

Decision 98-06-069 June 18, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company for Orders:
(1) Approving a Proposed Settlement and Power Purchase Agreement Restructuring Between Edison and Pacific Energy; (2) Authorizing Edison's Recovery in Rates of Payments Made Pursuant to the Power Purchase Agreements included in the Proposed Settlement and Restructuring.

ORIGINAL

Application 96-08-039
(Filed August 16, 1996)

FINAL OPINION

Summary

In this decision, we determine the disposition of a \$15 million payment made by Pacific Energy (Pacific), a Qualifying Facility (QF), to Southern California Edison Company (Edison) pursuant to a settlement governing the renegotiation of two power purchase agreements. We approved the settlement in Decision (D.) 97-07-039 (July 16, 1997). In this decision, we order the payment to be recorded as a credit to Edison's Transition Cost Balancing Account (TCBA).

This decision closes Application (A.) 96-08-039.

Discussion

D.97-07-039 reserved for this final decision the issue of whether the settlement payment in question should be refunded directly to ratepayers through the Electric Deferred Refund Account (EDRA) or, alternatively, recorded as a credit to the TCBA and thereby used to reduce the amount of transition costs to be recovered during the transition period established by Assembly Bill (AB) 1890. Ordering Paragraph (OP) 2 of D.97-07-039 fixed a

briefing schedule on this issue; OP 3 required Edison to place the payment in a memorandum account pending issuance of this order directing the treatment to be accorded this payment. These predicate conditions have been satisfied.

The Commission's Office of Ratepayer Advocates (ORA) argues that the payment should be credited to the EDRA because it fits the inclusion criteria: it was unanticipated and unforecast when the current rate level was set, and its realization is contingent upon the Commission adoption of the settlement between Pacific and Edison. ORA also argues that the ratepayers should receive it as a direct refund, because they have already funded through rates the overpayment that is being recovered in the settlement. Edison argues that the payment should be credited to the TCBA (which it refers to as the "CTC Balancing Account" in its pleadings) in accordance with Commission precedent, legislative policy, and appropriate regulatory incentives.

In D.96-12-025, we determined that the EDRA accounts would accumulate direct refunds for disallowances, settlements of reasonableness disputes, and utility cost refunds based on regulatory actions. Refunds resulting from the renegotiation of power purchase contracts do not fit this direct refund policy.

In AB 1890, Public Utilities (PU) Code §§ 330 et seq., Section 367 provides that:

"The commission shall identify and determine those costs and categories of costs for generation-related assets and obligations, consisting of generation facilities, generation-related regulatory assets, nuclear settlements, and power purchase contracts, including, but not limited to, restructurings, renegotiations or terminations thereof approved by the commission, that were being collected in commission-approved rates on December 20, 1995, and that may become uneconomic as a result of a competitive generation market, in that these costs may not be recoverable in market prices in a competitive market, ... These uneconomic costs ... shall be recovered from all customers ..."

Absent a finding of unreasonable behavior on the part of the utility, or a settlement approved by the Commission to resolve allegations of unreasonable behavior, what is true for generation-related costs should generally also be true for refunding of those costs. The payment at issue here derives from the renegotiation of power purchase contracts that were approved by the Commission. Although in the usual course of events, such renegotiation would not ordinarily take place in the context of settlement of a dispute concerning the alleged breach of performance by the QF, that happens to be the case here. The purpose of the settlement was not to resolve an allegation of unreasonable behavior on the part of the utility, in which case refunding the money to the EDRA account would be appropriate. We therefore direct Edison to credit the payment to the TCBA.

Findings of Fact

1. A \$15 million payment, the disposition of which is at issue here, was made to Edison under the terms of a settlement agreement.
2. The payment was made during the rate freeze mandated by AB 1890.
3. The settlement between Energy Pacific and Edison did not address any issues of unreasonable behavior on the part of the utility.

Conclusions of Law

1. In D.96-12-025, we determined that the EDRA accounts would accumulate direct refunds for disallowances, settlements of reasonableness disputes, and utility cost refunds based on regulatory actions. Refunds resulting from the renegotiation of power purchase contracts generally do not fit this direct refund policy unless there are issues of unreasonable behavior on the part of the utility.
2. The payment at issue here must be recorded as a credit to Edison's TCBA.

FINAL ORDER

IT IS ORDERED that:

1. Southern California Edison Company (Edison) shall credit to its Transition Cost Balancing Account the payment made by Pacific Energy to Edison pursuant to the settlement agreement approved in this proceeding, and subsequently placed in a memorandum account pending issuance of this Order, plus accrued interest.

2. Application 96-08-039 is closed.

This order is effective today.

Dated June 18, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners