

Decision 89 03 045

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 SOUTHERN CALIFORNIA EDISON COMPANY,)
 (U 338-E) for Authorization to)
 Record in a Memorandum Account the)
 Costs Associated With Its Hazardous)
 Waste Management Program at the)
 Visalia Pole Yard and the Operating)
 Industries, Inc. Landfill in)
 Accordance With Decision)
 No. 87-12-066.)

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Application 88-11-019
(Filed November 7, 1988)

INTERIM OPINION

Summary of Decision

We authorize Southern California Edison Company (Edison) to record in an interim memorandum account up to \$1,995,200 in expenses related to its Hazardous Waste Management Program at the Visalia Pole Yard (Pole Yard) and the Operating Industries, Inc. (OII) landfill.

Background

On November 7, 1988, Edison filed Application (A.) 88-11-019 requesting approval to record into a memorandum account certain expenses associated with its Hazardous Waste Management Program at the Pole Yard and OII landfill in accordance with the procedure adopted in Edison's 1988 test year general rate case Decision (D.) 87-12-066. Pending issuance of a final Commission decision in this application, Edison also requests authority to record in an interim memorandum account the expenses associated with these projects.

D.87-12-066 adopted a procedure and guidelines for the funding of Edison's hazardous waste management costs. The decision required Edison to file an application for authorization to record in a memorandum account expenses for specific Hazardous Waste

Management Program projects. According to D.87-12-066, the expenses recorded in the memorandum account could be recovered in rates in a subsequent Energy Cost Adjustment Clause or general rate case proceeding following a reasonableness review.

On December 21, 1988, the Division of Ratepayers Advocates (DRA) filed a protest to portions of Edison's application and a motion to accept its late filed pleading. Edison has agreed to waive the time for filing requirement in Rule 8.3 of the Commission's Rules of Practice and Procedure and to extend the deadline for filing DRA's protest to December 21, 1988. Accordingly, we will accept DRA's protest.

On January 20, 1989, Edison filed a motion requesting approval of its application subject to terms and conditions specified in DRA's protest to portions of Edison's application.

The Pole Yard

Site Description and Ownership History

The former Visalia Pole Yard (pole treatment area and service center) was acquired by Edison in three separate parcels. Parcel 1 was acquired on November 10, 1921, Parcel 2 was acquired on August 18, 1954, and Parcel 3 was purchased on March 15, 1960. Parcels 2 and 3 were used as pole storage areas.

Edison operated the Pole Yard from the early 1920s to 1980. Prior to 1968, poles were treated with creosote. From 1968 until closure of operations in 1980, poles were treated with pentachlorophenol.

Analyses have shown that soil and groundwater at the Pole Yard have been contaminated with pentachlorophenol, creosote, and chlorinated dioxins and furans. The dioxins and furans result from chemical impurities that are present in commercial-grade pentachlorophenol formerly used in wood-treating operations.

In 1976, the California Regional Water Quality Control Board Central Valley Region issued a Cleanup and Abatement Order which directed Edison to abate any further discharge of treating

fluids and to clean up all subsurface wastes. In compliance with the order, in 1977, Edison constructed a vertical subsurface retaining wall around the perimeter of the Pole Yard to prevent any further horizontal migration of contaminants off-site in one subsurface aquifer.

Since 1975, Edison has developed and installed an extensive groundwater monitoring and pumping program. Edison monitors the groundwater through 37 monitoring wells both on-site and off-site.

In 1985, Edison installed a tertiary water treatment plant. The system is designed to remove pentachlorophenol, creosote, and chlorinated dioxins and furans from the extracted groundwater. The treatment plant was put into full operation in October 1985 and has proved to be effective. Edison has spent approximately \$7 million to date for cleanup, but does not intend to seek recovery of any of these costs.

Department of Health Services Enforceable Agreement

The Department of Health Service of California (DHS) placed the Pole Yard on the State Superfund list in July 1985. Pursuant to its authority under California Health & Safety Code Section 25355.5(a)(1)(C), DHS issued an Enforceable Agreement on December 17, 1987, which requires that past releases of hazardous substances to the soil, surface water, groundwater, and air at the site are thoroughly investigated and appropriate remedial actions are taken.

