UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

In re SCANA Corporation Docket No. IN07-3-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued January 18, 2007)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and SCANA Corporation (SCANA). This order is in the public interest because it resolves alleged violations of its Open Access Transmission Tariff (OATT)[1] by South Carolina Electric & Gas Company (SCEG), a subsidiary of SCANA, with a settlement that provides for: (i) disgorgement of $1.4 million in profits, (ii) payment of $400,000 in transmission revenues, (iii) a $9 million civil penalty, and (iv) a compliance plan that ensures SCEG will follow the requirements of its OATT in the future regarding the appropriate use of network transmission service.

2. The Agreement resolves all issues relating to a non-public, preliminary investigation pursuant to Part 1b of the Commission regulations, 18 C.F.R. Part 1b (2006). The investigation concerned alleged violations of SCEG's OATT relating to the improper use of network transmission service to facilitate off-system sales, the improper designation of curtailment priorities, the improper designation of network resources, and the improper calculation of available transfer capability (ATC).

3. Enforcement alleges that SCEG's use of network transmission service, rather than point-to-point transmission service, to import power for off-system sales, violated section 28.6 of SCEG's OATT. Enforcement also alleges that SCEG used a higher curtailment priority than appropriate to import power from a non-designated network resource, that SCEG failed to comply with all the steps spelled out in section 29 of its

[1] South Carolina Electric & Gas Company Open Access Transmission Tariff, Original Volume No. 5.

OATT to properly designate a network resource, and that SCEG failed to include unscheduled firm transmission service in non-firm ATC in the operating horizon.

4. Enforcement concluded that the misuse of network service stemmed from a confluence of events, which included the failure of some employees to recognize the existence of a tariff violation, the active concealment of a tariff violation by another employee, and the failure of management to address an identified regulatory risk.

5. SCANA neither admits nor denies that the conduct described in the Agreement constitutes a violation of SCEG's OATT.

6. SCANA has fully cooperated with staff's investigation and has proactively put in place mechanisms to prevent the misuse of network service to facilitate off-system sales.

7. Of the identified alleged violations, 49 arose after August 8, 2005. As a result, the Commission may impose civil penalties against SCANA in this matter pursuant to section 316A of the Federal Power Act, as amended by the Energy Policy Act of 2005.[2] In approving the Agreement, we considered the factors set forth in the Federal Power Act[3] and our recent Policy Statement on Enforcement.[4] We have accorded great weight to SCANA's self report to staff. Absent such self report, the civil penalty sought would have been considerably higher. We also note that the identifiable harm was small. However, given the fact that the company had identified a regulatory risk as early as late summer of 2004, but failed to correct the problem until the fall of 2005, the Commission is of the opinion that the civil penalty agreed upon is appropriate.

8. We conclude that the payments and penalty specified in the Agreement provide a fair and equitable resolution of this matter and are in the public interest. We also conclude that the compliance program specified in the Agreement, under which SCANA is to provide data to staff to enable it to ascertain SCEG's compliance with the network service provisions of its OATT and related matters, is in the public interest.

[2] Section 1284(e) of the Energy Policy Act of 2005 amended section 316A(b) of the Federal Power Act (FPA), 16 U.S.C. § 825o-1(b), to grant the Commission authority to assess a civil penalty of not more than $1,000,000 for each day that a violation of any provision of Part II of the FPA or any provision of any rule or order thereunder continues.

[3] Section 316A(b) of the Federal Power Act, 16 U.S.C. § 825o-1(b).

[4] 113 FERC ¶ 61,068 (2006).

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

( S E A L )

Magalie R. Salas,
Secretary.

