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Decision 97-04-069 April 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 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)

ORIGINAL

And Related Matter.)
_____)

I.91-02-079
(Filed February 21, 1991)

Appearances

Applicant: Richard K. Durant, Attorney at Law, and
Munger, Tolles & Olson, by Kathleen M. McDowell,
Attorney at Law, for Southern California Edison
Company.

Interested Parties: Ater, Wynn, Hewitt, Dodson
& Skerritt, by Michael P. Alcantar, Attorney at
Law, for Cogenerators of Southern California, and
Paul J. Kaufman, Attorney at Law, for Kern River
Cogeneration; Carolyn A. Baker, Attorney at Law,
for Edson + Modisette; and Don Schoenbeck, for
Regulatory & Cogeneration Services.

Office of Ratepayer Advocates: Robert Cagen, Attorney
at Law, Scott Logan, and David Morse.

Information Only: Bruce Foster, for Southern
California Edison Company; and Brenda Jordan.

TWENTY-EIGHTH INTERIM OPINION

1. Summary of Decision

The February 21, 1997, motion of Southern California Edison Company (Edison) to limit the scope of Phase 5 in this proceeding is denied.

2. Background

The Commission established Phase 5 of Edison's test year 1992 general rate case in Decision (D.) 92-07-077. The purpose of Phase 5 is to review allegations of misappropriation of funds made by the Office of Ratepayer Advocates (ORA) and its predecessor the Division of Ratepayer Advocates (DRA). Phase 5 covers issues in what are known as the Western Division investigation, the Integrated Energy Group (IEG) investigation, and related investigations. See D.92-07-077, D.93-01-024, and D.97-02-009 for additional background.

As authorized by the Commission, Edison established an Investigation Memorandum Account (IMA) which tracks specific investigation-related costs beginning January 1, 1988. In addition, certain base rate costs are subject to refund beginning July 22, 1992:¹

Edison's ratepayers should be protected against possible overcharges for direct payments to vendors and third parties, shareholder incentive payments, litigation costs, internal audit and corporate security investigation costs, outside legal fees, consultant costs associated with outside legal assistance, customer service account billings, strategic planning accounts, merger-related expenses, management compensation,

¹ D.92-07-077, Finding of Fact 9 at mimeo. p. 10, Ordering Paragraph 6 at mimeo. p. 12 (1992).

tax liability, all costs listed by Edison in the proposed accounting scheme in Attachment A to its May 29, 1992 pleading in this matter, and related costs covered by the Western Division, IEG and related investigations.

The contested costs are generally associated with Edison's demand-side management (DSM) and research, development, and demonstration (RD&D) programs.

On October 23, 1992, DRA filed a motion requesting that three items be consolidated with Phase 5: (1) review of portions of an affiliate transactions audit that was the subject of Phase 4 of the proceeding, (2) review of an RD&D financial audit ordered in Phase 1 of the proceeding,² and (3) review of RD&D capitalization testimony submitted by Edison. The Commission denied DRA's motion in D.93-01-024. On November 18, 1996, concurrent with service of its investigation reports and prepared testimony, Edison filed a motion to terminate the IMA and dismiss Phase 5. The Commission denied Edison's motion in D.97-02-009.

The assigned administrative law judge adopted a Phase 5 procedural schedule at a January 29, 1997 prehearing conference.³ Edison and ORA have served opening testimony, and rebuttal testimony is due soon.

3. Edison Motion

On February 21, 1997, Edison filed a motion seeking to limit the scope of Phase 5. Edison argues that ORA's prepared testimony, specifically a recommendation for an extensive audit of Edison's DSM and RD&D activities, would unreasonably expand Phase 5. Edison asks the Commission to confirm that: (1) the

² D.91-12-076, Ordering Paragraph 27, 42 CPUC2d 645, 759 (1991).

³ Tr. PHC-11:386-388.

scope of Phase 5 hearings will be limited to determining if Edison's discovery of and response to Western Division expense account irregularities and IEG billing irregularities were reasonable, and (2) the ORA audit recommendation is beyond the scope of Phase 5. Edison makes five arguments in support of its motion:

First, Edison claims that D.92-07-077 limits Phase 5 to the Western Division and IEG investigations as they address alleged misappropriation of funds. Because ORA's recommended audit would cover years in which DSM and RD&D funds are not subject to refund, it is beyond the scope of Phase 5.

Second, the Commission four years ago rejected a similar DRA request to expand the scope of Phase 5. The Commission denied a request to include the financial audit of RD&D expenses in Phase 5, and it should do so again now. According to Edison, ORA is trying to replay the game it lost in D.93-01-024.

Third, permitting a reasonableness review of past costs in the form of ORA's recommended audit would be unlawful retroactive ratemaking. Edison claims that ORA's objective is not to perform an audit, but is to conduct a reasonableness review of Edison's entire DSM and RD&D programs since 1988. Edison points to a specific passage in the ORA prepared testimony, which states that based on the audit findings ORA may recommend penalties and remediation. Edison argues that remediation would violate retroactive ratemaking prohibitions. Edison makes a related argument regarding the previous financial audit of RD&D activities, which was performed by Barrington-Wellesley Group (BWG). Edison believes the ORA audit would be duplicative of the BWG audit, and constitutes a collateral attack on BWG's findings, which the Commission has already reviewed and approved.

Fourth, there is no connection between ORA's expanded audit scope and the IEG investigation. Edison's DSM and RD&D activities during ORA's recommended audit period, from 1988 through 1996, encompass more than \$1.1 billion of utility effort. IEG billings were less than 1% of that amount, and Edison paid no money to IEG after 1991.

Fifth, ORA's recommendation is untimely. ORA has waited too long to launch a large-scale audit as part of Phase 5. Many Edison employees with the knowledge to assist an audit effort have left the company, the audit trail is stale, and the audit would be expensive. The audit is unwarranted.

4. ORA Response

ORA opposes Edison's motion, arguing that it has no merit. ORA submits that the audit request must be reviewed and decided based on the entire Phase 5 record. The audit recommendation flows from factual information presented in Edison's and ORA's investigation reports. ORA believes that Western Division and IEG problems were not isolated events, as Edison claims, but are evidence of widespread failings by Edison. The audit is needed to identify and cure Edison's management inadequacies.

According to ORA, it is premature to address retroactive ratemaking issues. The primary purpose of the audit is to provide a factual basis for prospective solutions to DSM and RD&D problems revealed by the audit. The audit should develop historical information that can be used to guide future actions.

ORA believes the audit is not untimely. It will not rely solely on recollections by Edison staff, but will uncover written materials, documents, and procedures in Edison's files. Although

the passage of time is less than ideal, it should not prevent the undertaking of an audit that ultimately will benefit ratepayers.

5. Discussion

We agree with ORA in this dispute. Edison has not met its burden of justifying Phase 5 scope limitations.

In D.92-07-077, the Commission did not limit Phase 5 to review of costs recorded in Edison's IMA, or even to issues in the Western Division and IEG investigations. The decision makes subject to refund certain costs that are not in the IMA, and applies ratepayer protections to costs covered by the Western Division, IEG, and related investigations. Arguably, ORA's recommended audit qualifies as a related investigation. We will not make such a finding now, but ORA should have the opportunity to present its case in Phase 5 proceedings.

The Commission's denial of DRA's earlier motion to review the RD&D financial audit in Phase 5 does not preclude consideration of ORA's current proposal, in the same way that denial of Edison's earlier motion for dismissal of Phase 5 does not preclude consideration of the instant motion.

We agree with Edison that DSM and RD&D expenditures from January 1, 1988, through July 21, 1992, that are not recorded in the IMA are not subject to refund, but that conclusion does not prevent Commission review of Edison's activities during the period. As ORA points out, historical information can be used as a basis for prospective Commission orders. The orders might revise Edison's management of DSM and RD&D activities, or they could impose penalties for past failings. Public Utilities Code § 701 and § 2107 provide ample authority for such penalties. For these reasons, a nebulous concern about retroactive ratemaking problems is insufficient to foreclose ORA from proposing an extensive audit.

It is premature to judge the connection between the Western Division and IEG investigations and ORA's recommended audit. ORA apparently believes that evidence of specific irregularities supports further review of all of Edison's DSM and RD&D activities. Edison disagrees. Both ORA and Edison deserve full opportunities to present testimony and argument in this dispute. To grant Edison's motion would deny ORA a chance to be heard. Our concern over fair opportunity is magnified by uncertainty over future ratemaking proceedings. In Edison's most recent general rate case, the Commission suggested that it might be the last such proceeding.⁴ Under performance-based ratemaking, Commission staff and other parties will have fewer opportunities to review past utility operations. For example, in D.96-09-092, the Commission approved a performance-based ratemaking scheme for Edison's nongeneration revenue requirements that will endure through December 31, 2001.

Findings of Fact

1. Phase 5 covers issues in the Western Division investigation, the IEG investigation, and related investigations.
2. The Commission's denial of DRA's earlier motion in D.93-01-024 does not preclude consideration of ORA's current audit proposal.
3. Historical information can be used as a basis for Commission orders that might revise Edison's management of DSM and RD&D activities or impose penalties for past failings.
4. It is premature to judge the connection between the Western Division and IEG investigations and ORA's recommended audit.

⁴ D.96-01-011, discussion at mimeo. p. 26 (1996).

5. ORA should have the opportunity to present its case for an audit in Phase 5 proceedings.

Conclusions of Law

1. Edison DSM and RD&D expenditures from January 1, 1988, through July 21, 1992, that are not recorded in the IMA are not subject to refund.

2. Edison has not met its burden of justifying Phase 5 scope limitations.

3. Edison's motion should be denied.

4. This order should become effective today, to promote timely commencement of Phase 5 hearings.

TWENTY-EIGHTH INTERIM ORDER

IT IS ORDERED that the February 21, 1997, motion of Southern California Edison Company to limit the scope of Phase 5 in this proceeding is denied.

This order is effective today.

Dated April 23, 1997, at San Francisco, California.

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