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MAIL DATE
6/25/99

Decision 99-06-094 June 24, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Authority to Recover Capital Additions to its Fossil Generating Facilities Made Between January 1, 1996 and December 31, 1996 and Related Substantive and Procedural Relief.	A.97-10-024 (Filed October 3, 1997)

ORDER GRANTING LIMITED REHEARING, MODIFYING DECISION. 99-03-055 AND DENYING REHEARING

Decision (D.) 99-03-055 arises from the Application by Southern California Edison (SCE) to recover 1996 capital additions to non-nuclear generating plant (hereinafter referred to as "capital additions"). SCE's Application sought recovery of $100.3 million in capital additions for 1996, which corresponded to a $61.3 million increase in its rate base. Both the Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) filed protests to the Application. ORA proposed a $31.6 million disallowance, and TURN proposed disallowances totaling $25.6 million. The Commission held 4 days of evidentiary hearings. On March 18, 1999, the Commission issued D.99-03-059 which adopted $82.4 million for the capital additions. D.99-03-059 also reopened the proceeding for limited submittals regarding approximately $12.5 million in capital additions which were not justified by the present record.

An Application for Rehearing of D.99-03-055 was timely filed by TURN on May 3, 1999. In its Application, TURN alleges the following legal errors: (1) the Commission erred in allowing SCE to utilize a 20 year payback period to evaluate the cost-effectiveness of the capital additions; (2) the

Commission erred in exempting SCE from demonstrating the cost-effectiveness of capital addition projects under $100,000; and (3) the Commission made both factual and legal errors in permitting the recovery of costs associated with SCE's "Green Lights" Program. A Response in Opposition to the Application was filed by SCE. The Office of Ratepayer Advocates (ORA) did not respond to the Application.

The Commission has reviewed TURN's Application for Rehearing as well as the Response filed by SCE. TURN's first and third allegations are without merit. We conclude that a limited rehearing should be granted with respect to TURN's second allegation. Based on the present record, the legal error can be corrected with modifications to D.99-03-055. No further hearing is required. We therefore modify D.99-03-055, as set forth below. We then deny rehearing on D.99-03-055 as so modified.

TURN first alleges that the Commission erroneously allowed SCE to evaluate the cost-effectiveness of the capital additions with a 20 year payback period. TURN characterizes the Commission's actions as inconsistent. Among other things, we found that SCE's use of a 20 year payback period was "generally consistent" with past general rate cases and thus reasonable. (D.99-03-055, p. 9.) TURN contends that our findings actually show it was unreasonable for SCE to utilize a 20 year payback period. TURN had argued that a 6 year payback period was more appropriate because SCE knew "its business environment was changing and should have modified its investment approach accordingly." *Id.* at p. 8. The Commission agreed with TURN that SCE in fact "knew its business environment was changing in ways that created uncertainty about how generation investments would be recovered." *Id.* TURN questions how it could then be reasonable for SCE to evaluate the capital additions with the same approach taken in past general rate cases (GRCs).

TURN contends that we ignored the mandates of AB1890 and Section 367 by adopting a 20 year payback period. TURN claims that prior to the

enactment of AB1890 and Pub. Util. Code § 367,[1] the Commission likewise evaluated the reasonableness of capital additions by comparing the costs with the projected savings over a 20 year useful life. TURN argues that we erred in utilizing a reasonableness standard identical to the standard, which predated AB 1890 and Section 367. TURN asserts that Section 367 is rendered meaningless by the Commission's continued use of the same reasonableness standard.[2] TURN emphasizes our pronouncement that the Section 367 criteria "are not considered lightly" and "provid[e] explicit direction to the Commission in its assessment of post-1995 capital additions." *Id.* at p. 4, 6. TURN objects that the Commission's findings and conclusions of law as an improper "continuation of the status quo." (TURN Rehearing Application, p. 4.)

SCE responds that neither AB 1890 nor Section 367 compels the Commission to adopt any particular payback period. Similarly, SCE responds that nothing in the D.97-09-048 criteria compel the Commission to adopt any particular payback period. SCE contends that Section 367 merely requires us to find that the capital additions are "reasonable" and "necessary to maintain" the generating facilities through December 31, 2001. SCE argues that we may rely on the review utilized in a GRC to determine the reasonableness of the capital additions. SCE states that "[n]othing in Section 367 requires the Commission to model its process for reviewing capital additions after the 'reasonableness review' typical of a major construction project rather than the kind of 'reasonableness review' typical of a GRC." (SCE Response, p. 3.)

SCE disputes that we applied a pre-AB 1890 standard of review. SCE claims that the Commission required far more detailed analyses of the capital additions than would have been required pre-AB 1890. Further, SCE contends that the utilization of a 20 year payback period is consistent with AB 1890. SCE

[1] Unless otherwise indicated, all statutory references are to the Public Utilities Code.

[2] Section 367 permits the recovery of costs which "the Commission determines are reasonable and . . . necessary to maintain the facilities through December 31, 2001."

cites an AB 1890 objective as restructuring the electric services industry while maintaining the system reliability. *See* Pub. Util. Code § 330(h), 362. SCE argues that a payback period shorter than 20 years could have resulted in a degradation of system reliability over existing levels. Lastly, SCE asserts that it presented detailed evidence describing why its 1996 capital additions were needed to maintain its facilities and were cost-effective. (Exhibits 3, 9.)

TURN's first allegation fails. The Commission's findings in support of the 20 year payback period are not inconsistent. We did find that SCE "knew its business environment was changing in ways that created uncertainty about how generation investments would be recovered." (D.99-03-055, p. 8.) We then went on to find that SCE "could not have known how such changes would specifically affect ratemaking, liability for existing assets, or obligations to serve." *Id.* The Commission stated it was not "convinced that Edison should have drastically changed its assumptions regarding the payback period of its capital additions." *Id.* at p. 9. Given this degree of uncertainty, it was not unreasonable for SCE to rely on an approach consistent with its past GRCs.

In adopting a 20 year payback period to evaluate the capital additions, we did not ignore the mandates of either AB 1890 or Section 367. The Commission specifically reviewed the capital additions "in light of the statutory requirements [Section 367] and the criteria we established in D.97-09-048." *Id.* at p. 4. In particular, the four D.97-09-048 criteria were established by the Commission "to elaborate on the terms 'reasonable' and 'necessary' as they are used in § 367." *Id.* at p. 3. Our adoption of a 20 year payback period pertained to the third criteria for evaluating the capital additions, cost-effectiveness. *Id.*

TURN's second allegation is that the Commission erred in exempting SCE from demonstrating the cost-effectiveness of capital additions less than $100,000. In Finding of Fact no. 7, we stated that it was "not necessary for the Commission to require Edison to provide detailed information on these projects." TURN contends that Section 367 requires SCE to demonstrate that *any*

cost which it seeks to treat as a recoverable capital addition is "reasonable and . . . necessary to maintain the facilities through December 31, 2001." Pub. Util. Code § 367. TURN argues that a capital addition cost being $100,000 or less has nothing to do with whether it is reasonable and/or necessary to maintain facilities. TURN asserts that the exemption for SCE is contrary to Section 367 as well as the reasonableness criteria adopted by the Commission in D.97-09-048. TURN notes that there is no such exemption or monetary threshold in Section 367. TURN concludes that this utilization of such a lesser standard of proof is a failure by the Commission to regularly pursue its authority, thereby constituting legal error. *See* Camp Meeker Water System, Inc. v. Public Utilities Com. (1990) 51 Cal.3d 845, 863-864.

