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Decision 96-07-055 July 17, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 Own Motion of the Maintenance and)
 Operating Practices, Safety Standards)
 and the Reasonableness of Costs)
 Incurred from the Mohave Coal Plant)
 Accident, Southern California Edison)
 Company (U 338-E), Respondent.)

1.86-04-002
 (Filed April 2, 1986)

Stephen E. Pickett, Bruce A. Reed, and Tanya E. Oubre, Attorneys at Law, for respondent.
Kelly Jackson, Attorney at Law, for Public Service Commission of Nevada-Regulatory Staff; Bing E. Young and Richard L. Hinckley, Attorneys at Law, for Nevada Power Company; Anne Hamill, Attorney at Law, for Office of Consumer Advocate, State of Nevada; Mark L. Gentile, Attorney at Law, for the Nevada Power Company; Lawrence J. Stratman II, Attorney at Law, for the State of Nevada, interested parties.
Robert Cagen and Carol Matchett, Attorneys at Law, and John Kupiec, for Division of Ratepayer Advocates.

O P I N I O N

1. Summary

This decision approves a settlement of the reparations phase of this investigation of Southern California Edison Company (Edison), authorizing a refund to ratepayers of approximately \$39 million, including interest. The refund will be reflected in Edison's August or September customer billings and will average about \$3 for a residential customer using 500 kilowatt hours of electricity per month.

information intended to set forth the litigation position of each party and to determine whether settlement was feasible.

One of the first steps was determining the actual costs that Edison had incurred because of the accident. These included costs of repair and replacement of damaged systems in the Mohave plant, the cost of increased output from other plants and additional purchased power during the months that Mohave was out of service, the costs and recoveries attributable to insurance and litigation stemming from the accident, and the adjustments to rate base and other indicia of ratemaking affected by the accident.

The exchange of information continued into 1995. By the fall of last year, each side had developed its litigation scenario. Edison maintained that ratepayers had paid \$11.47 million more than they would have paid had Edison, with the state of knowledge at the time, been able to detect and repair the Mohave systems and prevent the accident. DRA on the other hand said that it would seek \$31.47 million in reparations based on its evidence of when and how repairs could have been made. The difference in estimates was based primarily on the parties' views of when the system defects reasonably could have been discovered and corrected.

4. Terms of Settlement

In late October 1995, DRA and Edison reached agreement on essential terms of a settlement. The agreement was based on an analysis of the litigation scenarios and the development of a third "settlement scenario," representing a compromise on the hypothetical sequence of pipe inspection, management reaction, weld repair, and eventual pipe replacement.

The key term of the settlement agreement is the disallowance of \$20 million, plus interest. Through July 1996, the accrued interest would be approximately \$19.055 million. Interest is to be accrued from June 1985 through the effective date of the Commission's decision, based on the Energy Cost Adjustment Clause

Edison, testified on behalf of the utility. Mahendra Jhala, program manager of the Fuels Branch of DRA, testified on behalf of DRA. The parties introduced the "Report of Southern California Edison and the Division of Ratepayer Advocates in Support of Settlement of the Mohave OII," and this was received into evidence as Exhibit 2-2. The proposed settlement agreement was received into evidence as Exhibit 2-1.

The parties testified that they had last year reached an agreement on the cost to ratepayers of the Mohave accident, and DRA verified these costs through its financial staff. At the same time, the parties were unable to agree on the timing and ratepayer cost impacts of a hypothetical pipe inspection and replacement scenario by which the accident might have been avoided. The parties then developed another pipe inspection and replacement scenario that, according to both DRA and Edison, "comported with all of the evidence, took into account the strengths and weaknesses of each party's litigation position, and represented a potential litigation outcome that could be computed on the same basis as the parties' own scenarios." (Joint Motion, p. 6.)

The only subject of disagreement at the settlement hearing was the manner in which the refund was to be distributed to ratepayers. Edison argued at first that the amount should become part of the ECAC balancing account, with distribution to take place with other debits and credits in January 1997. DRA argued that the refund should take place immediately. Following discussion, DRA formally proposed an immediate refund, and Edison did not oppose that remedy. Our order today requires that Edison issue the refund to customers in billings that are mailed either in August or September 1996.

6. Discussion

The record in Phase 2 of this proceeding reflects the litigation positions of the parties and explains the basis upon which both Edison and DRA compromised their positions in reaching

Findings of Fact

1. The Commission in D.94-03-048 directed the parties to quantify the disallowance of unreasonable costs attributable to the Mohave accident on June 9, 1985.

2. DRA and Edison exchanged information on costs attributable to the Mohave accident, and each party developed a scenario for litigating costs to be disallowed.

3. DRA's litigation scenario called for a disallowance of \$31.47 million of costs. Edison's litigation scenario called for a disallowance of \$11.47 million.

4. In October 1995, the parties reached agreement on principal terms of a proposed settlement agreement.

5. The key term of the proposed settlement agreement is that ratepayers would receive a refund of \$20 million, plus interest of approximately \$19.055 million.

6. Pursuant to Commission rules, the parties convened a settlement conference on December 15, 1995.

7. There have been no objections to the proposed settlement agreement.

8. Testimony and exhibits in support of the proposed settlement agreement were received into evidence at a hearing conducted on May 17, 1996.

Conclusions of Law

1. The joint motion to approve a settlement agreement in Phase 2 of this proceeding should be granted, and the settlement agreement should be approved.

