

## PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY AND  
COMPLIANCE DIVISION  
Auditing and Compliance Branch

RESOLUTION E-3249  
December 18, 1991

**R E S O L U T I O N**

RESOLUTION E-3249. Southern California Edison Company REVISES ITS ELECTRIC REVENUE ADJUSTMENT MECHANISM (ERAM) TO INCREASE THE AUTHORIZED LEVEL OF BASE RATE REVENUE (ALBRR) UNDER THE ERAM BY \$25.2 MILLION.

BY ADVICE LETTER 917-E, FILED ON NOVEMBER 1, 1991.

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**SUMMARY**

1. Southern California Edison Company (Edison) has requested authorization to revise its Preliminary Statement, Part J, Electric Revenue Adjustment Mechanism (ERAM) to reflect an increase to the Authorized Level of Base Rate Revenue (ALBRR) under the ERAM by \$25.2 million. This will be effective for service rendered on and after the date on which Edison makes its contribution to two Internal Revenue Code (IRC) §501(c)(9) trusts for its 1991 pre-funding of Post Retirement Benefits Other Than Pensions (PBOP). Edison anticipates that it will make its contribution by year end 1991.

2. This Resolution approves Advice Letter 917-E, but only to the extent that the contributions are tax deductible and otherwise comply with the requirements of Decision 91-07-006. Any tax resulting from the contributions will be the responsibility of Edison.

**BACKGROUND**

1. In Decision 91-07-006, Ordering Paragraph 4, the Commission authorized the respondent utilities, including Edison, "to recover in rates tax-deductible contributions paid to a pre-funded Post Retirement Benefits Other than Pensions (PBOP) plan" after the July 2, 1991 effective date of the decision.

2. Ordering Paragraph 4 also required the utilities to comply with the following:

- a. Establish and use an Internal Revenue Code (IRC) §401(h) plan, a Voluntary Employee Benefit Association (VEBA) plan, a collectively bargained VEBA Plan, or a pension benefit enhancement plan for their pre-funded

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- tax-deductible contributions. A utility-owned life insurance plan shall not be used.
- b. Establish and use an independent trust for the receipt, investment, administration, and disposition of PBOPs benefits.
  - c. Use distinct sub-accounts within their respective Uniform System of Accounts adopted by this Commission to account and track all PBOPs activities.
  - d. Meet the requirements of Ordering Paragraph 7.
3. Ordering Paragraph 7 of D. 91-07-006 requires the respondent utilities that seek recovery of their pre-funded PBOPs contributions to substantiate in their next general rate case for which hearings are held that their:
- a. Selected pre-funded plan is a reasonable plan that mitigates the impact on ratepayers' rates by demonstration that their plan's actuarial assumptions, contributions, and investments are reasonable.
  - b. Pre-funded PBOPs contributions are not used to enhance active employees and retired employees benefits by reducing the utilities pension contributions and extending active employees pension coverage.
  - c. Compliance with Ordering Paragraph 4.
4. On November 1, 1991, Edison filed Advice Letter 917-E to request authority to fund two separate VEBA trusts, also known as IRC §501(c)(9) plans, as follows:
- a. A collectively bargained VEBA trust (Collectively Bargained Trust) which will fund postretirement medical, dental and vision benefits, the employee assistance program, and corporate physicals for union employees and retired represented employees, and their spouses and dependents.
  - b. A trust to fund the postretirement term-life insurance coverage for all (represented and non-represented) active employees and retirees (Life Insurance Trust). The Life Insurance Trust is not utility-owned life insurance.

## PROTESTS

### Division of Ratepayer Advocates

1. The Division of Ratepayer Advocates (DRA) submitted a timely protest, raising the following issues.
2. First, DRA notes that Finding of Fact 37 in D. 91-07-006 (the Decision) refers to Edison requesting a §401(h) plan. It

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did not mention a §501(c)(9) plan. Therefore, DRA believes that this is a new request which should not be allowed in an advice letter.

3. DRA does not believe Edison has met the requirements of Ordering Paragraph 4 of the Decision. Specifically, DRA does not believe that Edison has proven that the contributions will be tax-deductible for two reasons:

- a. because Edison has not signed a labor contract for at least 5 years, it is not operating under a collectively bargained agreement, as required for the Collectively Bargained Trust, and
- b. the transition obligation portion (that portion earned by employees in prior years) is not tax deductible.

4. DRA suggests that Edison can use a memorandum account to track its §501(c)(9) VEBA contributions as allowed in the Decision. DRA believes this is the only ratemaking option that will protect shareholder investments and ratepayer interests.

5. DRA believes Edison's request is too controversial to be handled in an Advice Letter filing, citing "gray areas" in the IRS tax law which require a Revenue Ruling rather than a Private Letter Ruling. A Revenue Ruling has the weight of law on all companies whereas a Private Letter Ruling has the weight of law only on the party to which the ruling is addressed. DRA also believes that the time frame is too small, since the contribution must be made by December 31, 1991 to receive adequate assurance of tax-deductibility.

6. DRA then recommended the following safeguards if the Advice Letter is granted:

- a. Edison should assume 100% of the risk relating to the Collectively Bargained Trust. The risk is that a tax payment will become due if the contribution is found to be non-deductible.
- b. Edison should be required to file with the CPUC a complete copy of its request for a Private Letter Ruling from the IRS.
- c. Edison should be required to file with the CPUC a complete copy of the IRS Private Letter Ruling it receives.
- d. The IRS Private Letter Ruling should state specifically that the Collectively Bargained Trust will qualify as a collectively bargained VEBA.
- e. The IRS Private Letter Ruling should also state specifically that Edison's contributions relating to prior periods (i.e., the transition obligation) is tax-deductible.

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f. Edison must explicitly identify, name and document the sub-accounts it has established pursuant to Ordering Paragraph 4 to account for:

- 1- \$401(h) account (Advice Letter 913-E),
- 2- \$501(c)(9) VEBA (Life Insurance Trust),
- 3- Collectively Bargained \$501(c)(9) VEBA Trust.

Edison's Response to DRA

1. Edison counters that D.91-07-006 (the Decision) Finding of Fact 37 does not limit Edison to a \$401(h) account but simply recognizes that Edison was establishing a \$401(h) plan. Edison cites the wording of Ordering Paragraph 4 which allows "respondent utilities" to establish, among other tax-deductible options, a VEBA. Edison is a respondent utility.

2. Edison contends that it has a collectively bargained agreement, within the meaning of the applicable tax law and in compliance with applicable labor laws. Edison points out that it has requested a Private Letter Ruling from the IRS to confirm this position. Edison further points out that while taxpayers in general cannot rely on a Private Letter Ruling, the taxpayer who receives it may do so and that the courts have upheld that right. Therefore, a favorable Private Letter Ruling will invalidate DRA's concerns on the tax-deductibility issue.

3. Edison states that it has submitted a supplemental request to the IRS requesting a Private Letter Ruling that the full accrual cost, including the transition obligation, can be deducted in the year of contribution.

4. Edison points to Ordering Paragraph 5 of the Decision, which specifically allows Edison to recover its PBOP contributions through an increase to the ALBRR under the ERAM. Edison also refers to page 24 of the Decision which authorizes Edison to do so through an Advice Letter.

5. Edison accepts all of DRA's recommended safeguards except 6e, which relates to the transition obligation. Although Edison believes that this safeguard is not necessary, it has made a supplemental request for a Private Letter Ruling from the IRS to confirm their position. Edison is confident that those amounts will be deductible on advice from its actuary and attorneys. Even so, safeguard 6a is sufficient to protect ratepayers in the unlikely event of an unfavorable ruling.

DISCUSSION

1. On November 1, 1991, Edison established a trust for its Collectively Bargained Trust plans in compliance with D. 91-07-006, Ordering Paragraph 4b.

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2. On November 12, 1991, Edison established a trust for its Life Insurance Trust plans in compliance with D. 91-07-006, Ordering Paragraph 4b.
3. Edison has established distinct sub-accounts for all PBOP pre-funding contributions to the two VEBA trusts in compliance with D. 91-07-006, Ordering Paragraph 4c.
4. Funds in the trust accounts will be managed by investment managers engaged by Edison's Pension Investment Committee.
5. All income from investment activities will be reinvested in the respective VEBA trust.
6. Funds within the trusts cannot be diverted or used for purposes other than payment of trust benefits.
7. The trusts will be audited annually by Edison's independent public accountants.
8. Edison has requested a Private Letter Ruling from the Internal Revenue Service (IRS) confirming that:
  - a. The Collectively Bargained Trust constitutes a welfare benefit fund maintained under a collective bargaining agreement under IRC §419(f)(5),
  - b. Trust income will not be treated as unrelated business income under IRC §512(a)(3)(E), and
  - c. The Collectively Bargained Trust will be exempt from the nondiscrimination rules of IRC §505(b).
9. Edison does not intend to fund the Collectively Bargained Trust until it has received approval of this Advice Letter and has received a favorable Private Letter Ruling from the IRS.
10. Edison requests that it be allowed to increase its ALBRR by \$25,219,000 in order to recover the revenue requirement associated with its 1991 PBOP pre-funding and that the increase remain in effect for one year. Edison will file a separate advice letter to decrease its ALBRR by the increase granted, to be effective on the one year anniversary of the effective date of any ALBRR increase granted herein.
11. The 1991 contribution amount and related revenue requirement for each trust, after adjusting for capitalization, jurisdictionalization, franchise fees and uncollectible accounts expense, is as follows:

	<u>Collectively Bargained Trust</u>	<u>Life Insurance Trust</u>	<u>Total</u>
Contribution	\$32,555,000	\$625,000	\$33,180,000
Revenue Requirement	\$24,736,000	\$483,000	\$25,219,000

12. Edison's Test Year 1992 General Rate Case (1992 GRC) does not include the \$25.2 million ALBRR change requested in Advice Letter 917-E.

13. Edison requests that the rate level changes associated with the ALBRR change be determined in Application No. 91-05-050, Edison's 1992 ECAC proceeding. Edison has requested that various rate changes be consolidated in that application and that the changes be effective for service rendered on and after January 20, 1992.

14. The annual revenue changes by customer group associated with this filing, if allocated on a System Average Percent Change basis, is shown in the following table.

<u>Customer Group</u>	<u>Revenue Change Effective</u> <u>January 20, 1992</u>	
	<u>\$M<sup>2</sup></u>	<u>¢</u>
Domestic	9.0	0.4
Lighting, Sm. & Med. Power	9.5	0.4
Large Power	5.8	0.4
Agricultural & Pumping	0.8	0.4
Street & Area Lighting	<u>0.1</u>	<u>0.2</u>
Total	25.2	0.4

15. CACD agrees with DRA that an Advice Letter filing is an inappropriate place to determine the reasonableness of a PBOP plan. The appropriate place is a General Rate Case, as required by Ordering Paragraph 7 of D. 91-07-006.

16. CACD agrees with Edison that DRA's safeguard 6e is unnecessary. DRA's safeguard 6a is sufficient to protect ratepayers against unexpected taxes related to the transition obligation.

#### FINDINGS

1. Decision 91-07-006 allows respondent utilities, including Edison, to recover in rates tax-deductible contributions paid to a pre-funded Post Retirement Benefits other than Pensions plan, providing they follow the requirements of Ordering Paragraph 4.

2. Edison has established a IRC §501(c)(9) Collectively Bargained Trust (VEBA) and has complied with D. 91-07-006, Ordering Paragraphs 4b and 4c, with respect to this trust.

3. Edison has established a IRC §501(c)(9) Life Insurance Trust and has complied with D. 91-07-006, Ordering Paragraphs 4a, 4b and 4c, with respect to this trust.

4. Edison has requested a Private Letter Ruling from the Internal Revenue Service to establish the tax deductibility of contributions to the Collectively Bargained Trust referred to in

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findings of fact 2. This will also establish Edison's compliance with D. 91-07-006, Ordering Paragraph 4a.

5. Edison has not yet received a favorable Private Letter Ruling from the Internal Revenue Service. Therefore, Edison is not yet in compliance with D. 91-07-006, Ordering Paragraph 4a.

6. Edison will fund each VEBA Trust only after receiving a favorable Private Letter Ruling from the Internal Revenue Service which indicates that contributions to the Collectively Bargained Trust will be tax-deductible.

7. An Advice Letter filing is an inappropriate place to determine the reasonableness of a PBOPs plan.

8. D. 91-07-006, Ordering Paragraph 7, requires respondent utilities that seek recovery of pre-funded PBOPs contributions to undergo a reasonableness review, for the PBOPs plans pre-funded, in their next general rate case for which hearings are held.

9. Edison has agreed to comply with safeguards 6a, 6b, 6c, 6d, and 6f as discussed in the above section on DRA's protest.

10. DRA's safeguard 6a is sufficient to protect ratepayers, therefore, safeguard 6e is unnecessary.

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THEREFORE, IT IS ORDERED that:

(1) Southern California Edison Company may revise its Preliminary Statement, Part J, Electric Revenue Adjustment Mechanism (ERAM) to reflect an increase to the Authorized Level of Base Rate Revenue (ALBRR) under the ERAM as follows:

- a. The rate increase for contributions to the Collectively Bargained Trust is contingent on Edison receiving a favorable Private Letter Ruling from the IRS.
- b. For the Collectively Bargained Trust, the increase will be \$24,736,000 or a lesser amount based on the amount Edison funds as a result of the IRS Private Letter Ruling.
- c. For the Life Insurance Trust, the increase will be \$483,000.
- d. The increases will be effective for one year from the date Edison makes its contributions to the §501(c)(9) trusts.
- e. The rate increases are also contingent on Edison complying with safeguards 6a, 6b, 6c, 6d, and 6f, as listed in the discussion of DRA's protest.

(2) Edison shall comply in all respects with the ordering paragraphs of D. 91-07-006 as currently written, as they apply to this Advice Letter. In particular, Edison shall comply with Ordering Paragraph 7 of that decision.

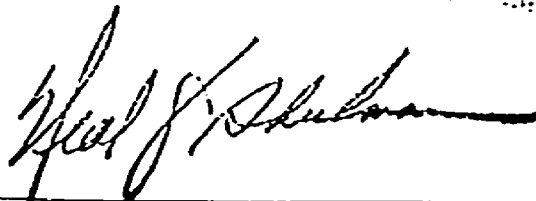
(3) Edison shall recover only its contribution to these §501(c)(9) trusts, and not any tax which may result from the contributions.

(4) Advice Letter 917 submitted by Edison shall be marked to show that it was approved for filing by Commission Resolution E-3249.

(5) This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on December 18, 1991. The following Commissioners approved it:

PATRICIA M. ECKERT  
President  
JOHN B. OHANIAN  
DANIEL Wm. FESSLER  
NORMAN D. SHUMWAY  
Commissioners



NEAL J. SHULMAN  
Executive Director