**UNITED STATES OF AMERICA**
**FEDERAL ENERGY REGULATORY COMMISSION**

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| In re SCANA Corporation | ) | Docket No. IN07-3-000 |

## STIPULATION AND CONSENT AGREEMENT

The Staff of the Office of Enforcement ("OE") of the Federal Energy Regulatory Commission ("Commission") and SCANA Corporation ("SCANA" or "Company") enter into this Stipulation and Consent Agreement ("Agreement") to resolve all outstanding issues of fact and law arising from a non-public, preliminary investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2006), into certain transactions and practices ("Power Marketing business practices") of the Power Marketing Division ("Power Marketing") of SCANA's subsidiary, South Carolina Electric & Gas Company ("SCE&G"), and into related issues of compliance with the open access transmission tariff ("OATT") of SCE&G (the "OATT compliance issues").

## I. Stipulation

The facts stipulated herein are stipulated solely for the purpose of resolving between SCANA and OE the matters discussed herein and do not constitute stipulations or admissions for any other purpose. SCANA and OE hereby stipulate and agree to the following:

### A. Background

1. SCE&G is a vertically integrated public utility serving both electric and gas loads. It is a subsidiary of SCANA, a $9 billion, Fortune 500 energy-based holding company. Under its electric operations, SCE&G serves some 610,000 retail and wholesale customers, and generates, transmits and distributes electricity to 24 counties covering more than 15,000 square miles in the central, southern, and southwestern portions of South Carolina.

2. SCE&G operates its transmission facilities and provides transmission service pursuant to its OATT, which has an effective date of July 9, 1996.

3. On January 2, 2006, SCANA submitted a quarterly report to the FERC Office of Market Oversight and Investigations ("OMOI," OE's predecessor, hereinafter referred to as OE), in compliance with the April 27, 2005 Stipulation and Consent Agreement that resolved OE's investigation of the Company in Docket No. IN05-6-000. In that January 2 submittal, SCANA reported that the Company had identified OATT compliance issues relating to the Power Marketing business practices and that it was investigating those issues internally. That notification was based on SCANA's review of the Power Marketing business practices in light of the Commission's September 29, 2005 order in *MidAmerican Energy Company*.[1] The *MidAmerican* audit report found that MidAmerican's wholesale merchant function, *inter alia*,

[1] *MidAmerican Energy Co.*, 112 FERC ¶ 61,346 (2005).

had "used network transmission service instead of point-to-point transmission service to deliver short-term energy purchases to a generator in its control area when it concurrently made short-term off-system sales."[2] OE classified such purchases as supporting off-system sales, rather than serving native and other network loads, under circumstances discussed in the *MidAmerican* order and audit report. The Commission approved the audit report's findings that this practice violated Section 28.6 of MidAmerican's OATT (identical to the corresponding provision of the Commission's *pro forma* OATT), which states:

> The Network Customer shall not use Network Integration Transmission Service for (i) sales of capacity and energy to non-designated loads, or (ii) direct or indirect provision of transmission service by the Network Customer to third parties. All Network Customers taking Network Integration Transmission Service shall use Point-To-Point Transmission Service under Part II of the Tariff for any Third-Party Sale which requires use of the Transmission Provider's Transmission System.

4. As to the SCE&G Power Marketing business practices, the Company found, as stated in its January 2, 2006 quarterly report, that during the time period under review Power Marketing on a number of occasions had purchased economy energy greater than needed to serve network loads, at a cost higher than the company's marginal cost of generation. SCANA further stated that, pending clarification from the OE Staff and/or the FERC, and in the interest of exercising caution in SCE&G's efforts to comply fully with FERC policy, the Company had taken action to implement certain new self-imposed procedures affecting the Power Marketing business practices. SCANA stated that the new procedures put safeguards in place intended to ensure compliance with the *MidAmerican* order and audit report.

5. On February 10, 2006, SCANA filed a Form 8-K disclosure with the U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934, stating that the Company had informed the FERC of the Power Marketing business practices and associated OATT compliance issues.

