

Decision 99-03-023 March 4, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Universal Studios, Inc.,

Complainant,

vs.

Southern California Edison Company,

Defendant.

Case 98-04-037
(Filed April 24, 1998)

Patrick J. Power, Attorney at Law,

for Universal Studios, complainant.

David E. Van Iderstine, Attorney at Law,

for Southern California Edison Company,

defendant.

Jack F. Fallin, Attorney at Law,

for Pacific Gas and Electric Company,

interested party.

Stanton J. Snyder, Deputy City Attorney,

for Department of Water & Power,

intervenor.

O P I N I O N

Summary

In this case, we consider whether Universal Studios, Inc. (Universal) meets the statutory exemptions from the nonbypassable competition transition charge (CTC) in seeking to obtain electricity from a provider of electricity other than Southern California Edison Company (Edison). Universal contends that by shifting loads from Edison to the Los Angeles Department of Water and Power (LADWP), it will have departed from Edison's service territory and therefore has

no obligation to pay Edison's CTC. We conclude that Universal has not abandoned its operations or physically moved from its location; therefore, Universal is not exempt from its CTC obligation to Edison.

Procedural History

Universal Studios filed this complaint on April 24, 1998. Pursuant to Article 2.5 of the Commission's Rules of Practice and Procedure, otherwise known as the Senate Bill (SB) 960 Rules, we issued the Instructions to Answer by certified mail on May 1, 1998. In this document, the complaint was categorized as an adjudicatory proceeding, pursuant to Rule 6(b)(1). Edison filed its answer on June 1, 1998. A prehearing conference was held on July 24. Pacific Gas and Electric Company (PG&E) and the Los Angeles Department of Water and Power (LADWP) were granted leave to intervene in this case, with the understanding that issues would not be broadened in any way. The parties filed a case management statement on September 4 and a joint status report, including a set of stipulated facts, on November 6.

Commissioner Conlon issued the Scoping Memo in this proceeding on October 21, 1998, in which designated Administrative Law Judge (ALJ) Minkin as the presiding officer. On December 10, ALJ Minkin issued an amended Scoping Memo indicating that no evidentiary hearings would be held, as no party submitted additional facts or direct testimony. This matter was submitted upon receipt of concurrent reply briefs on January 11, 1999.¹ Universal, Edison, PG&E, and LADWP filed timely opening briefs. Universal, Edison, and PG&E filed reply briefs.

¹ Universal provided additional facts in a declaration attached to its reply brief. The ALJ properly struck this declaration, as parties had the opportunity to submit additional facts or direct testimony and did not do so.

Stipulated Facts

Universal is a customer of both Edison and LADWP for respective parts of its contiguous property in Universal City. Universal receives about 77% of its electric requirements from Edison and about 23% of its electric requirements from LADWP.

Universal owns the Universal Studios property, which comprises approximately 415 contiguous acres. Approximately 70% is within the unincorporated area of Los Angeles County. The remaining 30% is located within the City of Los Angeles. Universal operates a number of distinct but interrelated businesses on its property.

Edison is an investor-owned utility providing electric services to industrial, commercial, and residential customers in Southern California. Universal is currently a sub-transmission, interruptible customer of Edison. Edison provides electric service to the Universal Studios property via a 66 kilovolt-ampere (kVA) interconnection with Universal at a boundary of the Universal Studios property located in Los Angeles County. Edison provides this service to Universal through two on-site substations: 1) the "Studio Sub," which is owned by Universal, but includes added facilities owned by Edison and serves a Universal-owned and operated distribution system, and the 2) "Universal Sub," which serves both Universal and non-Universal loads, including tenants of Universal. The demand currently served by Edison is located within the County of Los Angeles (Edison's service territory) and contiguous, adjacent areas within the City of Los Angeles where the City boundary runs through a building.

LADWP is a municipal utility providing electric service to industrial, commercial, and residential customers in the City of Los Angeles. LADWP provides electric service to Universal via an interconnection at a boundary of the Universal Studios property located in the City of Los Angeles. LADWP transmits

the electric power to Universal both through an on-site substation and distribution system owned by LADWP and by direct connection to the LADWP distribution lines. The demand currently served by LADWP is located both within the City of Los Angeles corporate boundary (the service territory of LADWP) and contiguous, adjacent areas within the County of Los Angeles.

The Universal electric distribution system actually comprises two separate, unconnected systems, one fed by Edison and one fed by LADWP. Absent any legal or regulatory restrictions, Universal can physically reconfigure its internally owned and operated distribution facilities and serve its entire property with electric service provided by either Edison or LADWP. Universal would like to reconfigure its internal distribution system so as to serve its full requirements with electricity obtained from LADWP and therefore to terminate its transmission and distribution service from Edison. Edison would thus cease to be Universal's utility distribution company (UDC).

Since December 20, 1995, as a normal consequence of its operations, Universal has shifted electric demand between Edison and LADWP by relocating various operational units to different physical locations and by expanding, remodeling, or constructing additional facilities. Universal has not "abandoned" or "physically moved" all of its operations from either the County of Los Angeles or the City of Los Angeles. Universal plans to continue to own, operate, and occupy facilities both within the County of Los Angeles and the City of Los Angeles.

Discussion

In 1996, the Legislature enacted Assembly Bill (AB) 1890 (Stats. 1996, Ch. 854.), which restructured the electric services industry in California. Among many other provisions, the Legislature determined that investor-owned utilities have the opportunity to recover stranded assets, or those assets that may become

uneconomic in the new competitive generation market. The Legislature required this Commission to establish a mechanism, known as the competition transition charge (CTC), that ensures the recovery of these stranded assets and that must be paid by all existing and future consumers, with certain limited exceptions. In other words, this charge must be nonbypassable. The question now before us is whether Universal is exempt from its CTC obligation to Edison.

Several code sections address stranded assets, or transition costs, and the nonbypassable charge leading to recovery of these assets. Section 330(v) refers to the nonbypassable nature of the charge incurred to collect such costs and how exemptions, if granted, must be recovered. Section 367 delineates particular transition costs and the time period of their recovery. Section 369 authorizes this Commission to establish a nonbypassable mechanism to ensure recovery of transition costs, with particular exemptions. Section 370 requires that the consumer has an obligation to pay the CTC directly to the utility providing electricity service in the service area in which the consumer is located, as a prerequisite for any consumer in California to engage in direct transactions. Section 371 provides that the collection of transition costs shall be based on the amount of electricity purchased by the customer from the investor-owned utility or an alternate supplier of electricity, subject to changes in usage occurring in the normal course of business.²

² Because Universal relies on § 371(b) as justification for its claim, we cite it here, in relevant part:

Changes in usage occurring in the normal course of business are those resulting from changes in business cycles, termination of operations, departure from the utility service territory, weather, reduced operations, modifications to production equipment or operations, changes in production or manufacturing processes, fuel switching, ... enhancement or increased efficiency of equipment or performance of existing self-generation equipment, replacement of existing cogeneration equipment with new

Footnote continued on next page

The statute itself must be read as a whole. Reading the plain language of the law, we find that the nonbypassable nature of the CTC is controlling, that is, the Legislature has determined that all consumers must pay their transition cost obligations, with only very limited exceptions. Universal does not meet the exceptions listed in § 371(b). In fact, Universal has not left Edison's system. Simply shifting its delivery point for electricity from the interconnection point at the County of Los Angeles to the interconnection point at the City of Los Angeles does not imply that Universal has departed from Edison's service territory. On the contrary, Universal is located exactly where it was on December 20, 1995. This fact is not in dispute. Universal contends that a customer must be a person, rather than the facility, and that it is 2 persons: an Edison customer and a LADWP customer. Edison agrees that Universal is two customers, but correctly explains that the load cannot be distinguished from the customer for the purposes of §371. Universal's loads and facilities will remain exactly where they are. We agree with Edison that because Universal will remain located exactly where it is and was, Universal will not have departed from Edison's service territory, as the term "departure" is used in § 371(b) and according to the plain language of the statute.

Moreover, the fact that Universal is an interruptible customer of Edison's is irrelevant. Section 367(e) provides that transition costs are allocated to and recovered from the various classes of customers, rate schedules and tariff options, including self-generation, deferral, interruptible, and standby rate

power generation equipment of similar size as described in paragraph (1) of Section 372, installation of demand-side management equipment or facilities, energy conservation efforts, or other similar factors.

options in substantially the same proportion as similar costs are recovered as of June 10, 1996.

Under the provisions established by statute, Universal is responsible for all applicable transition costs. Should Universal shift the portion of its load currently served by Edison to LADWP, that portion of Universal's load meets the definition of departing load, as described in our decisions and specified in Edison's approved tariffs.³ There is no exemption from CTC under these circumstances. Universal's complaint is denied.

In addition, Universal's claims to inferior status as an LADWP customer relative to Universal's status as an Edison customer have no merit. The law provides for the appropriate regulatory body to determine the applicable transition costs and corresponding charges. The fact that the Los Angeles City Council has not yet undertaken such a task does not imply that Universal's position as a customer of LADWP is inferior to its position as a customer of Edison. Sections 9601, 9602, and 9603 provide that both publicly-owned and investor-owned utilities are protected in terms of transition cost collection, once publicly-owned utilities conform to certain requirements. LADWP has not yet proceeded with those requirements.

We need not reach Universal's declaration that its inability to avoid Edison's transition charges by shifting its load to LADWP denied Universal equal protection under the law and is therefore unconstitutional. Administrative agencies, including this Commission, cannot determine the constitutional validity of any statute. (Constitution of the State of California, Article III, § 3.5.)

³ D.97-06-060 defines departing load as those customers who depart the utilities' transmission and distribution systems altogether, but for whom CTC still applies because they do not meet the statutory exemptions. (D.97-06-060, mimeo. at pp. 6-7.)

Comments on Draft Decision

The ALJ's draft decision in this matter was mailed to the parties in accordance with § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Universal and Edison filed comments on the draft decision.⁴ We have clarified the decision in response to those comments, but have not modified the outcome.

Findings of Fact

1. Universal is a customer of both Edison and LADWP for respective parts of its contiguous property in Universal City.
2. Universal receives about 77% of its electric requirements from Edison and about 23% of its electric requirements from LADWP.
3. Universal owns the Universal Studios property, which comprises approximately 415 contiguous acres. Approximately 70% is within the unincorporated area of Los Angeles County, served by Edison. The remaining 30% is located within the City of Los Angeles, served by LADWP.
4. Edison is an investor-owned utility providing electric services to industrial, commercial, and residential customers in Southern California. Universal is currently a sub-transmission, interruptible customer of Edison.
5. LADWP is a municipal utility providing electric service to industrial, commercial, and residential customers in the City of Los Angeles. LADWP provides electric service to Universal via an interconnection at a boundary of the Universal Studios property located in the City of Los Angeles.
6. Since December 20, 1995, as a normal consequence of its operations, Universal has shifted, and continues to shift, electric demand between Edison

⁴ Edison received permission to file its comments one day out of time.

and LADWP by relocating various operational units to different physical locations and by expanding, remodeling, or constructing additional facilities.

7. Universal has not "abandoned" or "physically moved" all of its operations from either the County of Los Angeles or the City of Los Angeles.

8. Universal's loads and facilities will remain at its existing location.

Conclusions of Law

1. Universal's election to switch loads from the distribution system supplied by Edison to the distribution system supplied by LADWP does not constitute a physical departure from Edison's service territory and § 371(b) does not apply.

2. Universal is not exempt from transition cost responsibility under the circumstances described herein; therefore, the complaint should be denied.

3. Universal does not meet the exemptions from transition cost responsibility established in § 371(b).

4. This order should be effective today to ensure that transition costs are collected expeditiously.

5. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The complaint of Universal Studios, Incorporated in Case (C.) 98-04-037 is denied.

C.98-04-037 ALJ/ANG/avs *

2. C.98-04-037 is closed.

This order is effective today.

Dated March 4, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners