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Decision 97-02-054 February 19, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of)
SOUTHERN CALIFORNIA EDISON COMPANY)
(U 338-E) for: (1) authority to revise)
its Energy Cost Adjustment Billing)
Factors, its Major Additions)
Adjustment Billing Factors, its)
Electric Revenue Adjustment Billing)
Factor, its Low Income Surcharge, and)
Base Rate Levels effective)
January 1, 1992; (2) Authority to Revise)
the Incremental Energy Rate, the Energy)
Reliability Index and Avoided Capacity)
Cost Pricing; and (3) Review of)
Reasonableness of Edison's operations)
during the period from April 1, 1990)
through March 31, 1991.)

ORIGINAL

A.91-05-050
(Filed May 24, 1991)

DENIAL OF REHEARING, AND ORDER GRANTING
MODIFICATION OF DECISION 96-10-069

Southern California Edison Company (Edison) filed an application for rehearing of our Decision (D.)96-10-069 in which we conditioned approval of a settlement agreement between Edison and the Division of Ratepayer Advocates (DRA). By its application, Edison asks the Commission to stay the date the decision becomes "final" under Rule 85 of the Commission's Rules of Practice and Procedure (Rule 85). Edison also asks for a modification of a reference to "further disallowances" which appears at page 5 of the decision. Edison fears that this phrase may characterize by implication the nature of its settlement agreement with DRA.

Upon review of Edison's application, and each matter presented therein, we here deny rehearing of D.96-10-069. The application does not demonstrate legal error as is required by

Cal. Pub. Util. Code Section 1732.¹ However, we agree that a \$14 million compromise agreed to in the settlement should not be characterized as a "disallowance" and, to avoid any confusion, we will delete the sentence which troubles Edison.

Edison's Request for A Stay Does Not Establish Legal Error

In a settlement agreement with DRA, Edison agreed to credit \$14 million to its ECAC balancing account in order to resolve a reasonableness dispute in the above-captioned proceeding. Upon reviewing the agreement for approval, the Commission determined that the \$14 million should be instead allocated to customers through an electric deferred refund account. The Commission, therefore, ordered in D.96-10-069 that the settlement agreement not be approved until the parties modified the terms for allocating the \$14 million.

In the application for rehearing, Edison asks that "the Commission stay the date the Decision shall become final under Rule 85 until the Commission has issued a final decision on the Refund Issue in the restructuring proceeding." Application, at page 3. By this request, Edison is effectively seeking a postponement of the 30-day time limit for filing another application for rehearing of D.96-10-069.

However, Rule 85 implements the filing requirements prescribed by statutory law. Section 1731(b) provides that a party must file an application for rehearing with the Commission within 30-days of the issuance (i.e. the mailing) of a decision in order to preserve the right to later seek judicial review of the decision. Where Edison asks, therefore, for a "stay" of the date the decision becomes "final" under Rule 85, it is actually asking the Commission to override the 30-day time limit prescribed in Section 1731(b), something the Commission may not

1. Unless otherwise indicated, all subsequent references to code sections shall be to the California Public Utilities Code.

do. The Commission does not have the authority to stay or modify jurisdictional filing date requirements prescribed in statutes by the legislature. We find, therefore, that instead of demonstrating legal error in D.69-10-069, Edison's application asks the Commission to unilaterally change statutory law. For this reason alone, there is abundant cause to deny Edison's application for rehearing.

We will, nevertheless, respond to the particular procedural concerns described by Edison in its application for rehearing. Edison contends that the order conditioning approval of the settlement agreement on the allocation of the \$14 million to a deferred refund account should await the Commission's decision in its restructuring proceeding, R.94-04-031/I.94-04-032. In this latter proceeding, a deferred refund account is being considered generically for all of California's electric utilities. In fact, since the filing of Edison's application, the Commission issued an Interim Order in the restructuring proceeding which provides that amounts agreed to in settlement of reasonableness disputes, as well as disallowances ordered by the Commission, are to be refunded to customers through deferred refund accounts. D.96-12-025, Ordering Paragraphs No. 2 and 4, and page 8.

Although it is correct, therefore, that the issue in one proceeding is related to the issue in another proceeding, Edison has not described legal error as required by Section 1732. An application for rehearing must specifically set forth grounds on which the applicant believes the Commission's order to be unlawful. Edison demonstrates no legal error in our conditioning approval of the settlement agreement with DRA on allocating the \$14 million to the deferred refund account. Edison does not argue the lack of a rational basis for our decision.

Edison, furthermore, has not substantiated a procedural problem that could rise to a legal error. It has merely noted a complexity of the regulatory process. This process, however, does not infringe on Edison's interests or rights. Edison may

protect its interests without the stay it has incorrectly requested in the present application. For example, in the restructuring proceeding, Pacific Gas and Electric Company (PG&E) has filed for rehearing of the decision involving the deferred refund account. Should the Commission grant rehearing and decide that amounts agreed to in the settlement of reasonableness disputes are not required to be refunded to customers through the electric deferred refund account, Edison may then file a petition for modification of D.96-10-042 consistent with that order. On the other hand, should the Commission deny rehearing on the matter in the restructuring proceeding, and affirm the use of deferred refund accounts, pursuant to Section 1758, Edison may appear in any Supreme Court review proceeding.

In conclusion, because Edison has not demonstrated that our order in D.96-10-069 is unlawful, its application for rehearing is denied.

Reference to "Further Disallowances" Shall Be Deleted

Edison appends to its application what is in fact not a claim of legal error, but a request for modification of a sentence on page 5 of D.96-10-069 which refers to "further disallowances." Edison believes this sentence may imply the \$14 million credit was a disallowance rather than a compromise of a reasonableness dispute. Edison notes that in the settlement agreement with DRA, there is an express disclaimer of any implication of unreasonable behavior. The settlement indeed provides that Edison's agreement does not represent an admission of unreasonable behavior by the company. Section 4.1 of the Settlement Agreement, a copy of which is attached to D.96-10-069. We will, therefore, strike the sentence which Edison thinks may imply that the \$14 million is a "disallowance."

IT IS THEREFORE ORDERED that:

1. With respect to a stay of the date for applying for rehearing of our order in D.96-10-069, rehearing is denied.
2. The following sentence, which appears in D.96-10-069 at page 5, last sentence of the second paragraph, is hereby deleted:

"Those issues may give rise to further disallowances."

3. This order is effective today.

Dated February 19, 1997, at San Francisco, California

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