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Decision 99-07-020

July 8, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Universal Studios, Inc.,
Complainant

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

vs.

Southern California Edison Company,
Defendant.

**ORDER DENYING APPLICATION FOR REHEARING OF
DECISION 99-03-023**

I. INTRODUCTION

This Order denies Universal Studios, Inc.'s (Universal) Application for Rehearing of Decision (D.) 99-03-023 (Decision). In the proceeding below, Universal sought statutory exemption under Public Utilities Code section 371(b)¹ from the non-bypassable competition transition charge (CTC) in seeking to obtain electricity from a provider of electricity other than Southern California Edison Company (Edison).² According to the facts stipulated to by the parties, Universal is a customer of both Edison and Los Angeles Department of Water and Power (LADWP). Universal argued that it will have "departed" from Southern

¹ Unless otherwise stated, all statutory references are to the Public Utilities Code.

² Public Utilities Code section 371(a) provides, in part, that competition transition charges "shall be applied to each customer based on the amount of electricity purchased by the customer from an electrical corporation or alternate supplier of electricity, subject to changes in usage occurring in the normal course of business." The relevant portion of section 371(b) provides: "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...."

California Edison Company's service territory if it reconfigured its internal distribution system to serve its full requirements with electricity delivered by the LADWP. Under Universal's theory, once the Universal/LADWP customer takes full electricity requirements from LADWP, the Universal/Edison customer would simply disappear, or "depart" from Edison's service territory within meaning of section 371(b). According to Universal, section 371(b) applies to customers, and not to facilities or loads. Therefore, Universal argued, since the Universal/Edison customer was "departing" Edison's service territory, Universal was exempt from CTC obligations under section 371(b).

In D.99-03-023, we concluded that Universal had not abandoned its operations or physically moved from its location, and therefore was not exempt from its CTC obligation to Edison. While we agreed that Universal was two customers, an Edison customer and a LADWP customer, we explained that the load cannot be distinguished from the customer for the purposes of section 371. We found that because Universal's loads and facilities 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 section 371(b) and according to the plain language of the statute.

Universal filed a timely application for rehearing, claiming that the Decision is not supported by the findings; the findings are not supported by substantial evidence in light of the whole record; and the Decision violates a right of Universal under the Constitution of the United States. Universal further argues that the Administrative Law Judge erred in striking a declaration submitted with Universal's reply brief. We have reviewed each allegation of legal error and find that Universal's arguments are without merit.

II. DISCUSSION

A. **The Decision contains separately stated findings of fact and is supported by substantial evidence**

We first note that much of Universal's application for rehearing merely reargues its position in the proceeding below. Rearguing the evidence and disagreeing with the Commission's view of the evidence does not articulate any legal error in our decision as required by Public Utilities Code section 1732 in an application for rehearing. To the extent such is the case, we do not consider such reargument. 50-30.1

Universal claims that the Decision fails to comport with Public Utilities Code section 1705, which provides that Commission decisions "shall contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision." Universal further argues that the Decision is not supported by substantial evidence. Universal argues that there are no findings or rationale explaining or supporting the Commission's determination that Universal's load cannot be distinguished from the customer for purposes of section 371(b). However, as Universal points out in its Application for Rehearing, the rationale for the Commission's decision is that "Universal's loads and facilities will remain at its existing location." (Finding of Fact No. 8). In addition, the Decision makes the finding that "Universal has not 'abandoned' or 'physically moved' all of its operations from either the County of Los Angeles or the City of Los Angeles." (Finding of Fact No. 7).

Universal also argues that there is no evidence to support the implied finding that Universal's loads are in Edison's service territory. Again, Universal merely reargues the evidence and declares that it will abandon the Universal substation if it shifts its Edison loads to LADWP. However, Universal's argument ignores the language of Edison's tariff, which states that CTC is applicable to a consumer who:

(1) Discontinues or reduces its purchases of electricity supply and delivery services from Edison; (2) purchases or consumes electricity supplied and delivered by sources other than Edison to replace such Edison purchase; and (3) remains physically located at the same location or within Edison's service territory as it existed on December 20, 1995.

According to the facts stipulated to by the parties, Universal has not abandoned or physically moved its operations from either the County of Los Angeles or the City of Los Angeles. Universal's facilities as well as the individual loads on its property presently served by Edison would remain located in exactly the same place they currently are after any switch to LADWP.