In compliance with this Agreement, Edison prepared the following five reports and submitted to DHS in 1988: (1) Remedial Investigation/Feasibility Study Summary Report; (2) Endangerment Assessment; (3) Quality Assurance/Quality Control Report; (4) Health and Safety Plan; and (5) Community Relations Plan. These reports are currently under review by DHS.

Edison estimates that it will have to perform the following work in 1989 to comply with DHS orders:

- a. Continuation of the groundwater monitoring and pumping program.
- b. Modification of the water treatment facility to maintain compliance with the National Pollutant Discharge Elimination System permit.
- c. Respond to DHS' comments regarding the need for additional work in connection with the Remedial Investigation/Feasibility Study Summary Report.
- d. Develop and submit a Feasibility Study.
- e. Prepare and submit a draft Remedial Action Plan within 30 days after the Feasibility Study is accepted by DHS.

Each of these principal project components is described in the discussion of DRA's protest.

Operating Industries Inc. (OII) Landfill

OII Site Description and History

The OII landfill is located at 900 Potrero Grande Drive in Monterey Park, Los Angeles County, California. Portions of the OII landfill were quarried in the past to depths of several hundred feet to extract sand and gravel.

In October 1948, the Monterey Park Disposal Company (MPD) obtained the initial 84 acres of the site for use as a landfill for the City of Monterey Park. It operated the landfill as a municipal facility until 1952, when OII assumed ownership and operation.

In 1974, NRG NUFUEL entered into a business relationship with OII to test and evaluate the landfill for gas (methane) extraction operations. These operations were subsequently undertaken by Getty Synthetic Fuels, Inc. in 1979 and are continuing.

In 1978, nearby residents began to complain of intense odors from the landfill. Enforcement agencies discovered several

landfill violations related to inadequate gas and erosion control, excessive odors, ponding of liquids, and grading problems.

Waste disposal at the site was stopped in 1984. In 1986, the Environmental Protection Agency (EPA) assumed responsibility for the site control and monitoring.

The OII landfill site was placed on the California Hazardous Waste Priority List in January 1984.

EPA Notification of Potentially Responsible Party (PRP)

Under the Federal Comprehensive Environmental Response, Compensation and Liability Act (Superfund) waste generators remain potentially liable for cleanup and other costs associated with such activities even though waste generation and disposal may have occurred many years ago and despite the fact the waste may not have been deemed hazardous at the time of the disposal. The enforcing agency, such as EPA, can require the responsible parties or potentially responsible parties (PRP) to share in the cost of cleanup.

Under the Superfund law, EPA Region IX named Edison a PRP for the cleanup of the OII landfill. EPA also requested information from Edison regarding its past disposal activities at the site. The EPA notice letter was issued under authority of the Comprehensive Environmental Response Compensation and Liability Act. This Act obligates responsible parties to take actions which EPA deems necessary to protect public health or the environment. Responsible parties are encouraged to undertake voluntary future cleanup activities at EPA's direction. EPA has notified 189 PRPs to date.

In a letter to all 189 PRPs dated February 18, 1988, EPA demanded payment from Edison for its share of costs incurred from site maintenance and control activities.

EPA determined that Edison was a PRP from available waste disposal records. Records show that Edison disposed of

approximately 650,000 gallons of oily/muddy wastewater to the OII landfill. Some of these wastewaters were removed from flooded Company vaults or sumps following rainstorms. Additional quantities of oily/muddy waste water were pumped from the Company's numerous vehicle washrack clarifiers, which remove oil and sediment from vehicle wash waters prior to sewer discharge. Most Company automotive service locations utilize such clarifiers. Minor amounts of oily waste were generated from Edison's oil tank and sump cleanings. Oily wastes are classified as hazardous substance by State regulations.

Edison also disposed of approximately 160,000 gallons of boiler cleaning wastewater at the OII landfill. This wastewater contains metallic boiler deposits and acidic cleaning solutions. It is also currently classified as hazardous substance by the State. In total, Edison contributed one-half percent of all liquid waste disposed of at OII, based on available records.

Description of Settlement Options

EPA notified Edison and 189 other companies that they were PRPs to the OII landfill site under federal Superfund law. EPA also demanded payment from the PRPs for site control and cleanup costs. EPA encouraged the PRPs to undertake voluntary cleanup activities at the agency's direction.

Due to the large size of the site and corresponding scale and complexity of cleanup tasks, EPA divided site remediation activities into two phases. The OII Steering Committee, comprised of Edison and other PRPs, negotiated a Consent Decree with EPA to settle Phase 1 of the OII landfill cleanup. This phase includes various site control and maintenance activities, and construction of a leachate treatment plant. Phase 2 will address collection and treatment of landfill gas and final site closure.

Edison has chosen the "cash out" option and anticipates a payment of \$360,700 for its share of the Phase I cleanup. Under this agreement, Steering Committee members may choose to either

participate in the actual cleanup work, or may "cash out" at a premium. By choosing the "cash out" option, Edison will avoid incurring additional costs for Phase 1. The Company is protected against stipulated and statutory penalties specified in the Consent Decree, and is also indemnified against any lawsuits which could arise during the Phase 1 work. Edison also avoids the risk of being assessed additional settlement costs in the future. Oil companies involved in discharging wastes at the OII landfill may pursue an exemption provided under Superfund law which could exclude some of their wastes from the cost allocation process. If they receive this exemption, cost reallocation among other participants would increase Edison's share by an additional \$100,000.

Edison's other settlement option, participating in the actual site cleanup work, would cost about \$260,000. However, it offers no protection against the aforementioned costs. According to Edison, if it does not settle, EPA would likely be successful in forcing the Company to participate. Edison believes that option would almost certainly cost more than the cash-out option.

In conclusion, Edison chooses to settle with EPA on cleanup of the OII site via the cash-out option as described. This decision protects Edison, and its customers, against exposure to additional costs from penalties, reallocation, and lawsuits.

Edison seeks permission to record in a memorandum account only its pro rata cost of the Consent Decree for Phase 1 of the OII cleanup. Edison expects to make a separate application for its future costs when those costs can be determined.

DRA's Position

While DRA believes that Edison has provided adequate documentation to justify its request for memorandum account treatment for certain expenses associated with its Hazardous Waste Management Program at the Pole Yard, it maintains that Edison should provide additional information to justify such treatment for

the remainder of the Hazardous Waste Management Program expenses at the Pole Yard. DRA does not object to granting memorandum account treatment expenses associated with the Hazardous Waste Management Program at the OII landfill.

DRA contends that its agreement to allow memorandum account treatment for the expenses at the Pole Yard and the OII landfill does not indicate prejudgment of any issue regarding the appropriateness of such treatment for those expenses. DRA asserts its right to conduct further discovery regarding all of the expenses associated with the Hazardous Waste Management Program at the Pole Yard and the OII landfill and believes that hearings will be required on these requests for memorandum account treatment.

DRA's recommendations regarding the requested interim memorandum account treatment for the Hazardous Waste Management Program expense items at the Pole Yard are as follows:

1. Pumping/Monitoring Program

The monitoring and pumping program is required by the Cleanup and Abatement Order issued by the Central Valley Regional Water Quality Control Board. Monitoring is also required by National Pollutant Discharge Elimination System permit. The program involves:

- a. Sampling from all monitoring wells on a prescribed basis.
- b. Analyses of samples for the contaminants of concern.
- c. Maintenance of wells so sampling can be accomplished.
- d. Maintenance and operation of water treatment plant.
- e. Development of reports for regulatory agencies.

The total cost of this program is estimated at \$168,000 for October through December of 1988 and \$1,020,000 for the calendar year 1989.

