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MAIL DATE
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Decision 97-01-047 January 23, 1997

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 a Certificate that)
the Present and Future Public)
Convenience and Necessity Requires)
or Will Require Edison to Construct)
and Operate a 220 kV Double-Circuit)
Transmission Line Between the Kramer)
Substation and the Victor Substation)
in San Bernardino County,)
California.)

ORIGINAL

Application 89-03-026
(Filed March 22, 1989)

DECISION GRANTING LIMITED REHEARING OF DECISION 96-09-039

On October 7, 1996, TURN timely filed an application for rehearing of Decision ("D.")96-09-039. In D.96-09-039, we granted in part a petition filed by Southern California Edison Company ("Edison") which sought to modify D.90-09-059, a decision that granted a certificate of public convenience and necessity to Edison to construct and operate the Kramer-Victor project, and specified an allocation of project costs among the project participants -- Edison, Cal Energy and Luz. The Kramer-Victor project was subsequently abandoned due to the bankruptcy of Luz. Prior to that event, Edison had already incurred costs reimbursable by Luz and CalEnergy in accordance with the allocation scheme adopted in D.90-09-059. In addition, Edison had advanced some \$7 million to Luz.

By D.96-09-039, we relieved (1) Cal Energy of responsibility for its proportionate share of project costs originally allocated to it, and assigned such responsibility to Luz; (2) continued to hold Luz liable for that portion of the project costs assigned to it; and (3) authorized Edison to treat all project costs as abandoned plant for ratemaking purposes. As

a result, Edison was authorized to "collect, at minimum \$5.778 million from ratepayers which represents Edison's total project-specific investment of \$17.131 million minus the cost responsibility assigned to Luz;" and to collect from ratepayers any balance of the remaining \$11.353 million "after Edison undertakes appropriate efforts to pursue collection" of such amount attributable to Luz. D.96-09-039 at 17, Conclusions of Law 3 and 4.

TURN seeks rehearing of our decision on three grounds. First, TURN contends that the decision to relieve Cal Energy of responsibility for its share of interconnection costs for the Kramer-Victor project is not based on record evidence. Second, TURN asserts that Commission precedent does not allow the Kramer-Victor costs incurred by Edison to be treated as abandoned plant for ratemaking purposes. Third, TURN claims that the CPUC's finding that all costs incurred by Edison were reasonable lacked record evidence.

Both Edison and Cal Energy filed in opposition to TURN's application for rehearing. As discussed below, we have carefully considered TURN's first two claims and find that they lack legal merit. TURN's third claim, however, does have legal merit, and accordingly, we will grant limited rehearing.

Both our decision to relieve Cal Energy of cost responsibility for its share of the interconnection costs for the Kramer-Victor project and our decision to treat the proportionate share of costs incurred by Edison for the project are policy judgments that are supported by reasoned analysis of the facts presented on the record. As explained in D.96-09-039, we initially assigned a portion of cost responsibility to Cal Energy for the Kramer-Victor project because Cal Energy stood to benefit therefrom. Pending completion of that project, Edison upgraded certain transmission facilities to serve Cal Energy as an interim solution. Cal Energy expended some \$28 million for these upgrades. After Luz declared bankruptcy, that solution was made

permanent in accordance with a settlement entered into by Cal Energy and Edison.

Based on these record facts, we concluded that since Cal Energy was blameless for the demise of the Kramer-Victor project and received no benefit from the unbuilt project, Cal Energy should not be held responsible for its share of the project costs originally apportioned to it. We also pointed out that Cal Energy had already incurred costs for the alternate interconnection service it received from Edison. TURN's disagreement with our reasoned policy judgment that was factually based does not constitute legal error.

TURN's disagreement with our decision to include in rate base as abandoned plant the costs incurred by Edison is also a reasonable policy judgment that we adequately explained based on the facts presented to us. Under Section 1005.5(c) of the Public Utilities Code ("P.U. Code"), the Commission has discretion to determine the ratemaking treatment of construction costs for projects that are discontinued. Section 1005.5(c) does not specify any particular criteria that the Commission must follow in exercising its discretion to include the reasonable costs of such projects in rates. In this case, we applied the general test of "reasonable managerial skill" set forth in prior precedent in evaluating Edison's conduct in conjunction with a project for which Edison could choose neither the time, place or size, nor the partners with whom Edison was required to cooperate. We then evaluated Edison's conduct in advancing funds to Luz and thereafter in suspending the project once Edison received definitive notice of the seriousness of Luz's financial problems. Finding Edison's conduct reasonable, we concluded that abandoned plant treatment of the costs incurred by Edison was appropriate. Our findings and conclusions are based on these facts.

Notwithstanding the lack of legal merit of TURN's first two arguments, its final argument does have legal merit. TURN correctly argues that the evidentiary record upon which we based

our decision lacks any factual showing that the costs that Edison sought to include in rate base for the discontinued project were reasonable.

Section 1005.5(c) provides in part that "After construction has commenced, the corporation may apply to the commission for authorization to discontinue construction and recover those costs which were reasonably and prudently incurred. After a showing to the satisfaction of the commission ... the commission may authorize discontinuance of construction and the recovery of those construction costs which were reasonable and prudent."

By its terms, Section 1005.5 places the burden of proof with the utility to demonstrate the prudence of costs that it seeks to include in rates. Edison has failed to satisfy its burden. Specifically, Edison made two arguments. First, Edison asserted that the Division of Ratepayer Advocates ("DRA") found that the costs incurred by Edison, with minor adjustment, were reasonable. Edison, however, never sponsored on the record the "comprehensive audit" report that Edison claims that DRA performed, nor did DRA. All that DRA did was file a protest which makes the conclusory statement that DRA confirms that nearly all the project costs have been correctly included for ratemaking purposes. DRA neither prepared or filed a report, sponsored a witness, nor otherwise demonstrated on the record an evidentiary basis for its conclusion. The unadorned DRA statement in an unverified pleading is simply an offer of evidence, and does not satisfy the showing required by Edison under Section 1005.5¹. Re Mobile Communications Corp., 12 CPUC 2d 208, 210 (1983) (protest is a pleading containing an offer of evidence which a protestant would sponsor or elicit at a public

1. Conversely, it would not be proper for the Commission to find costs incurred by Edison to be unreasonable based on an unsupported statement by DRA made in a protest.

hearing); Citizens Utils. Co., 75 CPUC 496, 502 n. 4 (1973) (evidence of actual costs, not pleadings of counsel, is required); Re Pacific Bell, 27 CPUC 2d 1, 21 (1987) (whenever utility comes before Commission seeking affirmative relief, utility must justify reasonableness of request by making at least a prima facie case of reasonableness even in absence of opposition).

Edison also cites the project status reports that it periodically filed with us in support of its required showing. According to Edison, these reports contained detailed cost, budget, scheduling and other information about the project. However, a review of these reports reveals that they constitute nothing more than an accounting of the costs that Edison expended. The reports do not demonstrate that such costs were reasonably incurred for a project that was discontinued.

Edison offered nothing more in addition to the above to justify the reasonableness of the costs that it incurred even though it was repeatedly invited by the administrative law judge to make the necessary evidentiary showing of prudence. Edison declined the invitation. Without more, the record is devoid of any factual basis upon which we can rationally conclude that the costs that Edison seeks to recover in rates "were reasonably and prudently incurred" under Section 1005.5(c). We will therefore grant limited rehearing to permit Edison to make the evidentiary showing of prudence required by law.

Based on the above, IT IS ORDERED that:

Limited rehearing of D.96-09-039 is granted to permit Edison to make the requisite evidentiary showing that the costs that it incurred for the Kramer-Victor Project are "reasonable

and prudent² in accordance with Section 1005.5(c) of the P.U. Code.

This order is effective today.

Dated January 23, 1997 at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners