

I.

**SETTLEMENT AGREEMENT AND SPECIAL RELEASE**

THIS SETTLEMENT AGREEMENT AND SPECIAL RELEASE (the "Agreement") is entered into by and between Southern California Edison ("SCE"), and the United States of America ("United States"). The United States and SCE hereinafter sometimes are referred to individually as "party" and collectively as "parties."

II.

**RECITALS**

A. SCE is an investor-owned electric utility organized and existing under the laws of the State of California.

B. Bonneville Power Administration ("BPA") was formed by statute in 1937 to market power in the Pacific Northwest. BPA is part of the Department of Energy, a Department of the United States.

C. In 1988, SCE entered into a twenty year contract, No. DE-MS79-88BP 92275, with the United States Department of Energy, acting by and through BPA, covering the sale or exchange of energy ("Contract").

D. On or about December 26, 2002, SCE filed a Complaint against the United States in the Court of Federal Claims, Case No. 02-1953 C for, *inter alia*, breach of the Contract ("Conversion Action").

E. On or about December 30, 2003, SCE filed a Complaint against the United States in the Court of Federal Claims, Case No. 3-2869 C for, *inter alia*, breach of the Contract ("Option Capacity Action").

F. On or about November 30, 2004, SCE filed a Complaint against the United States in the Court of Federal Claims, Case No. 04-1716 C for, *inter alia*, breach of the Contract ("Termination Action").

G. The "California Refund Process" includes: (1) those regulatory proceedings presently known as Federal Energy Regulatory Commission (hereinafter "FERC") Docket Nos. EL00-95-000 and EL-00-98-000; and (2) the claims and/or lawsuits that seek to modify the amounts that BPA, as a seller to the California Independent System Operator (hereinafter "CAISO") and/or to the California Power Exchange (hereinafter "PX") in the California wholesale electric power market, received for the period October 2, 2000 through June 20, 2001 (the "Refund Period") and/or for the period March 1, 2000 through October 1, 2000 (the "Summer Period").

H. SCE and BPA have been and continue to be adversaries in the California Refund Process. In addition to participating as a party in the FERC proceedings, SCE has also filed a claim with BPA regarding the California Refund Process. BPA understands that, notwithstanding any express or implied terms of this Agreement, nothing in this Agreement precludes SCE from pursuing those claim(s) against BPA or from filing a Complaint in a court of competent jurisdiction, if necessary to pursue its claims. SCE understands that, notwithstanding any express or implied terms of this Agreement, nothing in this Agreement precludes BPA from initiating or pursuing in the California Refund Process any claim, suit, counterclaim, or countersuit against SCE or any other party.

SCE and the United States now desire to resolve the Conversion Action and the Termination Action and any and all claims made therein, through settlement in accordance with the terms and conditions set forth below.

III.

**AGREEMENT**

NOW, THEREFORE, it is agreed as follows:

1. **Incorporation of Recitals**

The recitals set forth in this Agreement are hereby incorporated by reference and made a part of this Agreement.

2. **Option Capacity Action**

The Option Capacity Action is not included in or affected by this Agreement. The parties will continue litigating the Option Capacity Action in the Court of Federal Claims unless and until the parties enter into a separate mutual agreement concerning the Option Capacity Action.

3. **Attorneys' Fees and Costs Incurred in These Actions**

SCE and the United States will each pay its own attorneys' fees, costs and expenses incurred in litigating the Conversion Action and the Termination Action.

4. **Conditions Precedent to Specific Obligations**

The payment and release provisions set forth in paragraphs 5 and 7 of this Agreement are subject to the following conditions precedent, as set forth in paragraph 4(A) ("BPA Approval"), paragraph 4(B) ("PUC Approval"), and paragraph 4(C) ("The California Refund") below; *provided, however*, that either party may waive all or part of any condition precedent included for its benefit by providing written notice to the other party:

A. BPA Approval

This condition will be satisfied as follows:

(1) Within thirty (30) days following the execution of this Agreement by the signatories for SCE and the United States, BPA shall in whatever form or manner it deems appropriate provide notice of this Agreement to interested parties in the Pacific Northwest, along with the opportunity to provide comment on it within 30 days of the notice ("Notice Period"), unless the Administrator determines it necessary to subsequently extend the Notice Period for up to thirty (30) days. No further extensions of the Notice Period may be provided by the Administrator unless, acting in response to third-party requests for further time to evaluate or comment on the Agreement, he determines that it is appropriate to provide an extension of up to 30 days to respond to the third-party requests, *provided however*, that before the Administrator provides any additional extension, BPA's General Counsel will first notify SCE's General Counsel of the reasons for the extension and the amount of time to be provided.

