CASE NOs.  2011-ERA-00004 and 2011-ERA-00005

In the Matter of:

RICK BUSNARDO and MIKE MASON,
Complainants

V.

SOUTHERN CALIFORNIA EDISON COMPANY,
Respondent

ORDER APPROVING SETTLEMENT

These cases arise under the Energy Reorganization Act of 1974, as amended ("ERA"), which provides whistleblower protections to certain employees for engaging in certain protected activities. 42 U.S.C. § 5851. On May 4, 2012, the parties submitted a “Joint Motion for Approval of Settlement, Agreements, Dismissal with Prejudice, and Confidential Treatment of Settlement Agreements” and signed Settlement Agreements for each of the Complainants herein, which resolves all issues raised in the Complaints, for review and approval by the undersigned administrative law judge. The Motion and attached Settlement Agreements are incorporated herein by reference.

My review of the settlement agreement is limited to a determination of whether its terms are fair, adequate and reasonable. The settlement must adequately protect the whistleblower. Furthermore, the settlement must not be contrary to the public interest.

Paragraph 15 provides that the agreements shall be governed and construed under the laws of the State of California. This choice of law provision is construed as not limiting the authority of the Secretary of Labor and any Federal court, which shall be governed in all respects by the laws and regulations of the United States. See Phillips v. Citizens. Ass.n for Sound Energy, No. 91-ERA-25, slip op. at 2 (Sec.y Nov. 4, 1991).

Paragraph 13 of the settlement agreements provide that Complainants will keep the existence and terms of the settlement agreement confidential, with certain specified exceptions.

Because the Office of Administrative Law Judges is a government agency, and this is a public proceeding, the parties’ submissions in the case, including the settlement agreements, become a part of the record in this case and are subject to the Freedom of Information Act ("FOIA"), 5 U.S.C. §552 (1988). FOIA requires agencies to disclose requested records unless
they are exempt from disclosure under FOIA. *Gerald Fish v. H and R Transfer*, ARB No. 01-071; ALJ Case No. 00-STA-56 (ARB April 30, 2003).

The parties in this matter have indicated that the settlement agreement comprises and includes confidential information which may be exempt from disclosure under FOIA. The Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of requests and for protecting the interests of submitters of confidential commercial information. See 29 C.F.R. §70.26. The settlement agreement in this case will be placed in a separate envelope and identified as being confidential commercial information pursuant to the parties’ request.

After careful consideration of the settlement agreement, I find that none of the terms or conditions are unacceptable. Moreover, I find the terms of the agreement to be fair and reasonable and adequately protect Mr. Busnardo and Mr. Mason. Furthermore, I believe it is in the public interest to approve the agreements as a basis for administrative disposition of these cases and I therefore approve the settlement agreements.

Accordingly, both of these cases are **DISMISSED** with prejudice.

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Russell D. Pulver  
Administrative Law Judge