6. On February 22, 2006, SCANA voluntarily submitted to OE a lengthy document (the "Self Report"), detailing the preliminary results of the Company's internal inquiry into the Power Marketing business practices and OATT compliance issues that it had described in its January 2, 2006 quarterly report, and noting that a separate, parallel internal investigation was being conducted by the Company's Corporate Compliance Officer. SCANA submitted its Self Report pursuant to the Commission's October 2005 Policy Statement on Enforcement,[3] in which the Commission stated:

> We encourage regulated entities to have comprehensive compliance programs, to develop a culture of compliance within their organizations,

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[2] *Id.* at P 6.

[3] *Enforcement of Statutes, Orders, Rules and Regulations,* Policy Statement on Enforcement, 113 FERC ¶ 61,068 (2005).

and to self-report and cooperate with the Commission in the event violations occur.[4]

7. SCANA's Self Report stated that the Company's internal audit determined that there were numerous instances (measured individually as one hour transactions) between 1998 and late 2005 in which the Power Marketing business practices, as described above, were employed. The Self Report set forth in detail the history of the Power Marketing business practices. The Self Report also stated that the SCE&G transmission system was not constrained and that, despite the referenced practices, there was no indication that any potential customers had been denied access to the system. The Self Report also described internal dissention between the Director of SCE&G Power Marketing and other Company personnel over the propriety of those practices. The Self Report stated that at a December 2005 meeting, a Power Marketing employee provided to the SCE&G Legal Department ("Legal") certain transaction records detailing the Power Marketing business practices. This was the first time these transaction records were disclosed to any SCE&G personnel outside of Power Marketing. The Company took action to stop those historical Power Marketing business practices. Indeed, the Company terminated trading generally except as necessary to support native load and certain long-term contracts. The Self Report stated that the Company's Chief Compliance Officer, whose responsibilities include the provision of training to Power Marketing and SCE&G's Transmission Department personnel on FERC Standards of Conduct, would provide training to address the OATT compliance issues as well. The Self Report also stated that disciplinary action, including the discharge of one or more supervisory level employees, would occur imminently, based on SCANA's determination that certain employees had obstructed regulatory compliance in contravention of Company policy.

8. On March 17, 2006, SCANA provided to OE a copy of the report prepared by the Company's Corporate Compliance Officer ("Corporate Report") in the referenced parallel internal investigation. The Corporate Report detailed the steps taken internally to determine the nature and extent of the Power Marketing business practices and their underlying circumstances, which steps included reviewing source documents supporting the transactions, reviewing written correspondences and emails, verifying the accuracy of accounting treatment of transactions, reviewing samples of taped telephone conversations between Power Marketing and Transmission Dispatching personnel, and interviewing employees throughout the organization that had knowledge of the practices. The Corporate Report itemized the results of the Corporate Compliance Officer's investigation and concluded that the Power Marketing business practices had been employed from at least 1998 until November 10, 2005. The Corporate Report acknowledged: (a) in 2004, Legal had advised the Power Marketing Director that there was a risk that the Power Marketing business practices could be deemed to be a discriminatory use of transmission service, but the Power Marketing Director knowingly ignored the advice; (b) the Power Marketing bonus structure gave an incentive to employees to optimize net margins on energy trades, including transactions employing the historical Power Marketing business practices described above; and (c) Power Marketing and Transmission Department personnel were not adequately trained on the OATT.

[4] *Id.* at P 2.

9. OE conducted a preliminary, non-public investigation into the matters addressed in SCANA's Self Report. The period investigated by OE was from January 1, 2002 through February 28, 2006. Throughout the investigation, SCANA cooperated fully with OE's efforts to seek information regarding these matters. During the course of the investigation, SCANA provided documentation to OE that it had taken the disciplinary measures that it had anticipated at the time of the Self Report; specifically, the Power Marketing Director's employment was terminated, and three other employees were disciplined and counseled. SCANA also provided additional detail about the extent of the Company's trading restrictions and its adherence to steps designed to ensure that the Power Marketing business practices at issue in the investigation would not be repeated.

**B. Use of Network Service to Facilitate Off-System Sales**

10. SCANA acknowledges in its Self Report that since at least 1998 (when its current system of electronic recordkeeping for Power Marketing transactions began), Power Marketing used network service to bring energy onto the SCE&G transmission system to serve not only retail native load and other network loads, but to service off-system sales. As in the MidAmerican audit, the export leg of such off-system sale transactions used point-to-point transmission service.

11. SCANA's Self Report and Corporate Report, as well as OE's investigation, disclosed that SCANA's Legal Department advised the Director of Power Marketing, in an August 25, 2004 memorandum, that the Power Marketing business practices presented a regulatory risk because they could be construed as giving the company an undue preference.

12. One employee of Power Marketing who was familiar with the Power Marketing business practices reviewed the OATT and informed his supervisor, the Director of Power Marketing, that he interpreted section 28.6 of the OATT as prohibiting the Company's use of network transmission service to support the Power Marketing business practices. Neither the employee nor the Director of Power Marketing shared that interpretation of the OATT with anyone outside the Power Marketing Department.

13. The Director of Power Marketing made no change to the Power Marketing business practices, in spite of Legal's 2004 memorandum and the opinion of his employee concerning the potential existence of a tariff violation. Nor did he tell anyone outside his department that there was a possibility that the Power Marketing business practices constituted an ongoing tariff violation. The Power Marketing business practices continued for over a year after the date of the 2004 memorandum.

**C. Quantification of Transactions Using Network Service to Import Power Later Sold Through Off-System Transactions.**

14. OE utilized SCE&G purchase and sale data to determine the number of transactions that used network service to import power that later was sold off-system, and to determine the amount of profit attributable to such transactions.

15. OE's analysis identified 1,109 transactions from January 1, 2002 through February 28, 2006 that used network transmission service to import power that was later sold off-system. Of these, OE identified 49 that occurred after August 8, 2005, the effective date of the Energy Policy Act of 2005.[5]

16. SCANA also utilized SCE&G purchase and sale data to determine the number of transactions that used network service to import power that later was sold off-system, and to determine the amount of profit attributable to such transactions. SCANA's analysis included only transactions occurring between the effective date of the settlement in Docket No. IN05-6-000, referenced above, and February 28, 2006.

### D. Curtailment Priority

17. SCE&G's OATT provides that if the network customer (in this case, SCE&G Power Marketing) imports energy from a non-designated network resource to serve its network loads, it may use network service, but at a lower curtailment priority than firm transmission service. SCE&G should have tagged import capacity from a non-designated network resource as 6NN, even if the purpose of the import was to serve network load. However, SCE&G on some occasions scheduled delivery of energy from non-designated resources using the higher curtailment priority of 7F or 7FN.

### E. Designation of Network Resources

18. Under SCE&G's tariff, a network customer may use network service to serve its network loads under the same priority as service to its native load customers if it obtains the capacity or energy from a designated network resource. SCE&G has a number of partial and full requirements customers that qualify as designated network loads. SCE&G Power Marketing may serve them with firm network service if it follows the steps spelled out in section 29 of the OATT, which calls for a deposit and an advance application specifying several items of information. In many instances, SCE&G Power Marketing desired power for the next day from an off-system source, and faxed a request to the Transmission Department, without complying with the process mandated by the OATT.

### F. Calculation of Non-Firm ATC

19. SCE&G is required under its OATT to follow North American Electric Reliability Council ("NERC") principles in calculating available transfer capability ("ATC"), as set forth in NERC's Available Transfer Capability Definitions and Determination document. That document provides that firm transmission service that is not scheduled should be included in non-firm ATC in the operating horizon, where it will be available to other transmission customers on a non-firm basis. However, SCE&G did not include unscheduled firm reservations in its non-firm ATC, which can make the ATC number seem smaller than it actually should be.

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[5] Pub. L. No. 109-58, 119 Stat. 594 (2005).

## II. PARTIES' SEPARATE REPRESENTATIONS

### A. Statement of OE

1. SCE&G violated its OATT during the period from January 1, 2002 through February 28, 2006 by using network service to facilitate off-system sales. OE found there were 1,109 such improper transactions, of which 49 occurred after August 8, 2005, the effective date of the Energy Policy Act of 2005.

2. OE has calculated off-system profits from the prohibited transactions, for an agreed-upon settlement period, at $1.4 million.

3. The issue of the misuse of network transmission service to facilitate off-system sales arose in the 2003 OE investigation of Idaho Power Company. In its order approving a settlement in that case,[6] the Commission observed that "it is axiomatic that the native load priority cannot be used to complete sales that are not necessary to serve native load." The settlement approved by the Commission also stated that the transmission service improperly used by Idaho Power included scheduling of power both into and out of its system. From at least the issuance of this order onward, SCE&G should have known that its use of network transmission service to bring power into its system to facilitate off-system sales constituted a misuse of network transmission service. Although Legal was of the opinion that the Power Marketing business practices could be unduly discriminatory, it did not identify the associated OATT compliance issues until the disclosures made in the December 2005 meeting referenced above.

4. The President of SCE&G was advised in September 2004 of a regulatory risk related to the Power Marketing business practices, but allowed those practices to continue until November 2005.

5. SCE&G failed to pay point-to-point transmission to import energy used to facilitate off-system sales. OE has calculated these charges, for the agreed-upon settlement period, at $400,000.

6. SCE&G violated its OATT by using an inappropriate curtailment priority.

7. SCE&G Power Marketing's practice of faxing a request to the Transmission Department to serve partial and full requirements customers with network service, which fax did not contain the information required by section 29 of the OATT, fails to satisfy OATT requirements.

8. SCE&G's failure to include unscheduled firm reservations in its non-firm ATC calculations fails to comply with NERC and OATT requirements.

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[6] *Idaho Power Company*, 103 FERC ¶ 61,182 (2003).

### B. Statement of SCANA

1. SCANA admits that under the Power Marketing business practices there were instances in which SCE&G used network service to import power that later was sold off-system. However, SCANA neither admits nor denies that the facts set forth and agreed to by the parties for purposes of this Agreement constitute violations of the Federal Power Act, SCE&G's OATT or the Commission's regulations.

2. Prior to the *MidAmerican* order, SCANA diligently reviewed Commission orders and sought guidance from the Commission on the Power Marketing business practices. The absence of any Commission policy on such matters was a significant contributing factor in Power Marketing's continuation of those practices. The 2003 *Idaho Power* order and settlement referenced in Section II.A.3 of this Agreement did not address the Power Marketing business practices; there, the utility's wholesale marketing affiliate routinely benefited from a priority that it was given by the utility over other users of the transmission system (and no disgorgement of profits was required for transactions in which the marketing affiliate did *not* so benefit), and the Commission's admonition in *Idaho Power* that transmission providers "must take point-to-point service for their own off-system sales"[7] likewise did not apply to the Power Marketing business practices, which in every instance *did* include the use of point-to-point service for Power Marketing's off-system sales. In November 2005 the Company filed comments on the Commission's Notice of Inquiry on OATT reform in Docket No. RM05-25-000, requesting that the Commission state its policy on certain market practices and trading procedures reflected in the SCE&G Power Marketing business practices. The Commission has not acted on that request.

3. The President of SCE&G took affirmative steps to attempt to resolve the internal dissention between the Director of Power Marketing and other Company personnel over the propriety of the Power Marketing business practices, including meetings with the Director of Power Marketing and referring the matter internally to the Company's Corporate Compliance Officer. Ultimately, the Director of Power Marketing led the President of SCE&G to believe that the Power Marketing business practices were no longer an issue because they had been discontinued.

4. Although SCANA does not admit to any of the violations that OE has alleged, the Company has agreed to enter into this Agreement with OE to avoid extended litigation with respect to the matters described or referred to herein, to avoid uncertainty, and to effect a complete and final resolution of the issues set forth herein.

## III. REMEDIES AND SANCTIONS

For purposes of settling any and all civil and administrative disputes arising from OE's investigation into the matters reported by SCANA in its Self Report, OE and SCANA agree that on and after the effective date of this Agreement, SCANA shall take the following actions:

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[7] *Idaho Power Company*, 103 FERC ¶ 61,182 at P 4.

1. SCANA shall pay $1.4 million to SCE&G's retail native load ratepayers and non-affiliated firm transmission customers, allocated among these entities according to the dollar value of the SCE&G transmission system usage attributable to each during the period of January 1, 2002 through February 28, 2006, treating the retail native load ratepayers collectively. SCANA's payment to the retail native load ratepayers shall be made via a credit to the state-approved fuel clause mechanism for the current period in the appropriate amount.

2. SCANA shall pay to SCE&G's Transmission Department $400,000. It shall denominate this amount as transmission revenues, and shall credit it to retail ratepayers in accordance with SCE&G's accounting practices.

3. SCANA shall pay $9 million as a civil penalty to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below.

4. SCANA shall submit proof of payment of all the foregoing amounts to the Commission, provide certification of the identity and transmission usage of each of the recipients of SCANA's $1.4 million payment referenced above, and shall submit proof or other assurances, under oath, that none of the payments required hereunder have been or will be recovered from ratepayers, all within 30 days after the Effective Date of this Agreement.

5. SCANA shall make quarterly filings with OE for a period of one year, the first filing to be submitted within ten days after the end of the calendar quarter in which the Effective Date of this Agreement falls. The filings shall include spreadsheet data on off-system purchases and sales similar to the material SCANA provided OE for its investigation. The filings shall also include a description of the current bonus structure applicable to Power Marketing, a demonstration that SCE&G is providing training on the OATT to appropriate employees, and a demonstration that SCE&G is calculating avoided cost, for purposes of determining whether an off-system sale should displace its own generation, without regard to commitments other than retail native load and other network loads.

## IV. ADDITIONAL TERMS

1. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein as to SCANA and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to SCANA (collectively, "SCANA").

2. Commission approval of this Agreement without material modification shall release SCANA and forever bar the Commission from bringing against SCANA any and all administrative or civil claims arising out of, related to or connected with the facts and alleged violations addressed herein.

3. Failure to make a timely civil penalty payment or to comply with the compliance program agreed to herein, or any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Federal Power Act, 16 U.S.C. §§ 792,

*et seq.* ("FPA"), and may subject SCANA to additional action under the enforcement and penalty provisions of the FPA.

4. If SCANA does not make the civil penalty payments above at the times agreed by the parties, interest payable to the United States Treasury will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii) from the date that payment is due, in addition to the penalty specified above.

5. The signatories to the Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of OE or SCANA has been made to induce the signatories or any other party to enter into the Agreement.

6. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither OE nor SCANA shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by OE and SCANA.

7. The Agreement binds SCANA and its agents, successors and assigns.

8. In connection with the payment of the civil penalty provided for herein, SCANA agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 316A(b) of the FPA, 16 U.S.C. § 825o-1(b), as amended, unless and only to the extent that SCANA contends that the order approving the Agreement contains one or more material modifications to the Agreement. Absent an assertion by SCANA that there has been one or more material modifications to the Agreement, SCANA and OE, to the extent that it may otherwise be deemed necessary, waive findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

9. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.

10. The undersigned representative of each party affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by such party in express reliance on those representations, *provided*, however, that such affirmation by each party's representative shall not apply to the other party's statements of position set forth in Section II of this Agreement.

11. The Agreement may be signed in counterparts.

12. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:

Susan J. Court, Director
Office of Enforcement

12/22/06
Date

Francis P. Mood, Jr., Senior Vice President
and General Counsel
SCANA Corporation

December 22, 2006
Date