diego Gas & Electric
Attention: Todd Cahill
8330 Century Park Ct, Room 32C
San Diego, CA 92123
tcahill@semprautilities.com

[1] Discuss in AL if more space is needed.

General Order No. 96-B
ADVICE LETTER FILING MAILING LIST

cc: (w/enclosures)

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S. Cauchois
J. Greig
R. Pocta
W. Scott
Energy Division
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R.07-05-025

 Date of Issuance 11/24/2008

Decision 08-11-056 November 21, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking Regarding Whether, or Subject to What Conditions, the Suspension of Direct Access May Be Lifted Consistent with Assembly Bill 1X and Decision 01-09-060.	Rulemaking 07-05-025 (Filed May 24, 2007)

DECISION AUTHORIZING MEASURES TO FACILITATE REMOVAL OF DEPARTMENT OF WATER RESOURCES FROM THE ROLE OF SUPPLYING ELECTRIC POWER

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APPENDIX 1 – CDWR Power Long-Term Power Contract Expiration
APPENDIX 2 – Adopted Measures to Implement Revised Cost Allocation Methodology

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As a priority matter in Phase II(a)(2) of this proceeding, we shall provide guidance on appropriate "just and reasonable" standards to be used in the review and approval of any replacement agreements in order to ensure consistency with the applicable requirements of Section 454.5.

5.4. Effects on Resource Adequacy Requirements

5.4.1. Parties' Positions

DRA argues that under current resource adequacy rules, DWR contracts may count for resource adequacy and are exempted from Commission rules that do not allow for new Liquated Damages (LD) contracts to count for RA capacity. Currently, DWR has several LD contracts in its portfolio and it is unclear as to whether novation or replacement of those contracts entered into as a result of a DWR contract novation would qualify as meeting resource adequacy requirements.

The Commission decided in D.04-10-035 that DWR contracts should fully count for purposes of resource adequacy showings. In D.05-10-042, the Commission determined that the sunset date as well as the adopted portfolio limitations adopted related to LD contracts shall not apply to DWR contracts. Consequently, the IOUs currently are able to count the DWR contracts towards their resource adequacy requirements, regardless of whether the DWR contract is generator-specific or market-sourced. SCE argues that unless the Commission allows the novated DWR contracts, as well as any other replacement contracts, to count towards the IOUs' resource adequacy requirements at least through the current DWR contract expiration dates, the IOUs stand to lose a sizeable amount of eligible capacity from the novation process.

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5.4.2. Discussion

We shall adopt the proposal of SCE to allow novated DWR contracts, as well as any other replacement contracts, to count towards the IOUs' resource adequacy requirements, at least for equivalent power quantities through the current DWR contract expiration dates, including those contracts currently exempt from the Commission's LD rules. We agree that imposing this requirement is necessary so that the IOUs do not lose a sizeable amount of eligible capacity for resource adequacy from the novation process. We believe that adopting this condition on the Commission's approval of any replacement agreements adequately addresses the concern raised by DRA.

5.5. Effects of Novation on Cost Allocation Among IOUs

5.5.1. Parties' Positions

Parties generally agree that an impediment to the IOUs entering into negotiations to execute a new contract to replace a novated DWR contract up until now has been how the resulting contract costs could be allocated among the IOUs and their customers in an equitable manner. Accordingly, as a prerequisite to the IOUs moving forward with contract negotiations, the manner in which the associated contract costs are to be allocated among IOU customers must first be addressed.

Parties submitted proposals as to the principles, protocols, and processes that the Commission should adopt as necessary for the IOUs to enter into negotiations with power suppliers to arrange to take over DWR contracts pursuant to novation or through renegotiation.

PG&E submitted two alternative proposals addressing the inter-utility allocation issues. Under its first alternative, PG&E proposes that DWR contract benefits and costs be borne fully by the customers of the utility that either

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receives the contract through novation or assignment, or that continues to administer the contract after a designated date. There would be no allocation of contract costs among the utilities after the designated date. There would be no taking into account the proportion of DWR contract costs paid by the customers of each IOU prior to the designated date, and no attempt to preserve (by inter-utility payments or other means) the "equitable" formula for the life of the contracts adopted in D.05-06-060. Thus, this proposal would entail a revision to the Commission's "permanent" cost allocation decision.

The majority of parties oppose PG&E's first proposal, arguing that it would be inconsistent with the intent of D.05-06-060. DRA argues that the proposed allocation could also result in a substantial and potentially inequitable shifting of costs from one group of IOU customers to another. They argue that relitigating the "permanent" cost allocation adopted in D.05-06-060 is unnecessary and would be a poor use of the Commission's and the parties' resources.

PG&E's second alternative proposal would require recalculation of the inter-utility allocation of all the DWR contract costs over the life of the contracts from 2001 through the current termination date for the last remaining contract (in 2015). A revised cost allocation among the IOUs would thereby be determined based upon a statewide average DWR contract cost on a per-megawatt-hour (MWh) basis over the life of the DWR contracts. Transfer payments would be authorized among the IOUs as necessary to reconcile any differences between the resulting average cost allocation and total costs of each contract novated to a particular IOU. Under this approach, all utility customers would pay the same average DWR contract unit cost for deliveries of power. To the extent that an IOU were to negotiate additional terms after a DWR contract

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had been novated, the effects of the renegotiated terms would be borne fully by that IOU's customers.

PG&E argues that its second proposal "ensures that DWR contract costs are equitably allocated for the entire contract period."[27] However, the methodology proposed for determining each utility's "equitable" share is different from the methodology adopted in D.05-06-060. As with PG&E's first proposal, this approach would require modifying that decision and relitigating the cost allocation methodology. Parties generally oppose the proposal as being too complicated to implement.

Most parties oppose PG&E's proposals and argue instead that the "permanent" inter-utility cost allocation methodology adopted in D.05-06-060 should be maintained.[28] Under that adopted methodology, the "unavoidable" costs of the entire portfolio of DWR contracts among the three IOUs are allocated on a fixed percentage basis, while the "avoidable" costs of the contracts are allocated to the IOUs on a "costs follow contracts" basis. The IOU that administers a given contract thereby receives whatever benefits that contract offers and is responsible for the avoidable costs associated with it. Most parties argue that it is unnecessary to revisit these percentages for purposes of allocating costs among the IOUs as a result of taking over the DWR contracts through novation or renegotiation. These parties generally agree that SCE's proposal for inter-utility transfer payments appears to be a reasonable way to meet this objective.

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[27] *Id.*, p. 12.

[28] See comments of SCE, SDG&E, DRA, TURN, CLECA, and Reliant.

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SCE argues that the inter-utility allocation of costs associated with contracts entered into as a result of DWR contract novation must preserve the existing inter-utility allocation equities reflected in the permanent cost allocation methodology adopted in D.05-06-060. That methodology was made effective for the allocation of DWR contract costs since 2004, with assurance that the methodology would remain in place over the life of the DWR contracts. Consistent with that assurance, SCE argues that any revised inter-utility allocation methodology must ensure no IOU customers are allocated either a greater or a lesser share of contract costs merely as a result of the novation, assignment, or renegotiation of DWR contract costs.

As a means of accommodating the IOUs' entering into replacement contracts under a DWR novation, SCE proposes a transition to a "cost-follows-contracts" allocation methodology which preserves the principles adopted in D.05-06-060. Under the current allocation methodology, DWR contract costs which are classified as "unavoidable" are allocated among the three IOUs based on fixed percentages. Under SCE's proposal, all unavoidable DWR contract costs would be allocated to the customers of the IOU that administers the subject contract. As a result of this allocation, there would be a disparity as compared with the allocation that would result under D.05-06-060. To ensure that customers are left indifferent to the cost impact of the "costs-follow-contracts" allocation, SCE proposes that the Commission authorize a schedule of indifference payments.

Except for the Coral and Sempra contracts, all DWR unavoidable contract costs are fixed. Thus, except for these two contracts, the total unavoidable contract costs can be readily calculated. For Coral and Sempra, a portion of the unavoidable contract costs are tied to the delivery of natural gas or an index of

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natural gas prices. Thus, to calculate the costs for Sempra and Coral, SCE recommends that an assessment of forward natural gas prices be used to determine the total unavoidable contract costs at the time that the indifference payments are calculated.

SCE proposes a two-step contract allocation process to facilitate a transition to a "cost-follows-contracts" methodology. Step 1 would establish a transfer payment schedule between the IOUs to keep their respective customers indifferent to a new "costs-follow-contracts" methodology. The transfer payments would be based on the difference between the existing cost allocation methodology adopted in D.05-06-060 and the new allocation methodology. Step 2 would be the implementation of the new "costs-follow-contracts" methodology, which SCE proposes should take effect beginning January 1, 2009. SCE proposes that a 30-day compliance period be employed for the IOUs to coordinate and calculate the transfer payment amounts. The IOUs would also use the 30-day compliance period to explore a mutually acceptable "shaping of the transfer payments, such as levelized fixed payments over a period of time to facilitate rate stabilization." Any miscellaneous DWR contract costs that are not attributable to energy deliveries shall continue to be allocated in accordance with the fixed percentage allocations adopted in D.05-06-060.

TURN suggests that the three IOUs attempt to reach a negotiated agreement on a revised cost allocation approach going forward, based on a "cost-follows-contracts" allocation "in which each utility pays the full costs of the contracts it administers . . . and bears full responsibility for the costs and benefits of any future renegotiation of the contractual terms."[29] TURN believes that

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[29] TURN's Opening Comments on Inter-Utility/Cost Allocation Issues, p. 3.

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"equitable adjustment payments" among the IOUs would likely be a necessary component of such an agreement.[30] If after a prescribed period of time (e.g., 45-60 days) the IOUs could not reach agreement, TURN suggests the unresolved issues be set for hearing, briefing, and Commission decision. [31]

5.5.2. Discussion

We conclude that the SCE proposal for inter-utility allocation offers the best solution to facilitate the transfer of contracts to the IOU, and we hereby adopt it. Adopting a mechanism that preserves the existing allocation methodology, as proposed by SCE, is consistent with past Commission policy not to revisit the fixed percentages and the methodology adopted in D.05-06-060 to allocate the unavoidable costs over the life of the contracts. The previously adopted allocation methodology was "designed to be fair over the life of the contracts."[32] In the early years of the allocation period, however, SCE customers bear a disproportionate share of contract costs. Correspondingly, in the later years, PG&E customers bear a disproportionate share of costs. We expressly stated in D.05-06-060 that the adopted cost allocation approach fairly balanced the relative cost burdens, and that we did not intend to revisit the adopted methodology.

PG&E's first proposal would result in SCE customers absorbing approximately $1.4 billion more of DWR contract costs than they would under the adopted methodology. PG&E's second proposal would increase SCE customers' costs by $140 million and SDG&E customers' costs by $260 million.

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[30] *Id.*

[31] *Id.* at pp. 3-4.

[32] See D.05-06-060, *mimeo.*, pp. 9-10.

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Accordingly, we reject PG&E's proposals for a new allocation methodology as they unfairly shift costs to SCE and SDG&E customers and are in conflict with the principles of fairness underlying the methodology adopted in D.05-06-060.

We approve SCE's proposal for indifference payments with an important exception. The example contained in Paragraph 8 of SCE's proposal would violate two key principles contained in AB 1X: first, DWR power is sold by DWR to end use customers, and second, the IOUs collect the money owed for such DWR power from their customers and hold that money in trust until they remit it to DWR. In preparing their compliance filing, the IOUs must revise the methodology for making indifference payments to be consistent with these two principles of AB 1X. In addition, the methodology for making the indifference payments must comply with the Rate Agreement. Compliance with these principles may require that an IOU that owes an indifference payment to another IOU pay that sum directly to the other IOU (to ensure that the other IOU's overall rates remain reasonable).

6. Adopted Plan for Going Forward

6.1. General Framework for Formulating a Plan

We hereby adopt a plan for implementation in Phase II(a)(2) of this proceeding to facilitate the logistics and to provide guidance on the negotiating parameters to effect contract revisions to remove DWR from its obligations as supplier of power. In the assigned Commissioner's and ALJ's Ruling dated April 18, 2008, a preliminary procedural plan was adopted for Phase II(a)(2). We elaborate on that plan in prescribing the next steps in this proceeding. We also consider parties suggestions for how to design and coordinate the process.

DWR has expressed its view that it is up to the Commission and the IOUs to take the lead in transferring the legal and financial responsibility for DWR's

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stated previously, we will not prejudge how those contract negotiations will proceed. In any event, the replacement contracts will be reviewed in the context of the conditions, including market conditions, at the time of negotiation, and based on expectations of market conditions for the period that the replacement contract will be in effect. As such, the review of those contracts will be separate and distinct from the setting in which the previously executed DWR contracts were negotiated and subsequently litigated. Similarly, we find no basis in the arguments of CARE that pending federal litigation relating to existing wholesale power contracts provides any basis to halt progress in this proceeding toward securing ratepayer benefits through replacement contracts through the process outlined herein.

7. Comments on the Proposed Decision

The proposed decision of the assigned ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on October 26, 2008, and reply comments were filed on November 3, 2008. We have reviewed the comments and taken them into account as appropriate in finalizing this order.

8. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Thomas R. Pulsifer is the assigned ALJ in this proceeding.

Findings of Fact

1. Although DWR's authority to enter into new power contracts terminated as of January 1, 2003, at which time the IOUs took over responsibility for the scheduling and dispatch of DWR contract power, DWR still supplies power to

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retail customers pursuant to previously executed contracts which continue in effect.

2. In D.02-12-069, the Commission identified the fundamental short-term goal to transition full responsibility for energy market related activities back to the IOUs as soon as possible, and to make every effort to relieve DWR from the responsibility to perform any functions that should be performed in the long term by regular market participants.

3. The removal of DWR from the role of supplying power is consistent with the fact that the IOUs--and not DWR--are regular market participants that continue to have a statutory responsibility to serve electric customers.

4. The IOUs' obligation to serve their customers is mandated by state law and is part and parcel of the entire regulatory scheme under which the IOUs received a franchise and under which the Commission regulates IOUs under the Public Utilities Act

5. The most practical means by which DWR can be removed from its role of supplying power is through the novation of DWR contracts.

6. Given the uncertainties as to whether DWR could obtain a release from liability from all contract counterparties, assignment of the DWR contracts does not offer a viable means of removing DWR from supplying power.

7. A number of DWR contracts contain novation clauses whereby, upon request by DWR and satisfaction of specified conditions in the contract, the counterparty must enter into a replacement agreement with a "Qualified Electric Corporation."

8. The number of active DWR contracts has been gradually, declining from 59 originally down to 26 contracts today, with 15 separate counterparties.

9. Assuming no further action to accelerate DWR's removal as a power supplier, the DWR will supply declining amounts of power as contracts expire, gradually reducing to zero by about 2015.

10. Novation clauses have been negotiated in 22 out of the 26 remaining DWR contracts as a vehicle to allow for removal of DWR from its contract obligations by substituting a new contract with a different entity which wholly extinguishes the earlier contract.

11. In order for a novation to be executed, a series of conditions must be satisfied, culminating in the execution of a replacement agreement which substitutes an IOU for DWR as party under the new agreement.

12. In the case of the four contracts lacking novation clauses, DWR and the IOUs cannot unilaterally require the counterparties to those contracts to allow the substitution of DWR with an IOU. Negotiations with those counterparties would be necessary to elicit their agreement before DWR could be relieved of its obligations to supply power under such contracts.

13. In devising a plan for contract negotiations to remove DWR from its role as supplier of power, the most efficient outcome can be expected if negotiations are conducted in a sequence of priorities, beginning with the Sempra and Coral contracts.

14. Prioritizing the Sempra and Coral contracts as the initial focus of negotiations is appropriate, particularly given uncertainties as to whether revised Sempra or Coral contracts can be successfully negotiated, the potential time for negotiations, and the magnitude of benefits to ratepayers that depend on the successful negotiation of these contracts.

15. The IOUs estimated quantifiable net savings to ratepayers of approximately $128 million from DWR contract novation, assuming that all DWR

contracts were to be successfully replaced with new agreements by January 1, 2010 through contract novation. The estimates, however, are sensitive to assumptions as to changing conditions in credit and energy markets over time, and have the caveat that the IOUs doubt full novation is achievable, particularly by January 1, 2010.

16. While recognizing various issues that must be resolved, DWR suggests that the novation of all of its contracts could be concluded by January 1, 2010, assuming that the Commission acts expeditiously.

17. To the extent that the full novation of remaining DWR contracts were to occur later than January 1, 2010, the estimated net savings to ratepayers correspondingly are estimated to decline.

18. If negotiations prove to be unsuccessful for the early removal of DWR as a party to the Sempra contract, DWR would be relieved of its obligations under the Sempra contract as of September 2011, the contract's expiration date.

19. If, as a result of unsuccessful Sempra negotiations, the target completion date for novation of DWR contracts was extended to October 2011, net savings would continue to be forecasted, but would be reduced to about $58 million.

20. The estimate of quantifiable net ratepayer savings as a result of extending the target novation completion date to October 2011 is reduced principally because DWR reserves associated with the Sempra contract would not be released early.

21. If the Coral contract negotiations also were not successful, the Coral contract would expire in June 2012.

22. The failure to amend the Coral and/or CalPine contracts would not necessarily preclude novation of the other remaining DWR contracts.

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23. Although there are unquantified potential financial impacts from DWR contract novation assuming that existing DWR contract claims or counterclaims were linked to a replacement contract, such impacts cannot be determined until a replacement contract is negotiated, and subjected to review and approval by the Commission.

24. If the target date for completing DWR contract novation were to be extended to June 2012, there would only be about 500 MW of DWR contract power remaining. The estimated net benefits of novating the remaining contracts would be reduced to about $30.5 million.

25. Although the estimated benefits of novation decline as the target date for completion is extended, the associated risks and potential impediments to novation also decline correspondingly.

26. Although uncertainties exist as the prospects for achieving successful replacement of all DWR contracts by January 2010, and a precise measure of future net benefits is sensitive to various uncertainties that may change over time, the potential for some benefits outweigh the potential downside risks, subject to appropriate safeguards as will be implemented in Phase II (a)(2).

27. Uncertainties exist as to whether, or to what extent, parties may be able to negotiate a replacement contract that provides benefits relative to the existing DWR contract, or (in the case of contracts without novation clauses) whether the counterparty will agree to novation at all.

28. The trade-off between negotiating an "as is" novation versus more extensive amendments may be different for each contract depending on the relative bargaining strength of the counterparty, the specific terms of the existing contract, and the potential to arrive at a bargaining result that is mutually beneficial both to the counterparty and to the IOU and its customers.

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29. If DWR were to terminate its ownership interests in the remaining DWR contracts, through the plan adopted in this decision, then DWR would no longer be supplying power under AB1X.

30. A potential impediment to the IOUs entering into negotiations to execute a new contract to replace a DWR contract up until now has been uncertainties as to how the resulting contract costs could be allocated among the IOUs and their customers in an equitable manner.

31. Because PG&E's proposed methodologies for allocating each utility's "equitable" share of contract costs is different from the methodology adopted in D.05-06-060, its proposals would require modifying that decision and relitigating the cost allocation methodology.

32. SCE's proposed methodology for allocating contract costs to each utility would maintain the allocation principles adopted in D.05-06-060, and would be consistent with the Commission's goal not to relitigate the allocations adopted in D.05-06-060.

33. Under SCE's proposal, all unavoidable DWR contract costs would be allocated to the customers of the IOU that administers the subject contract, described as a "costs follows contract" allocation.

34. In order to ensure that ratepayers are left indifferent to the effects of a "costs follow contracts" allocation, SCE's proposal calls for developing a schedule of transfer payments to ensure that the allocation equities adopted in D.05-06-060 are preserved.

Conclusions of Law

1. The basis for deciding whether or how to move forward with a plan to expedite the removal of DWR from its role as supplier of power is whether it is in the public interest to implement such a plan.

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2. In D.02-12-069, the Commission expressed a preference for returning the IOUs to their traditional role of supplying power as a matter of public policy. This proceeding provides a forum to address analytically whether (or how) such an undertaking can be cost-effective.