(2) Prior to issuance of the notice, BPA shall provide a draft of the notice to SCE. SCE shall have the opportunity to provide written comments on the proposed notice to BPA within 5 days of SCE's receipt of the draft.

(3) Within thirty (30) days following the expiration of the Notice Period, BPA will notify SCE by letter and e-mail as to whether it is or is not proceeding with the settlement. If BPA's notification states that it will proceed with the settlement, the BPA Approval condition will be satisfied. If BPA does not provide notice within the prescribed time period, the United States will be deemed to have elected not to proceed with the settlement.

(4) If BPA states, or is deemed to have stated, under paragraph 4(A)(3) that it will not proceed with the settlement, the United States and SCE will cooperate in re-commencing the litigation of the Conversion Action and the Termination Action.

(5) If this settlement does not go forward for any reason, SCE agrees that this Agreement, the fact that BPA sought public comment on this Agreement, BPA's notice, as well as any verbal or other documentary communications made by BPA or any other person or entity in connection with the Agreement, including but not limited to those communications made in response to any objections or requests for information in connection with the Agreement, shall not be used by SCE in any proceedings involving BPA or the United States.

**B. California Public Utilities Commission Approval ("PUC Approval")**

This condition will be satisfied as follows:

(1) Within thirty (30) days following the execution of this Agreement by the signatories for SCE and the United States, SCE will file with the PUC an application seeking approval of this Agreement ("Application"). All opinions of counsel or other testimony supporting said application may, at SCE's sole discretion, be filed under section 583 of the California Public Utilities Code.

(2) If the PUC issues a decision that has become final and is no longer subject to review and that approves the terms of this Agreement in their entirety, the PUC Approval Condition will be satisfied.

(3) If the PUC issues a decision that does not approve the terms of this Agreement in their entirety or if the PUC fails to issue a decision within eighteen (18) months of SCE's filing its Application, the United States and SCE will cooperate in re-commencing the litigation of the Conversion Action and the Termination Action.

(4) If this settlement does not go forward for any reason, the United States agrees that the fact that SCE sought PUC approval of this settlement, SCE's Application, as well as any verbal or documentary communications submitted by SCE to the PUC in

connection with the application or in response to any objections or requests for information in connection with the Application shall not be used by the United States in any proceedings involving SCE.

**C. The California Refund**

This condition will be satisfied as follows:

When a final determination is reached in the California Refund Process, either by FERC, by a court order, by a settlement agreement, by any other mechanism or by a combination of the foregoing, that resolves the net amount either due to BPA or owed by BPA, including the amount of zero (0) dollars, from BPA's sales included in the California Refund Process, and the net amount, if any, due to BPA has been received in its entirety.

Until the California Refund condition is met, BPA's General Counsel will provide SCE's General Counsel a quarterly status report concerning whether BPA continues to be involved in the California Refund Process.

**5. Payment and Accrual of Interest**

**A. Payment:** Within one (1) week after the BPA Approval, the PUC Approval, and the FERC California Refund conditions have all been met, the United States will cause twenty-eight million, five hundred thousand dollars (\$28,500,000) ("Payment Amount"), plus all accrued interest, to be transferred by wire transfer to Southern California Edison, in accordance with the following wire transfer instructions:

**B. Interest:** Interest on the Payment Amount shall accrue from the date of execution of this Agreement through and including the date paid. The interest rate shall be calculated as follows, where:

$P_i$  is the payment by or to BPA from each order, settlement or other mechanism that is part of the determination of the California Refund Process.

$T$  is the total of the  $P_i$ .

$R_i$  is the interest rate or the effective interest rate applicable to each  $P_i$  for the time period for which interest accrues on the Payment Amount.

$N$  is the total number of payments.

$I$  is the weighted average interest rate.

Then the weighted average interest rate is:

$$I = \sum_{i=1}^N (P_i R_i) / T$$

As an example for illustrative purposes only, if the resolution of the California Refund Process results in the payment by and to BPA totaling \$230 million, and the details of the disbursements are: (1) BPA receives \$50 million pursuant to a court order based on a 4% per annum rate of interest; (2) BPA receives \$100 million pursuant to a FERC order based on an effective interest rate of 4.5% per annum; and (3) BPA pays \$80 million through a settlement based on a 5% per annum rate of interest, then the interest rate ("T") on the Payment Amount would be calculated as follows:

$$\begin{aligned} I &= (\$50 \text{ million})(4\%)/\$230 \text{ million} \\ &+ (\$100 \text{ million})(4.5\%)/\$230 \text{ million} \\ &+ (\$80 \text{ million})(5\%)/\$230 \text{ million} \\ &= 4.57\%. \end{aligned}$$

The interest shall be calculated and computed by an independent auditing firm/accounting firm jointly selected by the parties in the event either SCE or BPA notifies the other that it desires the interest to be so calculated.

