

Decision 00-06-054 June 22, 2000

**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.

Application 89-03-026  
(Filed March 20, 1989)

(See List of Appearances in Attachment B.)

**OPINION**

**Summary**

This decision approves the Settlement Agreement between The Utility Reform Network (TURN) and Southern California Edison Company (Edison), which grants a credit of \$2.15 million of expenses incurred on the terminated Kramer-Victor Project to Edison's ratepayers. In addition, one-half of any funds recovered by Edison from the Luz International Limited (Luz) bankruptcy proceeding in federal court shall be credited to Edison's ratepayers. The parties agree to withdraw their Rule 1 violation testimony, and exhibits dealing with Rule 1 violations are ordered withdrawn from the record at the parties' request.

**Background**

The Kramer-Victor Project was to consist of interconnection and integration facilities to interconnect facilities with nominal capacities of 150 megawatts (MW) with Cal Energy and 450 MW with Luz, pursuant to their

agreements with Edison. A certificate of public convenience and necessity (CPCN) was granted by Decision (D.) 90-09-059 and construction by Edison soon commenced. Construction delays by Luz were encountered, and Luz ultimately went bankrupt, which made the Kramer-Victor Project unnecessary because Cal Energy and Luz had previously paid Edison to upgrade a 115 kV line that provided an interconnection for the two QFs developed by Cal Energy.

In D.96-09-039 dated September 4, 1996, we concluded that Edison's 11-day delay in suspending construction after Luz suspended its own construction was reasonable, and authorized Edison to treat all project costs as abandoned plant for ratemaking purposes.

The Commission granted limited rehearing of D.96-09-039 in D.97-01-047 dated January 23, 1997, stating in part, "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 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." (D.97-01-047 *mimeo.* at pp. 3, 4.) The decision ordered limited rehearing "to permit Edison to make the requisite showing that the costs that it incurred for the Kramer-Victor Project are 'reasonable and prudent' in accordance with Section 1005.5(c) of the P.U.Code...." (*Id.* at pp. 5, 6.)

### **Hearings**

Prehearing conferences (PHC) were held on May 21, 1997, and June 8, 1998, followed by evidentiary hearings on June 18-21, 1998, and on April 19-23, and April 27, 1999.

On April 27, 1999, hearings were adjourned until further notice to allow TURN to conduct additional discovery and determine whether it would request further hearings.

### **Rule 1 Issues**

TURN alleged that Edison had violated Rule 1 of the Commission's Rules of Practice and Procedure by delaying responses to data requests, withholding information, or misleading TURN, all of which resulted in substantial waste of TURN's time in this proceeding.

Edison alleged that TURN and its witness, Weil, violated Rule 1, and may have violated Government Code § 87406.

Government Code § 87406(d) follows:

“(d)(1) No designated employee of a state administrative agency, any officer, employee, or consultant of a state administrative agency who holds a position which entails the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest, and no member of a state administrative agency, for a period of one year after leaving office or employment, shall, for compensation, act as agent or attorney for, or otherwise represent, any other person, by making any formal or informal appearance, or by making any oral or written communication, before any state administrative agency, or officer or employee thereof, for which he or she worked or represented during the 12 months before leaving office or employment, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. For purposes of this paragraph, an appearance before a state administrative agency does not include an appearance in a court of law, before an administrative law judge, or before the Workers' Compensation Appeals Board. The prohibition of this paragraph shall only apply to designated employees employed by a state administrative agency on or after January 7, 1991.

“(2) For purposes of paragraph (1), a state administrative agency of a designated employee of the Governor’s office includes any state administrative agency subject to the direction and control of the Governor.”

The motion of TURN to withdraw Rule 1 testimony and the request of Edison to withdraw Rule 1 testimony are granted, and the exhibits relevant to these testimonies are ordered to be withdrawn from the record of this proceeding.

### **Proposed Settlement**

Notice of a settlement conference was filed on September 23, 1999, and a settlement conference was held on September 30, 1999. The Settlement Agreement was executed on October 1, 1999 by the only two active parties to the rehearing. On October 4, 1999, these parties filed the Joint Motion of The Utility Reform Network and Southern California Edison Company (U-338-E) for Adoption of Settlement Agreement. The Settlement Agreement is attached hereto as Attachment A. The proposed terms are:

- ◆ Edison shall reduce the \$10.937 million entry in the Kramer-Victor Memorandum Account by \$2.15 million.
- ◆ The Kramer-Victor Memorandum Account will terminate after transferring the remaining debit balance to the Transition Cost Balancing Account (TCBA).
- ◆ Half of any amount Edison receives from the Luz bankruptcy proceeding shall be credited to either the Kramer-Victor Memorandum Account, or the TCBA if the memorandum account is closed at that time.
- ◆ There shall be no future review of this matter in other Commission proceedings.

## **Discussion**

The \$10.937 million balance in the Kramer-Victor Memorandum Account is the result of Edison filing Advice Letter 1258-E-A requesting authorization to record the amount of the remaining project costs in the Kramer-Victor Memorandum Account, a non-interest bearing memorandum account. Any recovery of funds from the Luz bankruptcy proceeding would be credited to this account and a final true-up would reflect the costs the Commission finds reasonable.

The parties argue that the Settlement Agreement complies with the Commission's settlement guidelines for all-party settlements, that it is reasonable, and that it should be adopted.

Prior to the parties signing a settlement, a settlement conference was duly noticed at least seven days in advance to all parties in accordance with Rule 51.1(b). That conference was attended only by representatives from Edison and TURN, who are the only two parties in this rehearing. Rule 51(c) states "Settlement means an agreement between some or all of the parties to a Commission proceeding on a mutually acceptable outcome to the proceedings." Since this Settlement Agreement is signed and mutually accepted by both parties, it is an all-party settlement.

The Settlement Agreement was not proposed within 30 days after the last day of hearing, as required by Rule 51.2, and the parties request waiver of that rule. The last day of hearing was April 27, 1999, when the proceeding was adjourned until further notice, pending possible further evidentiary hearings at TURN's request. It was not known to the parties that April 27, 1999 would be the last day of hearing until the settlement was reached and TURN determined that it would not request further hearings. Considering the uncertainty of whether further hearings would be needed, we conclude that the Settlement

Agreement reasonably complies with the intent of Rule 51.2, and that a waiver is not needed.

The Settlement Agreement was filed in accordance with Rule 51.3 which requires that it be served on all parties to the proceeding; it was served on all parties to the proceeding.

The parties state that the Settlement Agreement is consistent with Commission policy that encourages settlements, which have many worthwhile goals including reduced litigation expense, conserving Commission resources, and allowing parties to reduce the risk of litigation that will produce unacceptable results.

The Settlement Agreement appears to be the result of reasonable compromise between Edison and TURN. Edison is willing to forego over \$2 million in rate recovery. TURN has agreed to a compromise in return for securing the monetary benefit to Edison's ratepayers.

We believe that the Settlement Agreement is reasonable for Edison's stockholders since it removes the uncertainty of whether the Commission would find that amounts in excess of the amount Edison agrees to forego should be disallowed. In addition, the time and expense of further hearings are eliminated.

We also believe the Settlement Agreement to be reasonable for Edison's ratepayers since it returns more than \$2 million and removes the uncertainty of whether the Commission would conclude that a lesser amount of Kramer-Victor costs should be returned to ratepayers.

We conclude that the Settlement Agreement satisfies the applicable Commission rules regarding all-party settlements, as delineated in D.91-12-019 (46 CPUC2d at 538, 550.) The proposed settlement is approved by all active parties. These parties are representative of the affected interests. Edison represents the interests of its shareholders and TURN represents residential

ratepayers. No component of the settlement contravenes applicable law or prior decisions. Finally, the settlement provides us with sufficient information to conclude that this is a reasonable compromise. We will not dissect each term of the settlement to see whether we would have reached the same conclusion. As the Commission has previously stated, no settlement could survive that level of scrutiny. (D.96-12-005, 69 CPUC2d at 398, 404.) Taken as a whole, we find this all-party settlement to be reasonable in light of the whole record, consistent with the law, and in the public interest.<sup>1</sup>

We note that the current balance amount in the Kramer-Victor Memorandum Account may be different than the \$10.937 million indicated above due to possible bankruptcy revenues and we will therefore order that the reduction be from the account rather than from that amount.

This proceeding is deemed submitted on October 4, 1999, which is the date of receipt of the joint motion for adoption of the Settlement Agreement.

### **Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(d) of the Public Utilities Code and Rule 77.2 of the Rules of Practice and Procedure. Comments were filed by TURN and Edison. Ordering Paragraph 2 was modified by removing the interest portion to correctly reflect that the Kramer-Victor Memorandum Account is a non-interest bearing account.

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<sup>1</sup> Generally, costs allowed for recovery in the TCBA consist only of those identified by the Commission consistent with the categories established in Pub. Util. Code § 367. In D.97-11-074, the Commission confirmed that both under collections and over collections accrued in the Electric Revenue Adjustment Mechanism (ERAM) and the Energy Cost Adjustment Clause (ECAC) accounts should be transferred to the TCBA. The settlement proposal is consistent with this approach.

Other typographical and minor text changes have been made for clarifications.

### **Findings of Fact**

1. Limited rehearing of D.96-09-039 was granted to permit Edison to make the necessary evidentiary showing that the costs it incurred for the Kramer-Victor Project are reasonable.
2. Subsequent to the evidentiary hearings, the parties held a settlement conference and reached a Settlement Agreement.
3. The Settlement Agreement is an all-party settlement that satisfies the Commission's rules on settlements.

### **Conclusions of Law**

1. The Settlement Agreement is reasonable and should be approved.
2. TURN's motion to withdraw its testimony alleging Rule 1 violations is reasonable and should be granted. The testimony of TURN and Edison that addresses alleged Rule 1 violations should be withdrawn from the record.
3. This proceeding should be closed.

## **O R D E R**

### **IT IS ORDERED that:**

1. The Settlement Agreement Resolving Recovery of Costs Incurred for the Kramer-Victor Project, dated October 1, 1999, between Southern California Edison Company (Edison) and The Utility Reform Network (TURN) (Settlement Agreement), attached hereto as Attachment A, is approved.
2. Within 30 days after the effective date of this order, Edison shall reduce the debit entry in the Kramer-Victor Memorandum Account by a one-time credit of \$2.15 million.



3. Within 45 days of the effective date of this order, Edison shall terminate the Kramer-Victor Memorandum Account, and shall transfer the remaining debit, adjusted by the effective Commission Jurisdictional factor of 99.7454%, to its Transition Cost Balancing Account (TCBA).

4. Within 30 days of receipt, Edison shall credit 50% of any monies it receives from the Luz bankruptcy proceeding to the Kramer-Victor Memorandum Account if not terminated, or if terminated, credit these monies to the TCBA.

5. The following exhibits shall be withdrawn from the record in this proceeding:

A. TURN Exhibits 6-R, 40-R, 41-R, and 48-R.

B. Edison Exhibits 42-R and 43-R.

6. This proceeding is closed.

This order is effective today.

Dated June 22, 2000, at San Francisco, California.

HENRY M. DUQUE  
JOSIAH L. NEEPER  
RICHARD A. BILAS  
CARL W. WOOD  
Commissioners

President Loretta M. Lynch, being necessarily absent, did not participate.

A.89-03-026 ALJ/BRS/eap

**ATTACHMENT A**  
**(13 pages)**

A.89-03-026 ALJ/BRS/eap

**ATTACHMENT B**

A.89-03-026 ALJ/BRS/eap \*

**Note: See Formal Files for Attachments A and B.**