3. Good cause exists to move forward to Phase II (a)(2) of this proceeding for the purpose of implementing negotiations to execute novations of DWR's remaining contracts.

4. The goal of removing DWR from the role of supplying power should be pursued under a balanced approach, providing the opportunity for contract negotiations to produce ratepayer benefits, but with safeguards to limit or redirect contract negotiation efforts if, or to the extent that negotiations do not progress positively.

5. Many of the DWR contracts require, as a condition of transfer, that the Commission first conduct a review and issue findings that the terms of the "Replacement Agreement" are "just and reasonable" under Public Utilities Code Section 451.

6. We do not prejudge how negotiations for a replacement contract should be conducted or whether the negotiated terms of the new contract would be found "just and reasonable" under Section 451. The framework for conducting and approving replacement contracts pursuant to Section 451 should be developed in Phase II (a)(2) of this proceeding.

7. The Commission will not be required to make any findings as to the justness and reasonableness of any existing DWR contracts as a result of the novation process, but instead will make those findings for new replacement contracts. Any replacement contract to be negotiated should be reviewed in reference to the relevant conditions, including market conditions, in effect at the

time of negotiation and for the period that such replacement contract would be in effect.

8. Any "just and reasonable" findings that may be made by the Commission in connection with replacement agreements executed pursuant to DWR contract novation or other negotiations should in no way be construed as affecting the disposition of any pending litigation relating to existing DWR contracts.

9. In order to provide the appropriate incentives for the IOUs to enter into negotiations for replacement contracts, provision should be made to ensure that the cost allocation equities established in D.05-06-060 are preserved.

10. SCE's proposed contract allocation methodology should be adopted since it preserves the allocation equities established in D.05-06-060, and provides a practical approach to protect customers against cost shifting as replacement contracts are taken on by the three respective IOUs.

11. Because the Coral and Sempra unavoidable contract costs are tied to the delivery of natural gas or an index of natural gas prices, to calculate these costs for Sempra and Coral, an assessment of forward natural gas prices should be used to determine the total unavoidable contract costs at the time that the indifference payments are calculated.

12. This decision should be effective immediately so that the contract negotiations discussed in this decision may commence expeditiously.

ORDER

IT IS ORDERED that

1. A process is hereby authorized to facilitate efforts aimed at the early removal of the Department of Water Resources (DWR) from its role as supplier of

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power to retail electric customers through negotiations to remove DWR as a party to its existing contracts by executing new replacement agreements.

2. A Working Group shall be organized as a vehicle for DWR, the investor-owned-utilities (IOUs), and Commission staff to plan and implement protocols and strategies for conducting negotiations with the counterparties to the DWR contracts with the goal of removing DWR as a party to the contracts while ensuring that any resulting contract changes are not detrimental to ratepayers. The role of the Working Group is to develop protocols and strategies in the negotiation of replacement contracts. The working group, itself, will not be involved in all of the specific contract negotiations. Each IOU (along with DWR) will responsible for the negotiation of replacement agreements only for those specific DWR contracts that have been allocated to that respective IOU. However, we do not expect to see any replacement contracts that reduce customer benefits and these benefits must be sufficient to counterbalance any costs of posting collateral and letters of credit.

3. A process will be established for periodic progress reports on negotiation efforts by the Working Group for assessing the prospects for agreement on acceptable new contracts, with the goal being to curtail unproductive negotiation efforts before they result in the expenditure of unnecessary costs or time. Appropriate procedural processes will be addressed in the next phase to provide appropriate notice to-and input from other interested parties that are not members of the Working Group.

4. The Assigned Commissioner will issue a procedural ruling in Phase II (a)(2) addressing the formation, organization, and operation of this Working Group, prescribing, among other things, vehicle(s) for communication among the Working Group members, confidentiality protocols, and contingency

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plans for mid-course adjustments, if necessary, as negotiations progress. The procedural ruling will also establish a process for the timely updating of estimates of potential net benefits associated with the expedited replacement of DWR contracts. The ruling will also provide for further consideration of how to allocate the early release of DWR reserves to ratepayers.

5. The initial target date for the removal of DWR from all of its outstanding contracts shall be January 1, 2010. We clarify that this is not the target date for reopening direct access. Nothing in the instant decision prejudges the merits of (or manner of) lifting the direct access suspension.

6. The following priorities shall apply for purposes of scheduling and sequencing negotiations for replacement contracts. The first priority shall be negotiating to replace the Sempra contract. The second priority shall be negotiating to replace the Coral contract. The next priority shall be renegotiation of the PPM and SFO Peakers contracts, followed by novation of any remaining DWR contracts. Prioritization, however, does not rule out the possibility of overlap in time lines where negotiations may begin on certain contracts before others have been entirely finalized. The sequencing of negotiations shall also take into account any interrelationships that may exist among the contracts. More specific timing and sequencing issues shall be addressed in Phase II (a)(2).

7. Whether to execute novation by replacing the contract "as is," or to seek more extensive revisions at the same time shall be assessed on a contract-by-contract basis, rather than necessarily requiring the same approach for every contract.

8. Novated DWR contracts, as well as any replacement contracts, shall count towards the IOUs' resource adequacy requirements for a period extending at least through the remaining term of the existing DWR contracts for existing DWR

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contract quantities. Imposing this requirement is necessary so that the IOUs do not lose resource-adequacy-eligible capacity from the novation process.

9. A two-step cost allocation process to facilitate a transition to a "cost-follows-contracts" methodology to facilitate the IOUs' taking over replacement contracts pursuant to DWR novation is hereby adopted, as set forth in Appendix 2.

10. The adoption of the SCE proposal shall constitute a modification of the cost allocation methodology adopted in Decision (D.) 05-06-060, with the purpose of ensuring that IOU customers remain indifferent as a result of an IOU taking over a replacement contract pursuant to a DWR contract novation.

11. This proceeding shall remain open for consideration of subsequent Phase II(a)(2) issues. As a priority, Phase II(a)(2) of this proceeding shall address the appropriate "just and reasonable" standards to be used in the review and approval of any replacement agreements, in order to ensure consistency with the applicable requirements of Section 451.

This decision is effective today.

Dated November 21, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

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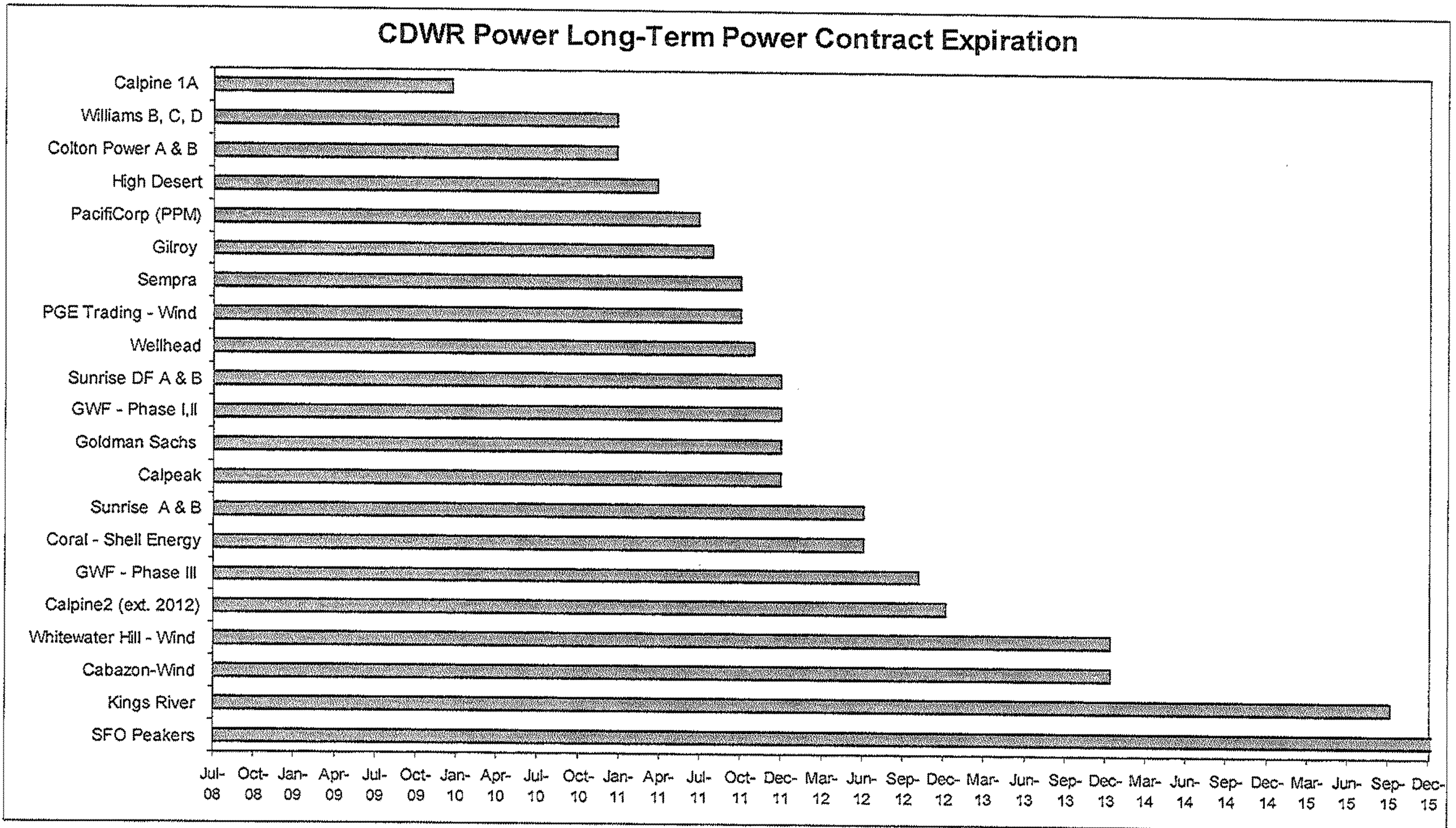
APPENDIX 1



(END OF APPENDIX 1)

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APPENDIX 2
Adopted Measures to Implement Revised Cost Allocation Methodology

1. The revised DWR cost allocation methodology adopted in this decision maintains the equity of the permanent cost allocation methodology adopted in D.05-06-060 by implementing a "costs-follow-contracts" methodology with indifference payments to keep each IOU's respective customers indifferent to the attempt to novate DWR contracts. Specifically, "avoidable" DWR contract costs shall continue to be allocated on "costs follows contracts" (CFC) basis as is currently required under D.05-06-060. "Unavoidable" DWR contract costs shall also be allocated on a CFC basis to the customers of the IOU that administers the subject DWR contract. DWR costs included in the calculation of DWR's Power Charge Revenue Requirement that are not attributable to energy deliveries should remain allocated on the fixed percentage allocations required by D.05-06-060 – 42.2% to PG&E, 47.5% to SCE, and 10.3% to SDG&E. In addition, costs allocated pursuant to DWR's Bond Charge Revenue Requirement are not impacted by this revised DWR cost allocation methodology. The DWR annual power charge revenue requirement determination process will continue until all of the DWR contracts have expired, been novated, or otherwise terminated.

2. The indifference payment calculation described below in Paragraphs 3-9 will include the costs and revenues associated with unavoidable DWR contract energy deliveries, including: unavoidable DWR contract costs, gas collateral costs, allocated William Gas Cost reductions, the previously-approved 2009-2010 Calpine Reduction Credit, and any other applicable categories of costs and/or revenues associated with unavoidable DWR contract energy deliveries. For purposes of this Appendix, costs that are included in the indifference payment calculation are referred to generically as "unavoidable DWR contract costs." The CCSF-DWR contract forecast of unavoidable DWR contract costs is not currently included in DWR's data. If this contact becomes effective, an indifference payment schedule will be developed at that time for the allocation of CCSF-DWR contract costs.

3. The revised DWR cost allocation methodology involves two steps: (1) establishing an indifference payment schedule, and (2) implementing a new CFC cost allocation methodology, effective for calendar year 2009.

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4. Establishing the indifference (transfer) payment schedule requires a determination of the annual difference between the unavoidable DWR contract costs that would have been allocated to each IOU's customers under D.05-06-060 and the unavoidable DWR contract costs that will be allocated to those customers under the CFC methodology, for each year from 2009 until the last DWR contract is scheduled to expire. The indifference payments made by an IOU, or received by an IOU, will equal the amount necessary to allocate the same amount of unavoidable DWR contract costs to the IOU's customers that would have been allocated if D.05-06-060 was not modified.

5. The calculation of indifference payments for each year from 2009 until the last DWR contract is scheduled to expire shall be jointly filed and served by the IOUs in an advice letter compliance filing due 30 days after the effective date of this decision. The IOU's shall concurrently serve a copy of the compliance filing on all parties to this proceeding. Parties will have a 15-calendar-day period within which to file comments on the IOU's filing. If no objections are filed, the IOUs compliance filing will become effective five calendar days thereafter. If objections are filed, Energy Division will prepare a formal resolution resolving objections.

6. For the purposes of calculating the indifference payments (except for the Coral and Sempra contracts), parties shall utilize the final DWR 2009 revenue requirement determination workpapers to determine unavoidable DWR contract costs.

7. To calculate the indifference payments applicable to the unavoidable DWR contract costs of the Coral and Sempra contract and the Williams Gas Cost reduction, the IOUs will need to determine a forward curve for the price of natural gas during the remaining term of those contracts. The IOUs may agree to submit to the Energy Division the IOUs' respective forward natural gas curves derived from then-current market/brokers' quotes and reviewed by Energy division-approved Independent Evaluators. The Energy Division would then calculate an average forward curve for natural gas from the three price curves submitted by the IOUs. If the IOUs agree to use the average curve calculated by the Energy Division, then that forward natural gas price curve shall be utilized in the 30-day compliance filing. Alternatively, if the IOUs and the Energy Division agree upon a different acceptable procedure for calculating a forward natural gas price curve, then the

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forward curve resulting from that mutually agreed-upon procedure shall be utilized in the 30-day compliance filing. If the parties are unable to agree upon a forward natural gas price curve, then the IOUs shall retain one or more consultants to provide an assessment of the most current forward curve for natural gas at the time the 30-day compliance filing is being prepared. The assessment will be a monthly price forecast of gas prices applicable to pricing terms of the Williams Gas Cost reduction and the Coral and Sempra contracts, and shall be coordinated by the Commission's Energy Division.

8. The indifference payments calculated by the parties and included in the compliance filing shall reflect the annual difference between the existing D.05-06-060 cost allocation and the CFC methodology. In preparing their compliance filing, the IOUs shall comply with the following principles of AB 1X: (1) DWR power is sold by DWR to end-use customers, and (2) the IOUs collect the money owed for such DWR power from their customers and hold that money in trust until they remit it to DWR. In addition, the methodology for making the indifference payments must comply with the Rate Agreement. These principles may require that an IOU that owes an indifference payment to another IOU pay that sum directly to the other IOU.

9. During the 30-day compliance period, the IOUs shall explore with the Energy Division a mutually acceptable shaping or indifference payments across multiple years, such as levelized fixed payments or an alternative shape that would facilitate rate stabilization. Any such shaped payments should not adversely impact a given IOU's customers when compared to payments based on the annual difference between the existing D.05-06-060 cost allocation and the CFC methodology. If the IOUs agree upon shaped payments, that agreement shall be reflected in the 30-day compliance filing. In addition, during the 30-day compliance filing period, the IOUs will explore whether any modification to the payment schedule for indifference payments is appropriate.

10. DWR's true-ups of actual DWR contract costs and remittances for contract deliveries in 2009 and beyond, reflected in the IOUs' respective utility-specific balancing accounts, will correspond to each IOU's allocated contracts. For true-ups related to pre-2009 costs and remittances, the D.05-06-060 cost allocation methodology should be used to calculate true-up amounts.

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(END OF APPENDIX 2)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA

Rulemaking Regarding Whether, or Subject to What Conditions, the Suspension of Direct Access May Be Lifted Consistent with Assembly Bill 1X and Decision 01-09-060.	))))	Rulemaking 07-05-025 (Filed May 24, 2007)

PROPOSAL OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) ON INTER-UTILITY COST ALLOCATION

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Dated: **July 28, 2008**

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PROPOSAL OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) ON MODIFICATIONS TO THE DWR COST ALLOCATION METHODOLOGY

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA

Rulemaking Regarding Whether, or Subject to What Conditions, the Suspension of Direct Access May Be Lifted Consistent with Assembly Bill 1X and Decision 01-09-060.	))))	Rulemaking 07-05-025 (Filed May 24, 2007)

PROPOSAL OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) ON INTER-UTILITY COST ALLOCATION

I.

INTRODUCTION

Before engaging in negotiations to novate and/or assign the California Department of Water Resources (DWR) power contracts, the three Investor-Owned Utilities (IOUs) must have a clear understanding of the cost impact to their customers of such action, including the impact on the allocation of DWR contract costs among the three IOUs.[1] Clear direction on how the Commission will allocate DWR contract costs in the wake of novation/assignment of the DWR contracts is necessary to alleviate SCE's concern that SCE's customers could be significantly worse off as a result of the novation/assignment process. This can only be accomplished by adopting a methodology that is clear, simple to administer and that maintains the existing inter-utility equities reflected in the permanent cost allocation methodology adopted in Decision (D.) 05-06-060. That methodology was made effective for the allocation of DWR contract costs since 2004 with assurance from the Commission that the methodology would remain in place over the life of the DWR contracts.[2] Although SCE recognizes the need to modify the

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[1] For example, a renegotiated DWR contract may provide for a positive improvement in the market value of the contract, but the cost allocation methodology employed by the Commission may increase the cost burden of the contract for a particular IOU's customers. As a result, that IOU will not have an incentive to support the adoption of the renegotiated DWR contract.

[2] See D.05-12-010, *mimeo*, pp. 9-10.

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methodology to accommodate novation/assignment of the DWR contracts, any new methodology must preserve the equities recognized in D.05-06-060 to ensure that no IOU customers are either better or worse off because of the effort to novate, assign, or renegotiate the DWR power contracts. SCE's proposal for an inter-utility transfer payment schedule and transition to a "costs-follow-contracts" (or "CFC") methodology adheres to this fundamental premise. Moreover, SCE's proposal is simple and straightforward to implement, and, because it is based on the Commission's existing DWR contract cost allocation methodology and is consistent with current Commission orders, it can be quickly implemented with little or no controversy on the mechanics of its application. If steps are taken to novate or assign the DWR contracts, SCE urges the Commission to adopt SCE's proposed cost allocation methodology.

II.

SUMMARY OF PROPOSAL

SCE's proposal consists of two steps designed to facilitate a transition to a CFC allocation methodology. Step 1 is to establish a payment schedule (i.e., a transfer payment or indifference payment schedule) between the IOUs to keep their respective customers indifferent to a new CFC methodology. The transfer payment amounts will be based on the difference between the existing D.05-06-060 cost allocation methodology and a new CFC allocation methodology. For example, if implementation of CFC results in Utility A's customers being responsible for $100 million more in DWR contract costs than the existing D.05-06-060 allocation methodology, a transfer payment of $100 million would be made to Utility A for the benefit of its customers from the customers of the IOU(s) that incurred less DWR contract cost responsibility as a result of implementing CFC.

SCE proposes that the transfer payments be calculated for the balance of the term of the DWR contracts, which will allow the IOUs to assume complete control of the risk management of the DWR contracts or any replacement contracts. A one-time calculation of the transfer payments will also eliminate the need for the Commission to conduct an annual proceeding to

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establish the following year's transfer payments – a process that would likely invite subsequent challenge to the Commission's adopted cost allocation methodology.

In Step 2, the Commission would implement a new CFC methodology, effective January 1, 2009. Under this CFC methodology, the customers of each IOU would be responsible for 100% of the costs of the DWR power contracts allocated to them, including any hedging, transportation, and administrative costs incurred by DWR and/or the IOU to service the contracts. The Commission currently employs CFC for the avoidable DWR contract costs and congestion costs to ensure that each IOU engages in least-cost dispatch of the DWR contracts. SCE's proposal would extend the CFC methodology to the unavoidable DWR contract costs, including any hedging costs.

One of the key benefits of SCE's proposal is that it allows for a transition to CFC as early as January 1, 2009. CFC can be readily implemented in the Commission's upcoming annual proceeding to allocate DWR's 2009 revenue requirement. Another benefit of SCE's proposal is that it provides the proper incentives for each IOU to administer the DWR contracts allocated to its customers because the cost-sharing element of D.05-06-060 will have been fixed by a one-time implementation of the current allocation methodology through a transfer payment schedule.

Both steps are essential components to SCE's proposal. The Commission cannot proceed with the CFC methodology in Step 2 without first defining and adopting the payment schedule called for in Step 1. The Step 1 transfer payments are essential to recognize that implementation of CFC for all DWR contract costs will result in a significant shift in the cost burden of the DWR contracts for most years.

SCE's proposal is an obvious solution to addressing the threshold cost allocation issue in this proceeding because it preserves the Commission's existing D.05-06-060 allocation of costs and benefits. Such an action is also consistent with the Commission's most recent decision on the allocation of DWR contract costs in response to DWR's renegotiation of the Calpine contract. In that decision, the Commission required the customers of SCE and SDG&E to be responsible for the same level of DWR contract costs that they would have incurred in the

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absence of the renegotiated Calpine contract, even though DWR's revenue requirement was reduced as a result of the Calpine contract renegotiation.[3]

SCE's proposal is also simple to implement because avoidable DWR contract and congestion costs are already allocated on a CFC basis, and therefore do not need to be considered in the transfer payment calculation. Additionally, most of the DWR unavoidable contract costs are largely fixed by DWR's contract terms, which means their prices are known and total costs can be easily calculated. For those limited unavoidable contract costs that are not fixed, the Commission can adopt a gas price outlook for the term of the affected contracts.[4]

In summary, the calculation of the transfer payment amount is a straightforward exercise. The only election required by the Commission is to determine whether the payments between the IOUs should be levelized over a period of time, shaped to facilitate rate stabilization across the IOUs, tied to the actual annual cost difference between the D.05-06-060 cost allocation methodology and CFC for each year, or some other objective function. SCE proposes that the Commission adopt the actual annual cost difference between the D.05-06-060 cost allocation methodology and CFC for each year as the default payment schedule. A 30-day compliance filing process should be employed for the IOUs to coordinate and calculate the transfer payment amounts (with oversight and assistance of the Energy Division). The IOUs could also use this 30-day compliance period to explore a mutually acceptable alternative "shaping" of the transfer payments.

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[3] See D.08-04-025.

[4] SCE provides more detail on this element of its proposal below.

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III.

PROPOSAL DETAILS

A. Allocation of Avoidable Costs

SCE proposes to continue the allocation of "avoidable" DWR contract costs on a CFC basis as is currently required under D.05-06-060, and its successor decisions. As a result, no additional modeling or calculations need to be performed to implement this feature of SCE's proposal.

B. Allocation of Unavoidable Costs

The Commission currently requires "unavoidable" DWR contract costs to be allocated to the customers of the IOUs in the following proportion: 47.5% to SCE, 42.2% to PG&E, and 10.3% to SDG&E. Under SCE's CFC proposal, all unavoidable contract costs associated with a particular DWR contract will be allocated to the customers of the IOU that administers the subject DWR contract. In many years, however, this will result in an allocation of unavoidable DWR contract costs to a particular IOU's customers that is significantly greater or less than what would have resulted under the Commission's existing D.05-06-060 cost allocation methodology. To ensure that customers are initially indifferent to the cost impact of a CFC allocation of unavoidable DWR contract costs, SCE proposes that the Commission authorize a schedule of indifference payments (i.e., transfer payments) between the IOUs that are based on the difference in cost responsibility between the existing D.05-06-060 cost allocation methodology and CFC.[5] An illustrative example is provided below in Table 1.

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[5] Indifference payments are discussed as an annual payment in this proposal, but the Commission can specify that such payments be made on a quarterly or monthly basis to ease the cash flow burden on the IOU(s) required to make such payments.

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Table 1

Calculation of "Indifference Payment" for the Allocation of "Unavoidable" DWR Contract Cost ($MM)										
		Utility A			Utility B			Utility C		
	Total Unavoidable Costs	D.05-06-060 (40%)	CFC	Indifference Payment	D.05-06-060 (50%)	CFC	Indifference Payment	D.05-06-060 (10%)	CFC	Indifference Payment
2009	3,500	1,400	1,200	200	1,750	2,000	(250)	350	300	50
2010	3,000	1,200	500	700	1,500	2,400	(900)	300	100	200
2011	2,000	800	400	400	1,000	1,500	(500)	200	100	100
2012	250	100	200	(100)	125	0	125	25	50	(25)
2013	50	20	40	(20)	25	0	25	5	10	(5)
2014	40	16	40	(24)	20	0	20	4	0	4
2015	40	17	40	(23)	19	0	19	4	0	4

In the illustrative example above, Utility A's customers would have been allocated $1.4 billion under the existing D.05-06-060 cost allocation in 2009, but are only allocated $1.2 billion under CFC in that year. To make Utility A's customers indifferent to the change to a CFC allocation of DWR contract costs, Utility A would make a transfer payment of $200 million to Utility B. Likewise, Utility C would make a transfer payment of $50 million to Utility B to keep their customers indifferent to the CFC allocation. The combined transfer payments of $250 million ($200 million plus $50 million) to Utility B's customers make them indifferent to the higher allocation of unavoidable contract costs under CFC in 2009.

C. <u>Calculation of Unavoidable Contract Costs</u>

With the exception of the Coral and Sempra contracts, all of DWR's unavoidable contract costs are fixed by contract terms. As a result, the Commission and parties to this proceeding can readily calculate the total unavoidable contract costs associated with all DWR contracts except the Coral and Sempra contracts. In fact, DWR provides these calculations as part of its annual revenue requirement workpapers. SCE proposes that the Commission use DWR's 2009 revenue requirement workpapers as the basis for calculating the unavoidable costs for all of the DWR contracts except Coral and Sempra, but allow parties to identify any errors they believe DWR workpapers contain. SCE recommends that the calculation of indifference payments be performed as part of a 30-day compliance filing with the Energy Division to follow the Commission's decision in this proceeding.

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A separate process for calculating the unavoidable costs associated with the Coral and Sempra contracts is required because a portion of the costs for the unavoidable contract energy deliveries under these two contracts are tied to either the delivery of natural gas (i.e., a tolling arrangement) or a specified index price for natural gas. To calculate unavoidable contract costs for the Coral and Sempra contracts, SCE proposes that a then-current assessment of forward natural gas prices be used to determine the total unavoidable contract costs at the time the indifference payments are calculated in the 30-day compliance filing process. SCE recommends that each IOU be required to provide the Energy Division, on a date specified by the Energy Division, a current natural gas forward curve (i.e., an assessment of forward market prices for natural gas) for the specified delivery/pricing points in the Coral and Sempra contracts. The Energy Division should calculate an average forward curve for natural gas using the IOUs' forward curves. To ensure that each IOU's forward curve is representative of actual market prices, SCE proposes the Commission require each IOU to use an Independent Evaluator approved by the Energy Division to oversee the IOU's submittal of its natural gas forward curve.[6] As a practical matter, each IOU should be able to develop its forward curve through a compilation of market/broker's quotes – a process that each IOU inevitably performs on a daily basis as part of its routine contract administration, risk management, and trading activities.

As an alternative to the Energy Division calculating an average forward curve for natural gas prices from IOU-supplied inputs, the Commission could also require that the IOUs retain one or more consultants to provide assessments of the then-current forward curve for natural gas. SCE proposes that this alternative means to establish a forward outlook for natural gas prices also be coordinated by the Energy Division.

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[6] The Energy Division should also verify that there are no significant discrepancies between the forward curves of the IOUs and, if discrepancies are identified, work with the IOUs and their Independent Evaluators to resolve any material differences.

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D. Shaping of Transfer Payments

As a default, SCE proposes that the transfer or indifference payment schedules be established to reflect the calculated difference between the existing D.05-06-060 cost allocation and CFC methodology on an annual basis. Thus, using Table 1 above as an example, the customers of Utility A would be required to make an annual indifference payment of $400 million in 2011, but would receive an annual indifference payment of $100 million in 2012. However, the Commission should allow the IOUs to explore with the Energy Division during the 30-day compliance filing process different transfer payment schedules that would seek to levelize DWR and IOU system rate impacts. Such an approach would require consensus among the IOUs and should not adversely impact a given IOU's customers when compared to the default approach.[7]

E. Allocation of Other DWR Revenue Requirement Charges

SCE's CFC proposal captures most of DWR's revenue requirement expenses, but any miscellaneous costs not attributable to energy deliveries should continue to be allocated in accordance with the fixed percentage allocation adopted in D.05-06-060. For example, contract hedging costs would be allocated to the customers of the IOU that entered into the hedge because of the CFC allocation, but DWR's A&G expenses should continue to be allocated on the fixed percentage allocations currently utilized under D.05-06-060.

F. Implementing CFC in the Allocation of DWR's Revenue Requirement

SCE proposes that its CFC allocation be implemented on January 1, 2009. If adopted, all forecast DWR contract costs for 2009 and beyond contract deliveries to a particular IOU would be allocated to that IOU's customers. Each IOU's DWR balancing account would track

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[7] Even if consensus is not obtained on an indifference payment schedule that deviates from the proposed default schedule during the 30-day compliance filing process, the IOUs can always petition the Commission at a later date to change the adopted indifference payment schedule if a subsequent consensus is achieved.

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allocated forecast DWR contract costs, actual DWR contract costs, and remittances to DWR for contract deliveries in 2009 and beyond. In this manner, true-ups for 2009 activity and beyond will be isolated to each IOU's allocated contracts. For true-ups related to costs and remittances that occurred for contract deliveries prior to 2009, including settlements of contract activities that occurred prior to 2009, SCE proposes that the Commission use the existing D.05-06-060 allocation methodology to "clear out" account balances.

IV.

A CFC ALLOCATION WITH TRANSFER PAYMENTS WILL FACILITATE DWR CONTRACT NOVATION/ASSIGNMENT

The IOUs expressed concern at the workshops in this proceeding that the potential cost implications to IOU customers from disruption of the permanent cost allocation methodology due to novation/assignment of the DWR contracts was of paramount concern and if left unresolved, would serve as an obstacle to the novation/assignment process. As explained above, SCE's CFC proposal keeps the IOUs' customers indifferent to a change in the cost allocation methodology, but facilitates the ability of an IOU to consider accepting a replacement contract through novation or assignment of a DWR contract because the IOU's customers do not confront economic harm as a result of the adopted cost allocation methodology. For example, the current D.05-06-060 cost allocation requires all IOU customers to share the unavoidable costs of each DWR contract. Thus, if SCE were to agree to accept a replacement contract or assignment of a DWR contract, its customers would become responsible for 100% of the unavoidable contract costs compared to the current situation in which they are responsible for only 47.5% of such costs.

SCE's CFC proposal also allows for a transitioning of the DWR contracts to the IOUs over time without an adverse impact on the allocation mechanics of the remaining DWR revenue requirement. Specifically, if a DWR contract is novated, assigned, or terminated, the DWR revenue requirement for that IOU's customers would be reduced by the loss of the DWR

contract. The reduction in the DWR revenue requirement provides an offset to the increased direct cost the IOU incurs from entering into a replacement contract. This arrangement also allows an IOU to consider contract enhancements (e.g., different delivery or pricing terms, later expiration date, etc.) because all such costs and benefits flow back exclusively to its customers.

V.

MAINTAINING THE EQUITY AND BURDEN OF THE EXISTING D.06-05-060 COST ALLOCATION IS PARAMOUNT

The establishment of an indifference payment (or transfer payment) schedule between the IOUs to implement CFC is critical to maintaining the benefits and burdens the Commission adopted in D.05-06-060. As the Commission is well aware, the allocation of DWR contract costs and benefits has been bitterly contested by the IOUs since DWR assumed the procurement function in 2001. After numerous decisions and challenges, the Commission finally established its "permanent" cost allocation methodology in D.05-06-060, and has since consistently rejected challenges to the allocation of costs and benefits. For example, in D.05-12-010, which reaffirmed the permanent cost allocation methodology adopted in D.05-06-060, the Commission stated (emphasis added):

> ***The allocation adopted in D.05-06-060 is designed to be fair over the life of the contracts. It is a permanent methodology, and as such balances the burdens over the longer term. We do not intend to revisit the adopted methodology,*** especially for issues that we have already taken into consideration, such as the relative cost burdens and benefits of the contracts over time.[8]

Additionally, the Commission vigorously reaffirmed in D.08-04-025 that its adopted allocation of contract costs in D.05-06-060 should be preserved for the existing life of the DWR contracts:

> We do not believe that the allocation methodology that was adopted in D.05-06-060 should be revisited.

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[8] See D.05-12-010, *mimeo*, pp. 9-10.

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> D.05-06-060 contains several statements as to why the allocation methodology should not be changed. When we developed and adopted the methodology, we stated in the decision that "we are adopting an allocation methodology applicable to the remaining term of the DWR power purchase contracts." (D.05-06-060, pp. 2-3.) We further stated that "The Commission and the parties have now gained enough experience, particularly with the DWR contracts, that it is appropriate to make our allocation methodology for the DWR revenue requirement permanent, and eliminate the annual litigation process we have used to date." (D.05-06-060, pp. 5-6.) As we noted in D.05-06-060, all three of the electric utilities agreed that the adopted allocation methodology should be permanent. (D.05-06-060, p. 5.)[2]

SCE's proposal to establish an indifference payment schedule to implement a CFC allocation preserves the intent and effect of the D.05-06-060 allocation methodology that the Commission has consistently upheld since 2005, and is the only means in which to ensure that all utility customers are treated fairly. In the absence of such a mechanism, SCE cannot support any effort to consider novation of the DWR contracts because of the significant financial harm that would inure to SCE's customers.

To provide the Commission and parties with an estimate of the necessary transfer payments to keep customers indifferent to a CFC methodology, SCE provides below in Table 2 a forecast of the allocation of DWR contract costs under both the existing D.05-06-060 allocation methodology and SCE's CFC proposal. SCE's unavoidable DWR contract cost forecast is based on DWR's July 8, 2008, Proposed 2009 Revenue Requirement determination workpapers, which are subject to change before DWR submits its 2009 revenue requirement to the Commission. SCE also had to make an assumption on natural gas prices for purposes of calculating the unavoidable costs of the Coral and Sempra contracts. For the estimate below, SCE assumed natural gas prices would be $9.00/MMBtu for the entire forecast period. If SCE's indifference payment schedule proposal is adopted, all unavoidable cost assumptions will be updated as part of a 30-day compliance filing process as described more fully above.

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[2] See D.08-04-025, *mimeo*, pp. 12-13.

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Table 2

Calculation of "Indifference Payment" for the Allocation of "Unavoidable" DWR Contract Cost ($MM) (Assumption: Natural Gas Prices for the Coral and Sempra Contracts are $9.00/MMBtu)										
		PG&E			SCE			SDG&E		
	Total Unavoidable Costs	D.05-06-060 (42.2%)	CFC	Indifference Payment	D.05-06-060 (47.5%)	CFC	Indifference Payment	D.05-06-060 (10.3%)	CFC	Indifference Payment
2009	3,328	1,404	1,120	285	1,581	1,954	(373)	343	255	88
2010	2,918	1,231	519	713	1,386	2,144	(758)	301	255	46
2011	1,975	834	427	407	938	1,414	(476)	203	134	69
2012	219	92	173	(80)	104	0	104	23	46	(24)
2013	60	25	42	(17)	28	0	28	6	18	(11)
2014	36	15	36	(21)	17	0	17	4	0	4
2015	35	15	35	(20)	16	0	16	4	0	4

VI.

CONCLUSION

SCE urges the Commission to adopt SCE's proposal calling for (1) the implementation of an inter-utility transfer payment schedule to monetize the difference between the current D.05-06-060 cost allocation methodology and a new costs-follow-contracts allocation methodology, and (2) a transition to a costs-follows-contracts allocation methodology effective January 1, 2009. This proposal is simple to implement with little or no controversy on the mechanics of its application, and it is consistent with the equities and principles adopted by the Commission in D.05-06-060.

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Respectfully submitted,

MICHAEL D. MONTOYA
AMBER DEAN

/S/ MICHAEL D. MONTOYA

By: Michael D. Montoya

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July 28, 2008

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commissioner's Rules of Practice and Procedure, I have this day served a true copy of PROPOSAL OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) ON INTER-UTILITY COST ALLOCATION on all parties identified in the attached service list(s).

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this **28th day of July, 2008**, at Rosemead, California.

/S/ CHRISTINA A. SANCHEZ
Christina A. Sanchez
Project Analyst
SOUTHERN CALIFORNIA EDISON COMPANY

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[ADDITIONAL COUNSEL FOLLOW SIGNATURE BLOCK]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

Coordination Proceeding Special Title (Rule 1550(b)) NATURAL GAS ANTI-TRUST CASES I, II, III & IV [This Document Relates to the Pipeline Cases Only]	J.C.C.P. Nos. 4221, 4224, 4226 and 4228 **NOTICE OF *EX PARTE* MOTION ON SHORTENED TIME AND MOTION IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPORT THEREOF** Hearing Date: January 11, 2006 Hearing Time: 3:45 p.m. Department: 71 Coordination Trial Judge: Hon. Ronald S. Prager

1 as the result of any such reduction, class counsel propose that such reductions in attorney fees
2 be treated as all other monies assigned from the benefit of the natural gas classes.
3 **2. Electricity Allocation**
4 Every California electricity ratepayer will benefit from the reduced cost of producing
5 electricity attributable to the reduced natural gas costs resulting that will result from the
6 Structural Relief achieved through the settlement. Electricity ratepayers other than ratepayers
7 who purchase electricity from a municipality will receive additional benefits in the form of a
8 unilateral $300 million price reduction to the electricity contract between the CDWR and an
9 affiliate of the Sempra Defendants. The benefits of this price reduction would flow to the
10 benefit of both of the existing certified classes based on their allocation of the costs associated
11 with that contract in any given month. This type of fluid recovery is well recognized in
12 California. *In re Vitamin Cases*, 107 Cal.App.4th at 830-831.
13 Ratepayers who purchase their electricity from municipalities, however, will receive no
14 direct benefit from any reduction in the CDWR contract because they have no interest in the
15 electricity purchased under that contract. These municipal ratepayers, however, will benefit
16 from the reduction in electricity prices resulting from the reduction in the price of natural gas
17 used to generate electricity that serves California. (Safir Declaration at ¶¶ 12, 25). These
18 ratepayers are being treated differently in this settlement with the Sempra Defendants than they
19 were in the settlement with the El Paso Defendants because, unlike the El Paso settlement, the
20 limitations period on the claims of these ratepayers, who have never previously been part of
21 this litigation, have now run.
22 **D. This Settlement is Fair and Well Within the Range of Possible Final**
23 **Approval**
24 The proposed class settlement that Plaintiffs' class counsel conservatively valued at
25 more than $1.8 billion is well within the range of reasonableness, especially when compared
26 with the previous settlement with the El Paso Defendants with a nominal value at $1.76 million
27 over 20 years that involved the resolution of many more claims brought by additional public
28 and private claimants and was approved by this Court.