DRA believes that Edison has provided adequate information to justify interim memorandum account treatment for expenses to be incurred through 1989. Therefore, DRA recommends that Edison be allowed to book up to \$1,020,000 in the interim memorandum account for expenses to be incurred in 1989 for the pumping/monitoring program.

2. Modification of the Water Treatment Facility

Edison proposes modifications to the water treatment facility at the Pole Yard to maintain compliance with National Pollutant Discharge Elimination System permit which does not allow any detectible amounts of dioxins or furans in the effluent from the treatment plant. According to Edison, the expected improvements in pollutant detection techniques will necessitate these modifications. Edison estimates that the modification will cost \$940,000.

DRA contends that Edison has not provided the necessary information to support its estimate. In fact, DRA is not convinced that the proposed modifications are necessary since their need is based on the expected improvement in pollutant detection technology. Therefore, DRA recommends that the expenses for this project should not be authorized memorandum account treatment.

3. Respond to Department of Health Services Comments on the Remedial Investigation/Feasibility Study Summary Report

Edison estimates that it will need about \$10,000 in October through December 1988 and about \$250,000 in 1989 to respond to DHS comments with regard to the Remedial Investigation/Feasibility Study, which has already been submitted to DHS. Although

DRA expects additional information from Edison regarding this task, it recommends the inclusion in the interim memorandum account of up to \$250,000 of expenses associated with this item.

4. Develop and Submit a Feasibility Study and Draft Remedial Action Plan

Edison estimates that it will need about \$200,000 in 1989 to develop and submit a feasibility study and draft remedial action plan. Both of these reports will be required by the Enforceable Agreement after the satisfactory completion of the work related to the remedial investigation/feasibility study investigation discussed above. Based on its contacts with the DHS, DRA believes that some of the expenses for the preparation and approval of the feasibility study and draft remedial action plan will be incurred after 1989. DRA recommends that Edison be allowed to include in the interim memorandum account only those expenses related to the preparation and approval of the feasibility study and draft remedial action plan which are incurred in 1989. According to DRA, the expenses for the feasibility study and draft remedial action plan to be included in the interim memorandum account should not exceed \$200,000.

5. DHS Direct Cost Payments

Edison estimates that it will need about \$100,000 in 1989 to reimburse the DHS for direct costs incurred by DHS associated with oversight and review of work performed at the Visalia Pole Yard. However, DRA points out that on page 24 of the Enforceable Agreement, the DHS estimates these costs to be about \$64,500. DRA recommends that \$64,500 should be the maximum amount allowed to be included in the interim memorandum account for this item.

OII Landfill

DRA does not object to interim memorandum treatment for the "cash out" payments for the OII landfill for 1989 up to \$360,700, assuming oil companies are unable to obtain an exemption for any of their wastes. If oil companies are able to obtain the exemption, DRA recommends the inclusion of up to \$460,700 for the "cash out" payments.

Table A shows the requested and authorized amounts for the projects at the Pole Yard:

	TABLE A		DRA Recommended
	Edison's Requested Amounts		And Adopted
	<u>Oct.-Dec. 1988</u>	<u>1989</u>	<u>1989</u>
1 Monitoring and Pumping Program and Operation/Maintenance of Water Treatment Plant	\$168,000	\$1,020,000	\$1,020,000
2 Modification of Water Treatment Plant		940,000	-
3 Superfund Process			
Additional Work for Remedial Investigation/Feasibility Study Report	10,000	250,000	250,000
Feasibility Study/Draft Remedial Action Plan		200,000	200,000
4 DHS Direct Cost Payment		<u>100,000</u>	<u>64,500</u>
Total	\$178,000	\$2,510,000	\$1,534,500

DRA recommends that the establishment of Edison's interim memorandum account be subject to the following conditions:

1. Authority to implement this account is effective on the date of this order. No costs or expenses paid or incurred prior to the date of this order shall be included in

the account. Also, no costs or expenses incurred after December 31, 1989 shall be included in the interim memorandum account.

2. All expenditures shall be consistent with the project documentation filed with the application, as supplemented by the discovery process.
3. Costs recorded in the account shall be subject to subsequent reasonableness review, and shall not be placed into rates until after such review and so ordered by the Commission.
4. The relief granted herein is interim in nature, and shall not be construed to indicate prejudgment of any issue in this case.

Discussion

The terms and conditions proposed in DRA's protest are consistent with the guidelines adopted in D.86-12-066. Edison has agreed to DRA's terms and conditions. Therefore, we will grant Edison authority to record in an interim memorandum account expenses associated with its Hazardous Waste Management Program at the Pole Yard and the OII landfill subject to terms and conditions proposed by DRA.

Because of the prohibition against retroactive ratemaking, Edison will be able to recover only those expenses for its Hazardous Waste Management Program which are incurred after receiving the Commission's approval to record such expenses in an interim memorandum account. Since Edison is currently incurring expenses at the Pole Yard and the OII landfill site, this order should be made effective immediately.

Findings of Fact

1. Edison filed A.88-11-019 requesting Commission approval to accrue in a memorandum account the expenses related to its Hazardous Waste Management Program at the Pole Yard and the OII landfill.

2. On December 21, 1988, DRA filed a protest to portions of Edison's requested relief.

3. In its protest, DRA recommended that portions of Edison's Hazardous Waste Management Program expenses not be allowed in the interim memorandum account and that the memorandum account treatment for the remaining expenses be subject to certain terms and conditions.

4. On January 20, 1989, Edison filed a motion requesting authority to record into an interim memorandum account the expenses incurred at the Pole Yard and the OII landfill in accordance with the terms and conditions proposed by DRA.

5. DRA's proposed terms and conditions are consistent with the guidelines established in D.86-12-066.

6. Edison is currently incurring expenses for its Hazardous Waste Management Program at the Pole Yard and the OII landfill.

7. Edison will be able to recover only those expenses for its Hazardous Waste Management Program at the Pole Yard and OII sites which are incurred after receiving Commission's approval to record such expenses in an interim memorandum account, and before December 31, 1989.

Conclusions of Law

1. Edison's request to record in an interim memorandum account the expenses associated with its Hazardous Waste Management Program at the Pole Yard and the OII landfill should be granted subject to terms and conditions proposed by DRA.

2. This order should be made effective immediately.

INTERIM ORDER

IT IS ORDERED that Southern California Edison Company's (Edison) request to record in an interim memorandum account expenses for its Hazardous Waste Management Program is granted subject to the following terms and conditions:

- a. Edison may record in an interim memorandum account up to \$1,534,500 for expenses associated with its Hazardous Waste Management Program at the Visalia Pole Yard. The breakdown of the expenses shall be in accordance with the adopted amounts in Table A.
- b. Edison may record in an interim memorandum account for the "cash out" payments for the OII landfill for 1989 up to \$360,700 if the oil companies are unable to obtain an exemption for a portion of their share of payments. If the oil companies are able to obtain the exemption, Edison may record up to \$460,700 for the "cash out" payments in the interim memorandum account.
- c. Authority to implement this memorandum account is effective on the date of this order. No costs or expenses paid or incurred prior to the date of this order or after December 31, 1989, shall be included in the account.
- d. All expenditures shall be consistent with the project documentation filed with the application, as supplemented by the discovery process.
- e. Costs recorded in the account shall be subject to subsequent reasonableness review, and shall not be placed into rates until after such review and so ordered by the Commission.

- f. The relief granted is interim in nature,
and shall not be construed to indicate
prejudgment of any issue in this case.


This order is effective today.

Dated MAR 22 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
Commissioners

Commissioner Patricia Eckert,
present but not participating

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Victor Weisner, Executive Director

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- a. Continuation of the groundwater monitoring and pumping program.
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- c. Respond to DHS' comments regarding the need for additional work in connection with the Remedial Investigation/Feasibility Study Summary Report.
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In 1978, nearby residents began to complain of intense odors from the landfill. Enforcement agencies discovered several