C. Access To the Judgment Fund

SCE shall, upon request of BPA, provide such information and assistance as may be necessary to effect payment under this Agreement from the U.S. Department of Treasury Judgment Fund.

**6. Dismissal of Claims**

A. Within fifteen (15) working days following the execution of this Agreement, the United States and SCE will request, by joint motion, that the Court stay the Conversion Action and the Termination Action until the Payment is made under paragraph 5 of this Agreement

B. In consideration of the terms and conditions set forth in this Agreement, SCE shall file a Request for Dismissal With Prejudice of the Conversion Action and the Termination Action within five (5) business days of receipt of the Payment Amount plus accrued interest.

C. Following execution of the agreement, if for any reason the settlement does not go forward, then SCE agrees that it will not put any impediment, including, without limitation, assertion of any prejudice, laches, or statute of limitations arising from the fact of the passage of time occasioned by settlement negotiations or this Agreement, in the way of BPA or the United States from filing or commencing any claim or counter-claim that the government has or could have brought as of August 31, 2005. Nothing in this Agreement prevents SCE from defending against any such claim or counterclaim brought pursuant to this paragraph in any way that would have been available to SCE on August 31, 2005.



D. If the settlement does not go forward for any reason, the parties agree that it is their intent that the Conversion Action and Termination Action each be restored to the posture it was in prior to August of 2005, that each party will cooperate to achieve that end, and that neither the passage of time nor anything said or not said, done or not done, by either or both of the parties in connection with this Agreement shall be used by the other in any way to argue against or otherwise preclude restoration of the Conversion Action and Termination Action to their posture prior to August of 2005, to include preservation of the right of the United States to proceed with a counter-claim that could have been asserted in August 2005. Nothing in this Agreement prevents SCE from defending against any such claim or counterclaim brought pursuant to this paragraph in any way that would have been available to SCE in August 2005.

E. This Agreement is not an admission of any liability but is a compromise and settlement and this Agreement shall not be treated as an admission of liability. All communications (whether oral or in writing) between and/or among the parties, their counsel and/or their respective representatives relating to, concerning or in connection with this Agreement, or the matters covered hereby, shall be governed and protected in accordance with the Federal Rule of Evidence 408 to the fullest extent permitted by law.

**7. Special Releases**

The Releases set forth herein become operative when the Conversion Action and the Termination Action have been dismissed with prejudice, or, if the Actions were dismissed without prejudice, when the Payment, including all accrued interest, has been received by SCE ("Effective Date"). Both parties acknowledge that these releases are not general releases as that term is used in California Civil Code Section 1542.

**A. Release by SCE**

As of the Effective Date, except as to obligations imposed by or under this Agreement, SCE, for and on behalf of itself and for and on behalf of each of its directors, officers, employees, shareholders, attorneys, agents, heirs, administrators, venturers, representatives, sureties, subsidiaries, predecessors, successors, assigns, and each of them (hereinafter "SCE Related Entities") releases, waives, and abandons the United States, including without limitation BPA, from any and all claims relating to the matters set forth in SCE's claims to the contracting officer, SCE's complaints in United States Court of Federal Claims Case Nos. 02-1953C and 04-1716C, the claims submitted in anticipation of these complaints to the BPA contracting officer, any matters raised by the United States' answers to SCE's complaints and any right or claimed right to appeal from any Order in those Actions, as well as any claim for interest, costs, attorney fees, or expenses under any provision of law, as against the United States, its agencies, or its officers, agents, or employees as related to the issues raised in these matters.

Except as expressly set forth in the preceding subparagraph, the release by SCE shall not include any other matter that it now has or may have in the future with the United States or any of its Agencies and/or Departments.

**B. Release by United States**

As of the Effective Date, except as to obligations imposed by or under this Agreement, the United States, including, without limitation, BPA, releases, waives, and abandons SCE and the SCE Related Entities from any and all claims relating to the matters set forth in SCE's claims to the contracting officer, SCE's complaints in United States Court of Federal Claims Case Nos. 02-1953C and 04-1716C, the Government's contracting officers' final

decisions and answers to the above referenced complaints, any counterclaims that could have been brought by the Government in those two cases and any right or claimed right to appeal from any Order in those Actions as well as any claim for interest, costs, attorney fees, or expenses under any provision of law, as against SCE, its agencies, or its officers, agents, or employees as related to the issues raised in these matters.

**C. Non-Waiver**

The United States does not waive any rights it may have or acquire concerning possible violations of statutes or regulations relating to false statements or claims submitted to the Government.