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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into as of January 4, 2006, by and among, on the one hand, Sempra Energy, a California corporation ("SE"), Southern California Gas Company, a California corporation ("SoCalGas"), San Diego Gas & Electric Company, a California corporation ("SDG&E"), Sempra Generation (f/k/a Sempra Energy Resources), a California corporation ("Sempra Generation"), Sempra Energy Trading Corp., a Delaware corporation ("SET"), Sempra Energy Solutions, a California corporation ("SES"), Sempra Energy Power I, a California corporation ("SEP I"), and Sempra Energy Sales, L.L.C., a California limited liability company ("Sempra Energy Sales" and, collectively with SE, SoCalGas, SDG&E, Sempra Generation, SET, SES and SEP I, the "Sempra Parties"), and, on the other hand, Continental Forge Company, on its own behalf and on behalf of the plaintiff class for which it acts as a representative, Frank & Kathleen Stella, individually on their own behalf and on behalf of the plaintiff class for which they act as representatives, Douglas & Valerie Welch, individually on their own behalf and on behalf of the plaintiff class for which they act as representatives, Andrew & Andrea Berg, individually on their own behalf, doing business as Wavelength Hair Productions, and on behalf of the plaintiff class for which they act as representatives, Gerald J. Marcil, individually on his own behalf and on behalf of the plaintiff class for which he acts as a representative, John Clement Molony, individually on his own behalf and on behalf of the plaintiff class for which he acts as a representative, SierraPine, Limited, on its own behalf and on behalf of the plaintiff class for which it acts as a representative, City of Los Angeles, City of Long Beach, the City Attorney of Los Angeles and the City Attorney of Long Beach, each on behalf of the people of the State of California, United Church Retirement Homes of Long Beach, Inc., doing business as Plymouth West, on its own behalf and on behalf of the plaintiff class for which it acts as a representative, Long Beach Brethren Manor, on its own behalf and on behalf of the plaintiff class for which it acts as a representative, Robert Lamond, individually on his own behalf and on behalf of the plaintiff class for which he acts as a representative, THUMS Long Beach Company, on its own behalf, Mark & Susan Benscheidt, individually on their own behalf, doing business as Madera Wash Depot Countrywood Laundromat and on behalf of the plaintiff class which they act as representatives, Celina Martinez, individually on her own behalf and on behalf of the plaintiff class for which she acts as a representative, H & M Roses, Inc., on its own behalf and on behalf of the plaintiff class for which it acts as representative, Laurence Uyeda, individually on his own behalf and on behalf of the plaintiff class for which he acts as a representative, and Dan L. Older, individually on his own behalf and on behalf of the plaintiff class for which he acts as a representative (collectively the "Settling Claimants").

1. <u>Definitions.</u>

The following terms, whether appearing with initial capital letters or not, which are in addition to other terms with initial capital letters defined in the body of this Agreement or by the context in which they appear in this Agreement, have the following meanings when used in this Agreement:

1.1 "Actions" or "Civil Actions" means, collectively, the civil actions and class actions (the "Class Actions") described in Attachment C of this Agreement.

1.2 "Affiliate" means, with respect to a specified Person, any other Person that (a) directly

opt-out, but will receive notice and opportunity to object to the settlement at the Final Settlement Hearing.

(b) preliminary approval of the class settlement set forth in this Agreement; and

(c) approval of the dissemination to the Class of a settlement notice or notices, in a form to be agreed upon by the Sempra Parties and California Class Plaintiffs, which shall set forth the general terms of the class settlement contained in this Agreement and the date of the Final Settlement Hearing. The Sempra Parties and Class Plaintiffs shall propose to the Class Action Court that notice be provided by such methods as are agreed upon by the Sempra Parties and Class Plaintiffs.

The Settling Claimants in the Class Actions shall request that, after notice is given, the Class Action Court hold a hearing (the "Final Settlement Hearing") at which the Class Action Court shall determine whether to approve the settlement of the Class Actions as set forth herein as fair, adequate and reasonable to the Class, and enter a final judgment of dismissal with prejudice as to each of the Sempra Parties pursuant to this Agreement. The Settling Claimants and the Sempra Parties agree that the Sempra Parties shall not be responsible for paying any costs or fees in connection with any notice to any Class or Classes contemplated by this Agreement.

Solely for the purposes of the settlement of the Class Actions, the Sempra Parties agree to the certification of the Classes as defined above in Paragraph 3.3(a). In the event that this Agreement is terminated in whole or part or the Closing does not occur for any reason, the Sempra Parties do not waive and will not be deemed to have waived their rights to oppose any settlement class or move to decertify or appeal the certification of any of the Classes previously certified in the Class Actions. Under no circumstances may this Agreement be used as an admission or evidence concerning the appropriateness of class certification of any Class in the event that this Agreement is terminated in whole or part or the Closing does not occur for any reason. The Sempra Parties reserve the right to further oppose class certification and/or seek decertification, either before the Class Action Court or on any appeal, should the Agreement be terminated in whole or part or should the Closing fail to occur.

3.4 *Effect of Class Disapproval and Opt-outs.* If either (a) this Agreement and class settlement is not approved by any court or (b) if more than 1% (measured either by number of Class members, size of natural gas or electricity load, or dollar value of alleged damages) of the Class members of any Class not now certified that is encompassed or contemplated to be certified for settlement purposes by the Agreement, and/or any named plaintiff of any Class not now certified, opts out of the settlement or this Agreement ("Requests for Exclusion"), the Sempra Parties, at their sole option, shall have the right to terminate this Agreement, and any related agreements as to all Settling Claimants.

4. CONSIDERATION FOR AGREEMENT.

4.1 *Consideration By Sempra Parties.* To induce the Settling Claimants to give the releases described in Paragraph 5 of this Agreement, and to make the representations, warranties, covenants, and other agreements set forth herein, the Sempra Parties agree to the following:

(a) *Cash Payments.* The Sempra Parties agree to pay the following amounts (less attorneys' fees and costs as determined by the Class Action Court and awarded to class

counsel):

(i) twelve million dollars ($12,000,000), payable to the City of Los Angeles, Department of Water and Power in eight equal annual installment payments;

(ii) six million dollars ($6,000,000), payable to the City of Long Beach in eight equal annual installment payments;

(iii) one hundred fifty-nine million four hundred thousand dollars ($159,400,000), payable to the Class in eight equal annual installment payments;

(iv) one hundred sixty-six million dollars ($166,000,000), payable to the Class in two equal annual installment payments; and

(v) four million dollars ($4,000,000), payable to THUMS Long Beach Company in eight annual installment payments as provided below.

In the case of all such installment payments pursuant to clauses (i) through (iii) above, the first installment payment shall be paid by the Sempra Parties to the Settlement Fund on the Closing Date and the remainder of the installment payments shall be paid by the Sempra Parties to the Settlement Fund on each successive anniversary of the Closing Date, until all such installment payments have been made. In the case of all such installment payments pursuant to clause (iv) above, the first installment payment shall be paid by the Sempra Parties to the Settlement Fund no later than thirty (30) Business Days after the Class Action Court shall have issued final orders approving the Agreement as fair and reasonable, and otherwise in compliance with the class action laws of their respective states, and the second and final installment payment shall be paid by the Sempra Parties to the Settlement Fund on the first anniversary of the date of the first installment payment pursuant to clause (iv) above. In the case of all such installment payments pursuant to clause (v) above, the first payment in the amount of one million four hundred thousand dollars ($1,400,000) shall be paid by the Sempra Parties to the Settlement Fund on the Closing Date and the remainder shall be paid by the Sempra Parties to the Settlement Fund in seven equal installments on each successive anniversary of the Closing Date, until all such installment payments have been made.

(b) *Unilateral Price Reduction Under the CDWR Contract*

(i) Unless otherwise ordered by any regulatory authority or court of competent jurisdiction, SE will cause Sempra Generation to provide CDWR with a unilateral price reduction under that certain Energy Purchase Agreement, dated as of May 4, 2001, by and between the CDWR and Sempra Generation (as amended, the "CDWR Contract") in the form of a discount of four dollars and fifteen cents ($4.15) per megawatt-hour to the energy charge for deliveries effective on January 1, 2006 and continuing for the life of the CDWR Contract; provided, however, that this discount shall be reduced to account for any CDWR Arbitration Offsets (as defined below). Prior to the Closing, Sempra Generation will accrue the monthly discount amounts and, following the Closing, apply any accrued discounts (less any CDWR Arbitration Offsets), plus any current discount, to monthly energy charges under the CDWR Contract. Based on the expected volumes of energy to be delivered under the CDWR Contract from January 1, 2006 to the end of the contract, the potential value of the above discount, not taking into account the value of the CDWR Arbitration Offsets, if

$300,M Settlement

any, will result in an average discount of four million, three hundred and forty-eight thousand dollars ($4,348,000) per month or three hundred million dollars ($300,000,000) in the aggregate. Alternatively, in lieu of Sempra Generation continuing to provide the above discount under the CDWR Contract, SE may, at the end of any calendar month, elect to make a one time payment to the Settlement Fund equal to the present value of a monthly stream of payments of four million, three hundred and forty-eight thousand dollars ($4,348,000) over the then remaining term of the CDWR Contract, using an annualized discount rate of seven percent (7%), less any un-recovered CDWR Arbitration Offsets. Reductions to the discount to the monthly energy charge under the CDWR Contract to account for any CDWR Arbitration Offsets shall be applied up to the full amount of the otherwise applicable discount for each month (or any accrued discounts prior to Closing) until such time as the CDWR Arbitration Offsets have fully been recovered by the Sempra Parties or the last payment under the CDWR Contract has been made, whichever comes first.

(ii) For the purposes of this Agreement, "CDWR Arbitration Offsets" means the value, over an aggregate threshold amount of one hundred fifty million dollars ($150,000,000), of (A) any amounts that Sempra Generation has paid, is ordered to pay, or incurs with respect to any restitution, refund, compensatory damages or other monetary award arising out of any and all current or future arbitrations related to the CDWR Contract for contract interpretations that pre-date this Agreement and/or conduct that pre-dates this Agreement or is on-going as of the date of this Agreement, including, but not limited to: (1) California Department of Water Resources v. Sempra Energy Resources (American Arbitration Association Case No. 74 Y 198 00193 04 VSS), and (2) any and all other arbitrations relating to CDWR dispute letters, audit reviews, or other complaints, investigations or allegations raised by CDWR (all such current or future arbitrations collectively referred to as "CDWR Contract Arbitrations"), and (B) any reduction in future revenues or profits or increase in future costs under the CDWR Contract as a result of, that relates to or arises from, any CDWR Contract Arbitration, including, without limitation, those resulting from any injunction against, declaratory relief adverse to or other non-monetary imposition on Sempra Generation (including, without limitation, contract interpretations that would require changes in the way Sempra Generation is currently administering the CDWR Contract). The monetary value of any reduction in future CDWR Contract revenues or profits or increase in future costs as a result of a CDWR Contract Arbitration award, decision, settlement, or declaratory relief adverse to Sempra Generation shall be determined by the Sempra Parties and verified by experts selected by Class Counsel, and, if the Sempra Parties and such experts are not in agreement, submitted to arbitration subject to the provisions set forth in clause (iii) below, all of which shall be subject to confirmation by the Class Action Court. Any reductions in future revenues or profits or increase in future costs resulting from limitations on the delivery flexibility conceded by the Sempra Parties in Paragraph 4.1(c) below, shall not be deemed a CDWR Arbitration Offset and shall not count toward the one hundred fifty million dollars ($150,000,000) threshold amount.

(iii) Any arbitration conducted to resolve a dispute between the Sempra Parties and experts selected by Class Counsel pursuant to clause (ii) above shall be conducted in accordance with the rules of arbitration of the Federal Arbitration Act and, to the extent an issue is not addressed by such Act, by the Commercial

Arbitration Rules of the American Arbitration Association, except as may be modified by this Paragraph 4.1(b)(iii). The validity, construction, and interpretation of this Agreement to arbitrate shall be decided by the arbitrators. To the extent not addressed by the Commercial Arbitration Rules of the American Arbitration Association, all procedural aspects of the arbitration shall be decided by the Parties and, absent an agreement among the Parties regarding those procedural aspects, by the arbitrators. In deciding the substance of the Parties' positions, the arbitrators shall refer to the governing law. The arbitration proceeding shall be conducted in San Diego, California. Within thirty (30) days of the notice of initiation of the arbitration procedure, each party shall select one arbitrator. The two (2) arbitrators shall select a third arbitrator. The third arbitrator shall be a person who has over eight years professional experience in energy-related transactions and who has not previously been employed by either Party and does not have a direct or indirect interest in either Party or the subject matter of the arbitration. While the third arbitrator shall be neutral, the two Party-appointed arbitrators are not required to be neutral, and it shall not be grounds for removal of either of the two party-appointed arbitrators or for vacating the arbitrators' decision that either of such arbitrators has past or present minimal relationships with the Party that appointed such arbitrator. The panel's decision shall be made by majority vote of the panel. A decision in writing signed by at least two of the panel's arbitrators shall set forth the panel's decision. To the fullest extent permitted by law, any arbitration proceeding and the arbitrators' decision shall be maintained in confidence by the Parties. All costs and expenses associated with the arbitration shall be borne equally by the Parties and Parties shall bear their own attorneys' fees.

(c) *Unilateral Limitation on the Exercise of Sempra Generation's Delivery Flexibility under CDWR Contract.* Unless otherwise ordered by any regulatory authority or court of competent jurisdiction, SE will cause Sempra Generation to limit the exercise of its delivery flexibility under the CDWR Contract such that all energy deliveries thereunder for the portion of the contract term commencing January 1, 2006 and continuing through the end of the contract term shall be made at SP15, Palo Verde, the Project Interconnection Points or any combination of the foregoing. For purposes of the preceding sentence, (i) "SP15" shall mean (A) during any period when the California Independent System Operator Corporation (the "Cal ISO") is not using a locational marginal pricing ("LMP") system for managing transmission congestion, any point on the transmission grid controlled by the Cal ISO within the Cal ISO congestion management zone currently designated as "SP15" ("SP15") and (B) during any period when the Cal ISO is using an LMP system for managing transmission congestion, the "EZ Gen Hub" established for SP15 or any other liquid trading hub developed by the Cal ISO and/or market participants based on SP15 (ii) "Palo Verde" shall mean the scheduling point of the Cal ISO currently designated as "Palo Verde" or "PV" and any of the electrical busses that currently comprise "Palo Verde" or "PV," including, but not limited to, the Hassayampa 500-kV bus; and (iii) "Project Interconnection Point" shall mean with respect to each of the generating facilities identified as a "Project" in the CDWR Contract, the point at which such Project interconnects with the interstate electric transmission grid (*i.e.*, the Merchant 230-kV bus (for the El Dorado and Copper Mountain Projects), the Midway 230-kV bus (for the Elk Hills Project), the Hassayampa 500-kV bus (for the Mesquite Project), the Imperial Valley 230-kV bus (for the Mexicali Project)).

(d) *Structural Changes to Utility Operations.* SDG&E and SoCalGas shall

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adopt and abide by the structural changes to utility operations as set forth in Attachment A, unless otherwise ordered by any regulatory authority or court of competent jurisdiction.

(e) *Structural Changes Regarding LNG and Gas Operations in Mexico.* SE, through an appropriate Subsidiary, shall sell re-gasified LNG at a $0.02 per MMBtu discount from the California Border Index price as reflected in Attachment B. SE shall cause its applicable Subsidiaries to adopt and abide by the structural changes to LNG and gas-related operations in Mexico as set forth in Attachment B, unless otherwise ordered by any regulatory authority or court of competent jurisdiction.

(f) *Attorneys' Fees and Costs.* Any attorneys' fees and costs payable to Class Counsel shall be determined by the Class Action Court and shall be deducted from the cash payments set forth in Paragraph 4.1(a) as determined by the Class Action Court. In no event shall the Sempra Parties ever be responsible to pay any other attorneys' fees and costs payable to Class Counsel in connection with the Actions. The Settling Claimants agree that the Class Action Court may reduce attorneys' fees and costs on a pro rata basis, in the event that CDWR Arbitration Offsets reduce the discounts provided by Sempra Generation under the CDWR Contract as provided in Paragraph 4.1(b).

(g) *Prepayments.* The Sempra Parties, in their sole and absolute discretion, may prepay any future installment payments contemplated by Paragraph 4.1(a) of this Agreement ("Deferred Payments") or any other Payments as may be called for by this Agreement, in full or in part, at any time following the first anniversary of the Closing Date without penalty or premium and at a discount rate of seven (7) percent.

(h) *Treatment of Partial Prepayments.* Partial prepayments of the Deferred Payments shall reduce the remaining nominal balance of the Deferred Payments by adjusting all remaining annual installment payments on an equal and proportionate basis to reflect the partial prepayment. No partial prepayment will change the due date of any subsequent Deferred Payments unless agreed to in writing by the Parties.

4.2 *Consideration by Settling Claimants.* To induce the Sempra Parties to give the Consideration described in this Agreement, and to make the representations, warranties, covenants, and other agreements set forth herein, each Settling Claimant, collectively and for itself, agrees to:

(a) give the Released Sempra Parties the waivers and releases applicable to it described in Paragraph 5 of this Agreement;

(b) dismiss all Actions in Attachment C, with prejudice;

(c) cooperate with the Sempra Parties (and to the extent applicable, the Released Sempra Parties) as more fully set forth in this Agreement; and

(d) satisfy all other terms and conditions contemplated by this Agreement.

4.3 *Manner of Payment.* All Payments and prepayments of cash Consideration contemplated by Paragraph 4.1(a) made on or after the Closing, subject to the payment dates contemplated by this Agreement, shall be made in immediately available funds to the Settlement Fund account or account(s) designated by the Designated Representative in writing and approved by the Class Action Court in lawful currency of the United States of America.

4.4 *Acknowledgement.* The Parties understand and acknowledge that (a) all Consideration payments made hereunder represent payment for alleged damages, overcharges, and/or restitution, and (b) no part of the Consideration under this Agreement is made in settlement of an actual or potential liability for a fine or penalty (civil or criminal), in settlement of an actual or potential liability for punitive damages, or the cost of, or in lieu of the cost of, a tangible or intangible asset.

4.5 *Settlement Expenses.* Settling Claimants shall pay any and all attorneys' fees, costs and expenses of administration related to the settlement described in this Agreement, any of the underlying Actions and any notice of the proposed settlement pursuant to a notice program approved by the Class Action Court.

5. <u>RELEASES, WAIVERS AND RELATED AGREEMENTS</u>.

5.1 *Releases by Settling Claimants.* As of the Closing Date, the Settling Claimants, and each of them, on behalf of themselves (and, where applicable, each and all members of the Classes they represent) forever waive, release, discharge and acquit the Sempra Parties, and each of them, as well as the Sempra Parties' officers, directors, shareholders, Subsidiaries, past Subsidiaries, Affiliates, past Affiliates, partners, members, agents, attorneys, assigns, beneficiaries, employees, heirs, insurers, predecessors, successors and other professional persons (the "Released Sempra Parties"), directly or indirectly, derivatively, on their own behalf, on behalf of any Class or on behalf of any other person or entity they represent, from any and all actions, causes of action, obligations, costs, damages, losses, Claims, Liabilities, restitution, and/or demands of whatsoever character, whether known or unknown, accrued or unaccrued, arising out of or relating in any way to:

(a) natural gas, natural gas pipeline capacity and/or electric power or transmission, the price or supply of natural gas, natural gas pipeline capacity and/or electric power or transmission, and/or any act, omission, or transaction concerning or relating to natural gas, natural gas pipeline capacity and/or electric power or transmission, including, without limitation, the purchase, sale, contracting for, scheduling, allocation, transportation, bidding, trading, reporting, marketing, transmission, generation, production, and/or withholding of natural gas, natural gas pipeline capacity and/or electric power, based in whole or in part on any alleged act, omission, fact, matter, transaction or occurrence between September 1996 and the date of this Agreement;

(b) all natural gas and electricity issues relating to the California energy crisis;

(c) the transactions and related events that lead to SE's formation and approval; and

(d) any alleged Claim, act, omission, fact, matter, transaction or occurrence alleged in, or at issue in, any Action identified in Attachment C.

Any and all actions, causes of action, obligations, costs, damages, losses, Claims, Liabilities, restitution, and/or demands that are waived, released, discharged and acquitted by this Paragraph 5.1 are referred to herein as "Released Claims." Without limiting the generality of the forgoing, Released Claims shall further expressly include: (i) any violations or claimed violations of any rules, regulations, orders or protocols of any U.S. state or federal agency or Mexican agency having or claiming to have regulatory authority over any conduct that is the subject of any of the above Released Claims including, without limitation, the Natural Gas Act, the Natural Gas Policy Act of 1978, and the Federal Power Act and/or any rules, regulations, tariffs, protocol or orders promulgated