Next, TURN contends that the Commission's reliance on D.98-05-059 [PG&E's capital additions case] to support the exemption is misplaced. TURN notes that the 100,000 or less exemption was part of a comprehensive settlement in D.98-05-059. TURN, for example, cites concessions made by PG&E in return for PG&E not having to provide the requisite detail for the capital additions. By contrast, TURN claims that there is no settlement or offsetting value from concessions herein to justify an exemption for SCE. TURN objects that allowing SCE to benefit from a PG&E settlement is fundamentally unfair and makes a mockery of the Commission's settlement rules. TURN also distinguishes D.98-05-059 from the instant case because PG&E's requested amount for capital additions was far less than that of SCE. TURN reasons that it "should not be surprising . . . that ratepayer advocates were more lenient in the standard applied in achieving a reasonable comprehensive settlement." (TURN Rehearing Application, p. 7.)

SCE responds that it is the Commission's practice to require less detailed evidence for capital addition projects below $100,000. In support, SCE cites an ORA draft suggestion from a 1997 workshop that utilities provide more information for projects over $500,000 than for projects under $500,000. SCE

alternatively contends that it presented detailed evidence for projects under $100,000. (Exhibits 3, 5.) SCE concedes that "typically a settlement can only be considered in the context of the proceeding to which it applies." (SCE Response, p. 11.) Nonetheless, in capital additions cases, SCE contends that the PG&E settlement should have some precedential value. SCE argues that the Commission would just be applying the same rules to all capital additions applications. SCE also argues that the amount requested by PG&E was "similar" to the amount requested by SCE.

The Commission did not err in adopting the $100,000 threshold. It should be noted that our adoption of the $100,000 threshold did not exempt SCE from providing any detail whatsoever for projects under $100,000, as suggested by TURN. Rather, we required *less* detailed evidence for projects under $100,000 than for projects over $100,000. SCE did in fact provide some detail for projects under $100,000. SCE identified projects under $100,000 by project type: (1) safety-related; (2) environmental; (3) maintenance; (4) regulatory mandated; and (5) FERC hydro relicensing projects. (Exhibit 3, sections III, IV.) SCE also listed all projects under $100,000 for its fossil-fired generating facilities and identified the cost of each project. (Exhibit 5.)

Nevertheless, the Commission's legal rationale for adopting the $100,000 threshold is erroneous. To support the $100,000 threshold, we made a finding that the parties to the PG&E settlement "had agreed that detailed information for projects under $100,000 was not needed . . ." (Finding of Fact no. 6.) Our citation to the PG&E settlement agreement to adopt the $100,000 threshold is erroneous. To begin with, TURN is correct that the PG&E settlement was the result of the parties compromising and reaching agreement on their divergent positions. The parties, in particular, assented to the $100,000 threshold only for the purpose of arriving at the various compromises embodied in the PG&E settlement agreement.

More importantly, our approval of the PG&E settlement cannot constitute endorsement of a $100,000 threshold or any other grouping methodology adopted by the parties. Rule 51.8 of the Commission's Rules of Practice and Procedure expressly provides that the Commission's approval of the PG&E settlement "does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding." Even in approving the PG&E settlement, we stated the "burden of proof is not affected by the agreement of the parties." D.98-05-059, 1998 Cal. PUC LEXIS 366, *5. SCE itself adamantly opposed any reference to the PG&E settlement as "*evidence, precedent or policy* to determine SCE's recovery of its 1996 capital additions." (SCE Reply, p. 5.)(Emphasis added.) Indeed, SCE filed a motion to strike a reference by ORA to the PG&E settlement. SCE stated that "ORA's Opening Brief violates Rule 51.8 in its discussion of the implications of PG&E's settlemen[t] . . . for SCE." (SCE Motion to Strike, p. 2.)