**8. Non-Assignment of Claims**

Each party hereto warrants that it has not expressly assigned, conveyed, granted, transferred, or otherwise disposed of any of the claims released by this Agreement. Each party covenants that it will not make, assert, or maintain any claim, demand, action, suit, or proceeding against any party it has released in this Agreement, nor will it assign any claim, demand, action, suit, or proceeding with respect to claims released in this Agreement. This Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement.

**9. Press Releases**

No sooner than two (2) days following execution of this Agreement, each party may issue a press release. Each party's press release shall be reviewed by the other party in advance of its issuance, and the party shall be afforded at least 24 hours during a business day for its review. The United States will inform SCE when it intends to issue its release. SCE will wait

at least three (3) hours after the time at which the United States informs SCE it will issue its release before issuing its release. Notwithstanding the forgoing, SCE may issue its release at any time if BPA has not issued a release within three (3) business days following the execution of this Agreement.

**10. Covenant to Sign Documents**

Each party will take all actions and execute all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

**11. Warranty of Authority**

Each signatory to this Agreement warrants that he or she has the authority to execute this Agreement on behalf of the party for which such execution is made, and to bind that party through such execution.

**12. No Admissions**

This Agreement is for the purpose of settling all claims relating to the Conversion Action and the Termination Action, and for no other purpose. The parties understand and agree that nothing contained herein shall be construed as an admission of liability by any party; all such liability being expressly denied. Except to enforce its terms or to meet any regulatory requirements, the Agreement shall not be cited or otherwise referred to in any proceedings, whether judicial or administrative, in which the parties or counsel for the parties have or may acquire an interest.

**13. Binding on Successors**

This Agreement shall be binding upon the parties and each of their Related Entities and any successors thereto.

**14. Advice of Counsel**

The parties hereto represent that in executing this Agreement they relied solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent, and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any representations or statements covering any matters made by the other parties hereto other than the statements set forth in this Agreement

**15. Entire Agreement**

This Agreement embodies the entire understanding and agreement of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof except as specifically set forth or referred to herein. All prior negotiations or agreements, if any, between the parties hereto related to the subject matter hereof are superseded by this Agreement.

**16. Modification**

This Agreement may not be modified in whole or in part except by an agreement in writing signed by all of the parties to this Agreement, and executed in the same manner as this Agreement. Waiver of a condition precedent set forth in paragraph 4 shall not constitute a modification of this Agreement.

**17. Faxing and E-mailing of Signature Lines**

Facsimile signatures, delivered either by facsimile machine or e-mail, will be acceptable and binding with respect to the enforceability of this Agreement the same as originals.

**18. Drafting of the Agreement**

It is acknowledged that all parties to this Agreement participated in the drafting of the Agreement and that in any action involving the interpretation of this Agreement, the language and terms of the Agreement should not be construed against any party to this agreement.

**19. Notices**

Any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given, or made if delivered in person or sent by e-mail *and* by facsimile or overnight delivery, to the persons specified below or their successors:

|         |   |
|---------|---|
| To SCE: | Alan J. Fohrer<br>Chief Executive Officer<br>and<br>Stephen E. Pickett<br>General Counsel<br>Southern California Edison<br>2244 Walnut Grove Avenue<br>Rosemead, California 91770 |
|---------|---|

|                   |   |
|-------------------|---|
| To: United States | Stephen Wright<br>Administrator<br>and<br>Randy Roach<br>General Counsel<br>Bonneville Power Administration<br>905 Northeast 11th Ave.<br>Portland, Oregon 97232<br><br>And to:<br>Martin F. Hockey, Jr.<br>Senior Trial Attorney<br>Commercial Litigation Branch<br>Civil Division<br>Department of Justice<br>Attn: Classification Unit<br>8th Floor<br>1100 L Street, N.W.<br>Washington, D.C. 20530 |
|-------------------|---|

20. Counterparts

This Agreement may be executed in counterparts, and shall be effective when fully executed.

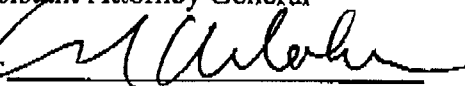
IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

SOUTHERN CALIFORNIA EDISON  
COMPANY

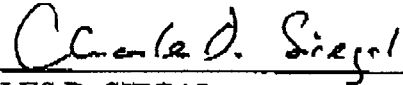
By:   
ALAN J. FOHRER  
Chief Executive Officer

UNITED STATES OF AMERICA


PETER D. KEISLER  
Assistant Attorney General

By:   
DAVID M. COHEN  
Director, Authorized Representative of the  
Attorney General

APPROVED AS TO FORM:

By:   
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MARSHA HYMANSON  
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Of Counsel:  
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June 5, 2006