

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

Order Instituting Rulemaking to Promote Policy) and Program Coordination and Integration in) Electric Utility Resource Planning.)	Rulemaking 04-04-003 (Filed April 1, 2004)
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Order Instituting Rulemaking to Promote) Consistency in Methodology and Input) Assumptions in Commission Applications of) Short-run and Long-run Avoided Costs, Including) Pricing for Qualifying Facilities.)	Rulemaking 04-04-025 (Filed April 22, 2004)

**SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E)
APPLICATION FOR REHEARING OF DECISION 05-12-009**

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Dated: [December 30, 2005](#)

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Pursuant to Rules 85 and 86.1 and Rule 47 of the Commission’s Rules of Practice and Procedure, Southern California Edison Company (SCE) respectfully applies for rehearing of Decision No. 05-12-009 (the Decision).

I.

INTRODUCTION

The Decision orders the investor-owned utilities (IOUs) to continue purchasing power from certain qualifying facilities (QFs) at current short run avoided cost (SRAC) prices pursuant to a five-year Standard Offer 1 (SO1) contract.¹ The Decision further states that “[t]he pricing terms for any such contract should be consistent with existing Commission SRAC policy . . . ; provided, however, to the extent that the Commission adopts a revised QF policy, the pricing terms of the contract shall be modified to reflect said revised QF pricing policy *as of the effective date of the Commission decision adopting a revised pricing policy.*”² This portion of the

¹ D.05-12-009, *mimeo.*, at 9-10.

² *Id.* (*emphasis added*).

Decision is unlawful and exceeds the Commission’s jurisdiction under the Public Utility Regulatory Policies Act of 1978 (PURPA)³ because it states that any QF pricing revisions will be prospective and purports to preclude a retroactive refund of contract payments even if the Commission subsequently finds in this proceeding that such payments were based on an SRAC methodology that yielded prices in excess of SCE’s avoided cost. Therefore, rehearing must be granted and this aspect of the Decision must be corrected.

II.

THE DECISION COMMITS LEGAL ERROR BY PURPORTING TO PRECLUDE ANY RETROACTIVE REFUND OF CONTRACT PAYMENTS

The Commission’s authority to regulate wholesale prices for QF power is wholly derived from PURPA.⁴ “PURPA does not permit either the Commission or the States in their implementation of PURPA to require a purchase rate that exceeds avoided cost.”⁵ Any implementation of PURPA that systematically overstates avoided cost exceeds the limited jurisdiction granted to the states under PURPA and is preempted by federal law.⁶ The Commission has recognized that it has “authority to consider retroactive adjustment of SRAC prices” to ensure compliance with PURPA.⁷ Indeed, under circumstances directly analogous to those presented here, the Commission has a *legal duty* to make such adjustments.⁸

In D.03-12-062, the Commission ordered the IOUs to continue to purchase power during 2004 from certain QFs at current SRAC prices pursuant to an SO1 contract.⁹ The Commission acknowledged that there “is evidence . . . [that] for some time periods the current SRAC energy

³ Pub.L. No. 95-617 (Nov. 9, 1978), *codified in part at* 16 U.S.C. § 824a-3 *et seq.*

⁴ *See* 16 U.S.C. § 824; 16 U.S.C. § 824a-3(f); *Miss. Power & Light Co. v. Miss. Ex rel. Moore*, 487 U.S. 354 (1988).

⁵ *S. Cal. Edison Co. v. Cal. P.U.C.*, 101 Cal. App. 4th 982, 998 (2002) (*internal quotations omitted*).

⁶ *See S. Cal. Edison Co. v. Cal. P.U.C.*, 101 Cal. App. 4th 384, 398-99 (2002); *Midwest Power Sys., Inc.*, 78 FERC ¶ 61,067, 61,247-48 (1997); *S. Cal. Edison Co.*, 70 FERC ¶ 61,215, 61,677 (1995); *Conn. Light & Power Co.*, 70 FERC ¶ 61,012, 61,029 (1995); *see also* 16 U.S.C. § 824a-3(f).

⁷ *See* D.01-12-025, *mimeo.*, at 4.

⁸ *See S. Cal. Edison Co. v. Cal. P.U.C.*, 128 Cal. App. 4th 1, 12 (2005); *see also S. Cal. Edison Co.*, 101 Cal. App. 4th at 999.

⁹ D.03-12-062, *mimeo.*, at 56, 88.

pricing methodology has yielded prices in excess of spot market prices” and that “the evidence . . . raises questions and supports the need to revisit [the] SRAC pricing system.”¹⁰ However, the Commission directed that “[t]he pricing terms for any such contract [] be consistent with existing Commission SRAC policy”¹¹ and, subsequently, opened a new rulemaking, R.04-04-025, to consider updates to QF pricing. In D.03-12-062, the Commission also stated that “to the extent that the Commission adopts a revised SRAC policy, the pricing terms of the contract shall be modified to reflect said revised SRAC policy as of the effective date of the Commission decision adopting a revised SRAC policy.”¹²

In D.04-01-050, the Commission “extend[ed] the determinations [it] made in D.03-12-062 with respect to existing QFs with expiring contracts” by ordering the IOUs to “offer five-year Standard Offer 1 (SO1) contracts at short-run avoided cost (SRAC) prices” to certain QFs having contracts that were set to expire before December 31, 2005.¹³ The Commission ordered that “[t]he contracts [] include the provision that the pricing terms may change if the Commission subsequently modifies its policy on QF pricing methodology”¹⁴ and, again, stated that any pricing revisions would be prospective.¹⁵

SCE applied for rehearing of D.03-12-062 and D.04-01-050 and, subsequently, petitioned for review of those decisions by the California Court of Appeal on the grounds, *inter alia*, that the decisions improperly stated that any pricing revisions would be prospective and purported to preclude any retroactive refund of contract payments. The retroactive refund would ensure that the QFs were paid no more than SCE’s avoided cost during the period the Commission considered changes to the SRAC methodology. In its decision reviewing D.03-12-062 and D.04-01-050, the Court of Appeal expressly stated that the Commission has a legal duty to make appropriate retroactive adjustments to SRAC prices.¹⁶ “[I]f the evidence shows that [a modified

¹⁰ D.04-07-037, *mimeo.*, at 24, Ordering Paragraph 1 (*modifying* D.03-12-062).

¹¹ D.03-12-062, *mimeo.*, at 56.

¹² *Id.*

¹³ D.04-01-050, *mimeo.*, at 157, 200.

¹⁴ *Id.* at 158, 200.

¹⁵ *Id.* at 161.

¹⁶ *See S. Cal. Edison Co.*, 128 Cal. App. 4th at 12; *see also S. Cal. Edison Co.*, 101 Cal. App. 4th at 999.

SRAC] formula . . . should have been applied retroactively to arrive at a more accurate SRAC, then it is the Commission’s duty to apply it retroactively.”¹⁷ Indeed, the Court of Appeal also noted that the Commission declared “that if a decision in R.04-04-025 shows a systematic violation of PURPA, then Edison is to be given credit for any PURPA violations by reason of Edison being required to enter into SO1 contracts with QFs”¹⁸

The Decision fails to comply with the decision of the Court of Appeal by stating that any QF pricing revisions will be prospective and purporting to preclude a retroactive refund of contract payments even if the Commission subsequently finds in this proceeding that such payments were based on an SRAC methodology that yielded prices in excess of SCE’s avoided cost. In doing so, the Decision commits legal error and exceeds the Commission’s jurisdiction under PURPA. Therefore, rehearing must be granted, and the Decision must be modified by deleting the language stating that any QF pricing revisions that are adopted by the Commission will be applied to the contracts “as of the effective date of the Commission decision adopting a revised pricing policy.”

III.

CONCLUSION

For all the foregoing reasons, SCE respectfully requests that the Commission grant rehearing of D.05-12-009 and modify the Decision by deleting the language stating that any QF pricing revisions that are adopted by the Commission will be applied to the contracts “as of the effective date of the Commission decision adopting a revised pricing policy.”

¹⁷ *S. Cal. Edison Co.*, 128 Cal. App. 4th at 12 (quoting *S. Cal. Edison Co.*, 101 Cal. App. 4th at 999).

¹⁸ *S. Cal. Edison Co.*, 128 Cal. App. 4th at 12.

Respectfully submitted,

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Dated: December 30, 2005

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of the SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) APPLICATION FOR REHEARING OF DECISION 05-12-009 on all parties identified on the attached service list. Service was effected by one or more means indicated below:

- 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.
- Placing the copies in sealed envelopes and causing such envelopes to be delivered by hand or by overnight courier to the offices of the Commission or other addressee(s).
- Placing copies in properly addressed sealed envelopes and depositing such copies in the United States mail with first-class postage prepaid to all parties.
- Directing Prographics to place the copies in properly addressed sealed envelopes and to deposit such envelopes in the United States mail with first-class postage prepaid to all parties.

Executed this **30th day of December 2005**, at Rosemead, California.

Lizette Vidrio
Project Analyst
SOUTHERN CALIFORNIA EDISON COMPANY

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December 30, 2005

Docket Clerk
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

RE: Rulemaking 04-04-003 and Rulemaking 04-04-025

Dear Docket Clerk:

Enclosed for filing with the Commission are the original and five copies of SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) APPLICATION FOR REHEARING OF DECISION 05-12-009 in the above-referenced proceedings.

We request that a copy of this document be file-stamped and returned for our records. A self-addressed, stamped envelope is enclosed for your convenience.

Your courtesy in this matter is appreciated.

Very truly yours,

[Berj K. Parseghian](#)

[LAW-#1263509](#)
Enclosures

cc: All Parties of Record
(U 338-E)