The instant case is analogous to Re San Gabriel Water Company (1996) 67 CPUC2d 98. In Re San Gabriel Water Company, San Gabriel sought to increase its Los Angeles division revenues for the period 1996-1999. San Gabriel requested an equity ratio of 60%. San Gabriel argued that the Commission should not adopt an equity ratio lower than the 56% equity ratio approved for San Gabriel in its recent Fontana division general rate case. *Id.* at 105. The Commission found the argument unpersuasive, noting that the authorized 56% equity ratio was the result of a settlement agreement. The Commission explained that under Rule 51.8, its "adoption of the settlement agreement does not constitute Commission approval of or precedent regarding an individual issue included in a settlement encompassing multiple issues." *Id.*

Yet Section 367 like other "[s]tatutes must be given a reasonable and common sense construction in accordance with the apparent purpose and intention of the lawmakers – one that is practical rather than technical, and will lead to a wise policy rather than to mischief or absurdity." People v. Aston (1985) 39

Cal.3d 481, 492. The Legislature has given the Commission latitude under Section 367 to adopt one or more approaches for determining the recovery of capital addition costs. As we explained in D.97-09-048, Section 367 gives the Commission "discretion to establish what constitutes appropriate costs and reasonableness in implementing PU Code 367." D.97-09-048, 1997 Cal. PUC LEXIS 866, *21. This includes the discretion to adopt grouping methodologies as was deemed appropriate herein.

At the February 24-25, 1997 Capital Additions Workshop, the "participants recommend[ed] that the Commission evaluate 1996 and 1997 projects on a case-by-case basis, *with possibly some grouping of costs of smaller projects as appropriate*." *Id.* at p. *11. (Emphasis added.) The Commission agreed that "*[s]ome grouping of costs of smaller cost projects may be appropriate for this case-by-case review*." *Id.* at n.7. (Emphasis added.) The utilities were even instructed to set forth "additional evaluation criteria for Commission consideration" in their capital additions applications. *Id.* at p. *35. As more fully set forth below, we modify D.99-03-055 to incorporate this rationale for adopting the $100,000 threshold and eliminate the citations to the PG&E settlement.

Third, TURN alleges that we made both factual and legal errors in allowing SCE to recover the costs for its Green Lights Program. "Green Lights" is a voluntary program sponsored by the EPA to encourage businesses to install energy efficient lighting. TURN contends that there is no support in the record for Finding of Fact no. 10 and Conclusion of Law no. 7. Finding of Fact no. 10 states that the program is cost-effective, and Conclusion of Law no. 7 states that the costs "should be recoverable." TURN cites our conclusion that SCE failed to make a "showing of necessity under the relevant code Section" for the program. (D.99-03-055, p. 20.) TURN then cites our statement that the argument by TURN against the recovery of the program costs "has merit." *Id.* at p. 21. TURN had argued that the program's cost-effectiveness should be calculated by comparing its costs to the energy cost adjustment clause (ECAC) rate or the power exchange

(PX) price. Because its argument "has merit", TURN concludes that SCE's cost-effectiveness calculation via a comparison of the program costs to the full costs of electricity is without merit.

TURN disputes that the program is cost-effective and requests the disallowance of the $2.17 million in capital additions associated with it. TURN questions the cost-effectiveness of the program's replacement of light bulbs with energy efficient bulbs, even though the existing light bulbs were still in their expected useful life. TURN also claims that it argued for a full disallowance and not a partial disallowance, as set forth in D.99-03-055. In D.99-03-055, the Commission referred to "TURN's argument for a *partial* disallowance . . ." *Id.* (Emphasis added.)

SCE disputes that TURN argued for a full disallowance. SCE contends that TURN only recommended disallowing $2.17 million of the $3.08 million sought to be recovered by SCE. Even if TURN's argument against recovery "has merit," SCE contends that the Commission is not compelled to adopt it. SCE suggests that the Commission simply adopted the more meritorious position of SCE. SCE also contends that it provided evidence that the program was cost-effective.

TURN's third allegation is without merit. There is evidence in the record to support Finding of Fact no. 10 and Conclusion of Law no. 7. The Commission noted that the program was approved in SCE's previous GRC as a capital cost and was thus found to be cost-effective. (D.99-03-055, p. 21.) ORA even agreed that the program was cost-effective. *Id.* at 20. In addition, the Commission found that the program was an alternative lighting maintenance program and thus necessary. *Id.* Because "some lighting replacement would seem logically to be necessary to maintain the plants," the Commission concluded that the program "can reasonably be considered an alternative lighting maintenance program." *Id.* Section 701.1 directs the utilities "to seek to exploit all practicable and cost-effective conservation and improvements in the efficiency of energy use . . ."

Although TURN's PX rate argument generally "has merit", it was incorrectly premised on the use of a 6 year payback period as opposed to a 20 year payback period. TURN argued that "[u]sing a six-year life and a PX price of 2.4 cents/kWh, the 1996 expenditures were not justified." (Exhibit 33, p. 11.) The Commission accurately referenced TURN's argument for a partial disallowance. TURN's statement about its position on the program is belied by the record. Although SCE sought recovery of $3,080,000 in costs for 1995 and 1996, TURN only recommended disallowing the 1996 spending level of $2,170,000. *Id.* TURN did not seek to disallow the 1995 costs. The prepared testimony of TURN's expert, William Marcus, stated that "[t]he 1995 expenditures are recommended for approval because these projects are relatively small and modular and could be deemed to come into service as they are installed." *Id.* Contrary to its Application, TURN thus did not seek a full disallowance of the costs associated with the program.

No further discussion is required of TURN's allegations of error. Accordingly, upon review of each and every allegation of error raised by TURN, we conclude that sufficient grounds for a limited rehearing have been shown. D.99-03-055 is modified to correct the legal error, as set forth below. Rehearing is then denied on D.99-03-055 as so modified.

IT IS THEREFORE ORDERED that:

1. A limited rehearing is granted for the purpose of modifying D.99-03-055 as follows:

a. The first full paragraph on page 17 of D.99-03-055 is omitted and replaced with the following new paragraphs:

> "Of Edison's total request of $100.3 million in capital additions for 1996, about $3.2 million is for projects under $100,000. This amount includes $1.9 million for fossil-fired generation and $1.3 million for hydroelectric generation. Edison has grouped projects under $100,000 together. Section 367 like other "[s]tatutes must be given a reasonable and common sense construction in accordance with the apparent purpose and intention

of the lawmakers – one that is practical rather than technical, and will lead to a wise policy rather than to mischief or absurdity." People v. Aston (1985) 39 Cal.3d 481, 492. The Legislature has given the Commission latitude under Section 367 to adopt one or more approaches for determining the recovery of capital addition costs. As we explained in D.97-09-048, Section 367 gives the Commission "discretion to establish what constitutes appropriate costs and reasonableness in implementing PU Code 367." D.97-09-048, 1997 Cal. PUC LEXIS 866, *21. This includes the discretion to adopt grouping methodologies as deemed appropriate herein.

At the February 24-25, 1997 Capital Additions Workshop, the "participants recommend[ed] that the Commission evaluate 1996 and 1997 projects on a case-by-case basis, *with possibly some grouping of costs of smaller projects as appropriate*." D.97-09-048, 1997 Cal. PUC LEXIS, *11. (Emphasis added.) The Commission agreed that "*[s]ome grouping of costs of smaller cost projects may be appropriate for this case-by-case review*." *Id.* at n.7. (Emphasis added.) The utilities were even instructed to set forth "additional evaluation criteria for Commission consideration" in their capital additions applications. *Id.* at *35. Under the facts and circumstances in this proceeding, given the large number of projects under $100,000 and the relative magnitude of the amount requested in this proceeding, we do not believe it necessary for this Commission to require Edison to provide detailed information on small projects under $100,000."

b. The current language in Finding of Fact no. 6 is eliminated. Finding of Fact no. 6 now reads "in D.97-09-048, the Commission agreed with participants in the 1997 Capital Additions Workshop that "[s]ome grouping of costs of smaller cost projects may be appropriate for this case-by-case review."

2. The rehearing of D.99-03-055 is denied in all other respects.

3. The rehearing of D.99-03-055, as modified, is then denied.

This order is effective today.

Dated June 24, 1999, at San Francisco, California.

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

I abstain.

/s/ CARL W. WOOD
Commissioner