

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U 388-E) for Approval of an Amendment to a Power Purchase Agreement Between the Utility and Mammoth-Pacific, L.P. and for Authority to Recover the Costs of Any Purchases Under the Amendment in Rates.

A.13-06-012
(Filed June 13, 2013)

**PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES TO
APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 388-E)
FOR APPROVAL OF LETTER AGREEMENT AND AMENDMENT TO POWER
PURCHASE AGREEMENT WITH MAMMOTH PACIFIC, L.P.**

(CONFIDENTIAL VERSION)

July 17, 2013

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I. INTRODUCTION

Pursuant to Rule 2.6 of the California Public Utilities Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) files this protest to the application of Southern California Edison Company (SCE) for approval of a letter agreement and amendment to a power purchase agreement with Mammoth Pacific, L.P. (Mammoth). Rule 2.6 allows parties to file protests within 30 days of the date the notice of the filing of the application first appears on the Daily Calendar. The notice for this application appeared on the June 17, 2013 Commission's Daily Calendar; thus, this filing is timely.

DRA does not recommend approval or denial of the Application at this time. DRA plans to conduct discovery to develop its testimony and recommendations. This Protest may not identify all of the issues that DRA will examine in this proceeding and DRA reserves the right to include additional issues as discovery proceeds. At this time, DRA believes that hearings will be necessary to resolve factual issues raised by SCE's application.

II. BACKGROUND

SCE requests California Public Utilities Commission (CPUC) approval of a letter agreement and amendment to a power purchase agreement (PPA) with Mammoth, as well as the authority to recover the associated costs through rates.

Mammoth owns and operates three Renewable Portfolio Standard (RPS) eligible geothermal power generation facilities that have been providing power to SCE pursuant to two Qualifying Facility (QF) PPAs and one QF negotiated contract since December 7, 1990, December 28, 1990, and February 26, 1985 respectively.¹ Facility 1 is 7.5 megawatts (MW).² Facility 2 is 10MW.³ Facility 3 is 9.1MW.⁴ SCE and Mammoth entered into an agreement in June 2001 and then again in November 2006 to provide for deliveries of all three PPAs pursuant to a fixed price.⁵ The 2006 Fixed Price Agreement expired on May 1, 2012.⁶ In May 2012, Mammoth and SCE executed Legacy Amendment Option B that established energy pricing in accordance with the Combined Heat and Power (CHP) Program Settlement dated October 8, 2010.⁷

In November 2011 and May 2012, Mammoth bid the output from two of the three Mammoth geothermal power generation facilities into Pacific Gas & Electric's (PG&E) Renewable Auction Mechanism program (RAM) because the prices paid for the energy under PG&E's RAM are significantly higher than those paid under the original QF PPAs with SCE.⁸

Mammoth then expressed its concerns to SCE about its ability to supply SCE with the energy required under its original contracts *and* fulfill its RAM agreement with PG&E.⁹ Mammoth and SCE entered into a series of negotiations and agreed that Mammoth will

¹ See Application, p. 1

² See Confidential Testimony, p. 5

³ Id.

⁴ Id.

⁵ See Application, p. 2

⁶ Id. at p. 2-3

⁷ Id.

⁸ See Confidential Testimony, p. 7

⁹ Id.

- pay SCE 100 percent of the termination payment from Facility 1 in cash;
- pay SCE 35 percent of the termination payment from Facility 2 in cash; and
- make up the remainder of the deliveries that would have otherwise been due from Facility 2 through additional deliveries from Facility 3 to satisfy the remaining 65 percent of the termination payment from Facility 2.¹⁰

[REDACTED]

[REDACTED]¹¹

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹²

The renegotiated PPAs allowed Mammoth to financially benefit from PG&E's RAM while not having to pay two full termination payments to SCE.

SCE contends that the proposed contract amendments result in the following savings compared to the original contracts now terminated:

- SCE states that ratepayers will experience a significant net present value in savings.¹³
- SCE claims that the negotiated product price, as compared to the forecasted market price of energy and capacity, will yield a direct net present value savings during the Extension Term.¹⁴
- SCE claims collateral benefits. For example, SCE states that its letter of credit with Mammoth amounts to significant protections and added value to SCE customers.

¹⁰ See Application, p.2-3

¹¹ See Confidential Testimony, p. 8

¹² Id.

¹³ Id. at pp.14-15

¹⁴ Id at p. 15

SCE seeks authority to recover the costs associated with the renegotiated contract through rates because Mammoth will deliver energy from Facility 3 beginning in 2020.

III. DISCUSSION

SCE claims that the renegotiated contracts are more beneficial to ratepayers than the original contracts. DRA submits that the amended contract should not be compared to the original contracts because Mammoth effectively terminated the original contracts when it bid the same energy into PG&E's RAM. Because Mammoth effectively terminated the contracts by bidding into PG&E's RAM program but could not remit the full termination payment and needed to renegotiate one of the contracts, DRA recommends that the amended contract be viewed on its own rather than in comparison to the original contract. When viewed on its own merit, it is not clear that the renegotiated contract provides benefits for ratepayers.

IV. ISSUES

DRA has identified the following issues to be resolved in a proceeding:

- Whether it is appropriate for SCE to recover in rates the revenues necessary to make whole the contract that Mammoth unilaterally terminated. Mammoth risked bidding energy already committed to SCE into PG&E's RAM and then sought renegotiation with SCE in lieu of full termination payments thereby passing on the risk to ratepayers. Should the Commission condone such actions by approving this Application?
- Given that Mammoth's decision to bid into PG&E's RAM with resources it had already obligated to SCE effectively terminated its contracts with SCE, is the renegotiated contract a good deal for ratepayers on its own, rather than in comparison to the original contracts;
- Is an outright termination payment for Facility 2 better for ratepayers than the renegotiated agreement under which Mammoth will provide 65 percent of Facility 3 energy;
- Is the purchase price for Facility 3 energy competitive when compared to other existing or forecasted purchase prices for the 2020-2026 term;
- Are SCE's forecasted market prices of energy and capacity accurate;
- Will the termination payments reduce ratepayer costs;
- Are the termination payments are reasonable.

V. CATEGORIZATION

SDRA agrees with SCE that this proceeding should be categorized as ratesetting.

VI. HEARINGS

DRA believes evidentiary hearings may be necessary to resolve the issues SCE's application raises. DRA will submit a proposed schedule before the anticipated prehearing conference.

VII. CONCLUSION

DRA recommends that the Commission further investigate several aspects of SCE's application before deciding to approve it. DRA is conducting discovery to develop its testimony and recommendations. Hearings will likely be required and the Commission should adopt a schedule that allows for a thorough review of the application.

Respectfully submitted,

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