2. Edison should be directed to refund \$20 million plus interest to ratepayers as part of the August or September 1996 billings.

3. The subject-to-refund provisions of I.86-04-002 should be withdrawn on the effective date of this order.

4. This order should be made effective immediately in order that refunds to ratepayers may be issued promptly.

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CALIFORNIA**

Investigation on the Commission's Own)
Motion of the Maintenance and Operating)
Practices, Safety Standards and the)
Reasonableness of Costs Incurred from the)
Mohave Coal Plant Accident. Southern)
California Edison Company (U 338-E),)
Respondent.)

I.86-04-002
(Filed April 2, 1986)

**SETTLEMENT AGREEMENT RESOLVING DISALLOWANCE OF COSTS
FROM MOHAVE PLANT ACCIDENT IN I.86-04-002**

Dated: December 22, 1995

SETTLEMENT AGREEMENT RESOLVING DISALLOWANCE OF COSTS
FROM MOHAVE PLANT ACCIDENT IN I.86-04-002

A. INTRODUCTION

1. The parties to this Settlement Agreement (Settlement) are Southern California Edison Company (Edison) and the Division of Ratepayer Advocates (DRA).
2. The parties intend by this Settlement to resolve all remaining issues in I.86-04-002 (Investigation on the Commission's Own Motion of the Maintenance and Operating Practices, Safety Standards and the Reasonableness of Costs Incurred From the Mohave Coal Plant Accident).

B. BACKGROUND

1. Edison is the majority owner and operator of the Mohave Steam Generating Plant (Mohave) in Laughlin, Nevada. On June 9, 1985, a longitudinal weld in a section of hot reheat pipe in Unit 2 of the Mohave plant failed catastrophically, resulting in the loss of six lives and injury to ten other people, as well as significant property damage.
2. On April 2, 1986, the Commission issued I.86-04-002, commencing an investigation of the maintenance and operating practices, safety standards and the reasonableness of costs incurred from the Mohave plant accident. The proceeding was later divided into two phases.
3. Phase 1 of I.86-04-002 examined the reasonableness of Edison's operations and maintenance of the Mohave plant. Seven and a half years passed between the issuance of I.86-04-002 and the submission of Phase 1 to the Commission for decision.

description of the basis for each party's position is included in the report attached to this Settlement.

C. AGREEMENT ON DISALLOWANCE

1. As a compromise of their positions, the parties agree on a disallowance of \$20 million, plus interest accrued at the recorded ECAC Balancing Account 3-month interest rate from June 1985 through the effective date of the Commission's decision adopting this Settlement.
2. Through December 1995, the accrued interest is estimated to be \$17.8 million, making the total disallowance as of the end of 1995 approximately \$37.8 million.
3. The disallowance shall be effected by making an appropriate adjustment to the ECAC Balancing Account to reflect a disallowance as of the effective date of a Commission decision adopting this Settlement. The Balancing Account adjustment shall be \$20 million as if incurred from June through December 1985, plus interest accrued at the recorded ECAC Balancing Account 3-month interest rate from June 1985 through the effective date of the Commission's decision adopting this Settlement.
4. The parties agree that the disallowance of \$20 million, plus interest, represents a reasonable and appropriate resolution of all outstanding issues in this proceeding. The parties further agree that the \$20 million disallowance represents a compromise of the positions asserted by the parties and in no way constitutes an admission with respect to any particular issue.
5. The parties intend that the report attached to this Settlement, titled Report Of Southern California Edison And The Division Of Ratepayer Advocates In Support Of Settlement Of The Mohave OII, will be made an exhibit and, along with

- recommendations contained in this Settlement, whether reportable under the Commission's Rules or not, except in the presence of the other party, or unless otherwise agreed to by both parties.
5. The parties agree to actively defend this Settlement and to develop a mutually acceptable defense if its approval is opposed by non-parties to this Settlement.
 6. Except as expressly provided for in this Settlement, none of the principles or methodologies underlying this Settlement shall be deemed by the Commission, the parties, or any other entity as precedent in any proceeding or in any litigation, except in order to implement in this proceeding the recommendations contained in this Settlement. The parties reserve the right to advocate different principles or methodologies from those underlying this Settlement in other proceedings.
 7. The parties agree not to contest this Settlement before any regulatory agency or court of law where this Settlement, its meaning or effect is an issue. No party shall take or advocate, either directly, or indirectly through another entity any action inconsistent with the terms of this Settlement.
 8. The parties agree that the Commission shall have exclusive jurisdiction over any issues related to the Settlement and that no other court, regulatory agency, or other governing body shall have jurisdiction over any issue related to the interpretation of this Settlement, the enforcement of this Settlement, or the rights of the parties to the Settlement (with the exception of the California Supreme Court in connection with review of any Commission decision). All rights and remedies are limited to those available before the Commission. The parties further agree that no signatory to this Settlement, officer, director, or employee of either

conditions and recommendations set forth in this Settlement Agreement. The parties agree that this Settlement Agreement may be executed in counterparts.

Dated this 22nd day of December, 1995.

Southern California Edison
Company

Division of Ratepayer
Advocates

/s/Bruce A. Reed
Bruce A. Reed
Attorney for Edison

/s/ Carol L. Matchett
Carol L. Matchett
Attorney for DRA