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Decision 83 03 032 MAR 16 1983**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of SOUTHERN CALIFORNIA EDISON)
COMPANY for authority to increase)
rates charged by it for electric)
service.)

Application 61138
(Filed December 18, 1981)

SECOND INTERIM DECISION

This decision involves the expenses incurred by the Southern California Edison Company (Edison) to repair the steam generator and associated equipment at the San Onofre Nuclear Generating Station No. 1 (SONGS 1) and Edison's costs for replacement power during the period of these repairs. In Decision (D.) 82-12-055 (December 13, 1982), we reviewed Edison's expenditures for the repairs to the steam generator in an attempt to determine the reasonableness of those expenditures, and deferred consideration of the replacement fuel costs until an appropriate ECAC proceeding. We examined in particular the reasonableness of Edison not bringing a lawsuit against Westinghouse, the designer and manufacturer of the steam generator, to recover some, or all, of the costs associated with the repairs. Based upon the record available to us at the time D.82-12-055 was reached, we stated, but did not find, that "...Edison has made a prima facie showing regarding its election not to institute legal proceedings against Westinghouse, but we have yet to reach a final determination regarding the reasonableness of Edison's actions." (p. 63.)

Accordingly, we ordered our General Counsel to examine Edison's "past, present and future legal remedies relating to the costs of sleeving the steam generator tubes of SONGS Unit 1 and ...if appropriate...recommend disallowance of all or a portion of such costs which have been or may be included in rates." Id. at 263 (Ordering para. 14). Pending such review, we held that the final three of four annual allowances of \$14.2 million included in rates to amortize these costs shall be subject to refund. Id.

The Commission's General Counsel has reviewed the evidence in the record of this proceeding and the applicable law and has reported to us the following conclusions:

1. Edison's claim that any legal action against Westinghouse is barred by the statute of limitations is without merit.

2. The facts in the record before the Commission do not conclusively show that Edison would lose a lawsuit against Westinghouse on the merits.

3. The factual record in this proceeding is very incomplete and does not form an adequate basis for evaluating Edison's chances of success in litigation against Westinghouse.

Based upon this analysis by our General Counsel, and in particular her conclusion that an action was not barred by the statute of limitations if filed quickly (Edison's central contention) we can no longer state that Edison has even made a prima facie case for not filing a lawsuit. Accordingly, we expect Edison to file a suit against Westinghouse as soon as possible, but no later than April 7, 1983, and to vigorously pursue said litigation in good faith. Any reasonable legal costs associated with the action, of course, would be recoverable through rates. If Edison fails to file suit it will have a heavy burden of showing the reasonableness of such action at its next attrition adjustment proceeding or ECAC proceeding.

To protect the ratepayers' interest in any litigation with Westinghouse, we find that Edison should be required to submit to the General Counsel copies of all filings made by any party in such lawsuit against Westinghouse. Edison should also submit to the General Counsel quarterly reports on the progress of the lawsuit.

The General Counsel also recommended that one finding of fact in D.82-12-055 be clarified to correct any ambiguity concerning the Commission's intention. We agree with this recommendation and will amend finding of fact number 45 to reflect more accurately the scope of the record.

We note that although the statute of limitations has not yet run on a suit by Edison against Westinghouse, the statute may run as early as April 8, 1983. Thus, it is critical that this order be issued immediately to provide Edison with an opportunity to file a suit by that deadline. Because of the need for speedy action, the Commission has determined that it must act prior to providing the usual notice resulting from placement of this item in the public agenda in accordance with Section 306 of the Public Utilities Code. Accordingly, pursuant to the authority granted the Commission by Section 701 of the Public Utilities Code, we issue this interim order effective immediately. We note also that Edison has already had numerous opportunities to be heard on this issue and has presented testimony, written briefs, and oral argument to the Commission which is contained in the record of this case.

FINDINGS AND CONCLUSIONS

Findings of Fact.

1. The record before the Commission in this proceeding is not adequate to evaluate accurately Edison's chances of success in

litigation against Westinghouse.

2. Based on the record in this proceeding the filing of a lawsuit by Edison will provide the maximum assurance that ratepayers' interests will be protected.

Conclusions of Law.

1. Edison is not currently barred from filing suit against Westinghouse by the statute of limitations.

2. Edison has not made an adequate showing that failure to file a lawsuit to recover the sleeving costs is a reasonable action.

3. Edison should submit to the General Counsel copies of all filings in any lawsuit against Westinghouse for the recovery of costs associated with sleeving at SONGS 1 and a quarterly progress report on such litigation.

4. Any reasonable legal expenses incurred in such suit should be recoverable in rates.

5. Finding of fact number 45 in D.82-12-055 should be modified to clarify the Commission's intent.

6. The statute of limitations for any action by Edison against Westinghouse may run as early as April 8, 1983.

7. Because of the possible imminent tolling of the statute of limitations, this order should be issued on an emergency basis.

Accordingly, IT IS ORDERED that:

1. Finding of fact number 45 in D.82-12-055 is modified by deleting the current language and substituting:

"45. The record in this proceeding supports the conclusion that Edison did not expect SONGS 1 to experience the corrosion of water tubes caused by intergranular attack during the reactor's operational life."

2. Upon filing of a lawsuit against Westinghouse or other parties to recover damages for the costs of repairs associated with resleeving at SONGS 1, Edison shall submit to the General Counsel of the Commission, copies of all:

- (a) filings made by any party to the proceeding, and
- (b) quarterly reports on the progress of the lawsuit.

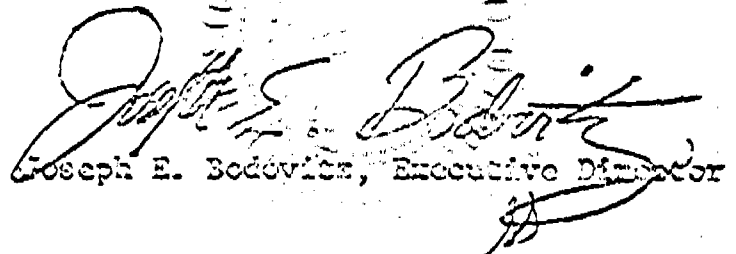
This order is effective today.

Dated MAR 16 1983 at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

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


Joseph E. Bedovick, Executive Director

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Conclusions of Law.

1. Edison is not currently barred from filing suit against Westinghouse by the statute of limitations.

2. Edison has not made an adequate showing that failure to file a lawsuit to recover the sleeving costs is a reasonable action.

3. Edison should submit to the General Counsel copies of all filings in any lawsuit against Westinghouse for the recovery of costs associated with sleeving at SONGS 1 and a quarterly progress report on such litigation.

4. Any reasonable legal expenses incurred in such suit should be recoverable in rates.

~~5. If Edison fails to file a lawsuit against Westinghouse, it should introduce new evidence of the reasonableness of such action at the next appropriate proceeding or risk the disallowance of some or all of the remaining sleeving expenses.~~ *KN*

5. Finding of fact number 45 in D.82-12-055 should be modified to clarify the Commission's intent. *KN*

6. The statute of limitations for any action by Edison against Westinghouse may run as early as April 8, 1983. *KN*

7. Because of the possible imminent tolling of the statute of limitations, this order should be issued on an emergency basis. *KN*

Accordingly, IT IS ORDERED that:

1. Finding of fact number 45 in D.82-12-055 is modified by deleting the current language and substituting:

"45. The record in this proceeding supports the conclusion that Edison did not expect SONGS 1 to experience the corrosion of water tubes caused by intergranular attack during the reactor's operational life."