The Decision's findings of fact are based on facts stipulated to by the parties of the case. These findings adequately support the decision's conclusion that Universal has not departed Edison's service territory and therefore is not exempt from its CTC obligation to Edison. Contrary to Universal's claim, there is an adequate explanation of reasoning in the Decision. Universal's arguments are without merit and do not establish legal error in the decision.

Most of Universal's objections come from its disagreement with the Commission's interpretation and application of section 371(b). We rejected Universal's interpretation of section 371(b) in favor of one that comports with the plain meaning of the statute. The fact that Universal is unhappy with the result does not establish legal error in our Decision. In challenging our interpretation of a provision of the Public Utilities Code, Universal assumes a heavy burden. The courts give great weight to "the construction of a statute by the officials charged with its administration." Worthington v. Unemployment Ins. Appeals Bd. (1976) 64 Cal.App.3d 384, 389, citing CocaCola Co. v. State Bd. Of Equalization (1945) 25 Cal.2d 918, 921; see also Richfield Oil Corp. v. Crawford (1952) 39 Cal.2d 729, 736. The courts have also held that the "Commission's interpretation of the Public Utilities Code should not be disturbed unless it fails to bear a reasonable

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relation to the statutory purpose and language.” Greyhound Lines, Inc. v. PUC (1968) 68 Cal.2d 406, 410-411. As we explained in our Decision, with the passage of Assembly Bill (AB) 1890 (Stats. 1996, Ch. 854.), 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 the CTC mechanism that ensures the recovery of these stranded assets and that must be paid by all existing and future consumers, with certain limited exceptions. Our interpretation and application of section 371(b) in this instance bears a reasonable relation to the statutory purpose and language of AB1890. Universal’s interpretation would not only have us ignore the plain language of section 371(b), but would thwart the intent of the Legislature. As such, we find Universal’s arguments without merit. 261.41

**B. Universal’s claim that the Decision violates
Universal’s constitutional rights is without merit**

Universal’s claim of constitutional violation apparently stems from what it sees as differential and discriminatory treatment of customers of investor owned utilities and municipal utilities. Universal points out that it can shift its LADWP loads to Edison and avoid LADWP’s transition costs, but it cannot shift its Edison loads to LADWP and avoid Edison’s transition costs. Universal argues that AB1890’s distinction between investor owned utilities and municipal utilities with respect to the rights of customers results in discrimination which requires a rational basis. According to Universal, there is nothing on the face of AB1890 which justifies this discrimination and nothing in the Decision that compensates for the failure of AB 1890.

Universal’s argument pertains to the constitutional validity of the legislation enacting AB1890. However, Universal fails to provide any legal analysis or authority in support of its argument. As we pointed out in the Decision, 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.

Even if Universal's constitutional arguments had merit, this Commission cannot determine the constitutional validity of any statute. (Cal. Const., art. III, section 3.5.) Universal concedes as much in its application for rehearing. While Universal argues that the Commission should interpret AB 1890 to avoid this constitutional law issue, Universal offers no viable alternative interpretations which would avoid the perceived constitutional infirmities. Universal's interpretation would not circumvent the alleged constitutional violations. Instead, Universal essentially asks this Commission not to apply the law as written to Universal. Again, this Commission is specifically prohibited from refusing to apply a statute on the basis that the law is unconstitutional, unless an appellate court has made a determination that such statute is unconstitutional. (Cal. Const., art. III, section 3.5). We find no basis for interpreting section 371(b) other than applying the unambiguous wording of the statute.

C. The ALJ did not err in striking the declaration of J. David Thomas

Universal contends that it submitted the declaration of J. David Thomas attached to its reply brief to respond to what it perceived as inconsistent arguments made by Edison. Universal claims that the ALJ erred in striking the declaration from the record. However, Universal provides no basis for such an assertion. As the parties had stipulated to the facts of the case and had not stated that material disputed facts remain to be litigated, evidentiary hearings were unnecessary in this proceeding. In submitting its reply brief, Universal attached a declaration which presented facts outside those stipulated to by the parties. Briefs, particularly reply briefs, are not the forum in which to present new facts which could be in dispute. Although Universal claims it submitted the declaration in

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response to new facts raised by Edison, there is nothing in the Decision indicating the Commission relied on any facts other than those stipulated to by the parties. Universal's arguments are without merit and fail to establish legal error in the Decision.

III. CONCLUSION

We have reviewed Universal's application for rehearing and find that the arguments raised have no merit. Accordingly, Universal's application for rehearing is denied.

THEREFORE, IT IS ORDERED that:

1. Rehearing of Decision 99-03-023 is denied.
2. This proceeding is closed.

This order is effective today.

Dated July 8, 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