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Decision 97-02-009 February 5, 1997

ORIGINAL

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 Authority to Increase its Authorized Level of Base Rate Revenue Under the Electric Revenue Adjustment Mechanism for Service Rendered Beginning January 1, 1992 and to Reflect this Increase in Rates.

Application 90-12-018
(Filed December 7, 1990)

1.89-12-025
(Filed December 18, 1989)

And Related Matters.

1.91-02-079
(Filed February 21, 1991)

(See Decision (D.) 91-12-076, D.92-06-020, D.92-12-022,
D.93-12-034, D.94-10-041, D.95-01-018, D.95-09-015,
and D.96-03-005 for appearances.)

TWENTY-SEVENTH INTERIM OPINION: MOTION TO DISMISS

1. Summary of Decision

Phase 5 of this test year 1992 general rate case is intended to review allegations of misappropriation of demand-side management and research, development, and demonstration funds by applicant Southern California Edison Company (Edison). Applicant's motion to dismiss Phase 5 and terminate a related memorandum account is denied.

2. Background

The Commission established Phase 5 of this proceeding in D. 92-07-077, issued July 22, 1992. Edison's base rate costs relating to a portion of its revenue requirement were made subject to refund, pending the outcome of investigations into alleged misappropriation of funds. Some of the disputed costs are recorded in an investigation memorandum account. The Commission clarified the scope of Phase 5 in D.93-01-024,

issued January 8, 1993. The memorandum account balance as of November 1996 was approximately \$11.7 million plus interest.

On November 18, 1996, following lengthy investigations and discovery disputes, Edison served a package of documents that includes: (1) a report on its investigation of alleged misconduct in the Western Division during 1991-1992; (2) a report on its investigation of transactions with Integrated Energy Group (IEG) and affiliates during 1988-1992; (3) associated exhibits and prepared testimony; and (4) a review of costs recorded in the investigation memorandum account.

As a result of its investigations, Edison admits that one of its Western Division energy services managers intimidated and coerced subordinate Edison employees to submit false, inflated expense reports to Edison and return cash to the manager. Another manager falsified expense reports for personal gain. Edison also found IEG billing irregularities that were fraudulent in nature. Edison refused to pay IEG \$1.5 million, leaving \$9.6 million paid, and terminated its contracts with IEG. Edison retained the law firm of Munger, Tolles & Olson to review the Western Division investigation, to conduct the IEG investigation, and to provide Edison with legal advice. Edison has provided the law firm's reports to the Office of Ratepayer Advocates (ORA). The Los Angeles County District Attorney's Office also reviewed these matters, but closed its investigation after concluding that criminal prosecution would likely not be successful.

On December 23, 1996, ORA served on the Commission and the assigned Administrative Law Judge an ORA report and the report of its consultant, along with supporting exhibits. ORA did not release the reports to the public because Edison claims confidentiality for much of the underlying information. ORA hopes to resolve confidentiality issues soon, and to make the reports public.

3. Edison's Motion

Concurrent with service of its investigation reports and testimony, Edison filed a motion to terminate the investigation memorandum account and dismiss Phase 5. ORA filed an opposition to the motion.

Edison makes two arguments in support of its motion. First, despite abundant opportunity, ORA has failed to pursue its review with reasonable diligence. It has been more than four years since Munger, Tolles & Olson concluded its investigations. This undue delay caused by ORA has unreasonably prevented Edison from concluding Phase 5, and strongly suggests that ORA has no legitimate basis to oppose Edison's conclusions resulting from its investigations. Edison cites Commission dismissal of complaints due to failure to prosecute with reasonable diligence. Second, further Commission action is unnecessary because Edison has thoroughly investigated the allegations, has taken corrective steps, and has instituted preventive measures to avoid recurrence of misconduct. Edison has terminated offending employees, and amounts not paid to IEG more than offset amounts improperly billed to Edison. It was reasonable for Edison to engage IEG, and Edison received consulting services that were worth the costs incurred. Edison claims there is no genuine issue of fact before the Commission, and Edison is entitled to dismissal as a matter of law.

According to ORA, Phase 5 is needed to determine whether Edison has acted prudently in matters which have cost ratepayers millions of dollars. The Commission should review and determine the value ratepayers have received for Edison expenditures that were admittedly misappropriated or fraudulent in nature. The outcome of this review should not be decided by Edison alone, especially not before ORA can make a full showing of its case. Edison characterizes its motion as a request for summary judgment, which is a drastic remedy in light of the many factual issues raised in ORA's reports. ORA regrets the delays to date, but ORA does not command the resources at Edison's disposal, and retrospective reasonableness reviews are often delayed by staff and Commission work on rate proceedings with more immediate completion deadlines. For example, the Commission's review of a tragic explosion at Edison's Mojave Generating Station in 1985 went to hearing eight years after the investigation began.

4. Discussion

We will deny Edison's motion. We, too, regret the delay in litigation of Phase 5, but we are not convinced that ORA caused the delay by lack of effort or because ORA has a weak case. ORA has done a reasonable job of completing its reports in the face of higher priority rate proceedings and extended discovery disputes. (The last discovery ruling in Phase 5 was issued seven months ago, on July 9, 1996.) Based on the pleadings before us, we find that ORA has pursued its Phase 5 review with reasonable diligence.

We also concur with ORA that there are unresolved issues of fact. Before determining the fate of amounts recorded in the investigation memorandum account and other charges that are subject to refund, we intend to review the prudence of Edison's acts and omissions prior to the allegations of misappropriation of funds, and Edison's later corrective and preventive actions. In 1992 we stated that "ratepayers should be protected from unreasonable overcharges...." (D.92-07-077, discussion at mimeo. p. 5.) Findings regarding the reasonableness of Edison's actions are at the heart of Phase 5. There remain many factual disputes between Edison and ORA.

Edison's own Preliminary Statement suggests that reasonableness of costs is the central issue:

"The Company will seek Commission approval for final disposition of the amount recorded in the Memorandum Account as a part of Application No. 90-12-018, Edison's 1992 Test Year General Rate Case. Upon completion of the Commission's review..., the Company shall make appropriate ratemaking adjustments to remove from final rates any amounts found to be inappropriate for final rate recovery." (Revised Cal. PUC Sheet No. 19041-E, effective Jan. 1, 1995.)

5. Findings of Fact

1. ORA has pursued its Phase 5 review with reasonable diligence.
2. There are unresolved issues of fact in Phase 5.

6. Conclusion of Law

Edison's motion should be denied.

TWENTY-SEVENTH INTERIM ORDER

IT IS ORDERED that the motion to dismiss Phase 5 of this proceeding and terminate the investigation memorandum account, filed November 18, 1996, by Southern California Edison Company, is denied.

This order shall become effective 30 days from today.

Dated February 5, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners