

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY AND
COMPLIANCE DIVISION
Energy Branch

RESOLUTION E-3286
NOVEMBER 6, 1992

R E S O L U T I O N

RESOLUTION E-3286. SOUTHERN CALIFORNIA EDISON COMPANY REQUESTS AUTHORITY TO REVISE ITS RULE NO. 9 "RENDERING AND PAYMENT OF BILLS" TO REFLECT THE REQUIREMENTS OF GOVERNMENT CODE SECTION 926.17

BY ADVICE LETTER 944-E, FILED ON MAY 20, 1992.

SUMMARY

1. Southern California Edison Company (Edison) requests authorization to revise its Tariff Rule No. 9. "Rendering and Payment of Bills", Paragraph F "Late Payment Charge" (Rule No. 9) to include language referencing the limitation of late payment charges as set forth in Government Code (GC) Section 926.17 for agencies of the State of California.
2. This Resolution grants the request, and orders additional language to be included in Edison's tariffs.

BACKGROUND

1. Government Code Section 926.17, which necessitates a change in tariff language as proposed by this Advice Letter, was most recently amended effective September 26, 1987. GC Section 926.17(a)(1) states, in part:

A state agency which acquires property or services pursuant to a contract, including any approved change order, with a business shall pay for each complete delivered item of property or service on the date required by contract between the business and agency or be subject to an interest penalty fee. If no date for payment is specified by contract, the state agency shall pay the contractor directly, if authorized to do so, within 50 calendar days after the postmark date of the invoice. If the state agency is not authorized to pay the contractor directly, the state agency shall forward the invoice for payment to the Controller within 35 calendar days after the postmark date of the invoice. The Controller shall pay the contractor within 15 calendar days of receipt of the invoice from the state agency.

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GC Section 926.17(b)(1) states, in part:

An interest penalty fee shall accrue and be charged on payments overdue under subdivision (a) at a rate of 1 percent above the rate accrued on June 30th of the prior year by the Pooled Money Investment Account, but not to exceed 15 percent.

2. D. 91-12-076 in Application 90-02-018, Finding of Fact No. 214 states:

Edison's estimates of revenue lag reduction due to imposition of a late payment charge are reasonable and should be adopted.

and, in Conclusions of Law, No. 36:

Edison must enforce late payment charges fairly and uniformly, in accordance with the filed tariffs.

Hence, Ordering Paragraph 1 of D. 91-12-076 directs that:

Southern California Edison Company (Edison) shall, on or before December 26, 1991, file with this Commission revised tariff sheets which:

c. make other revisions as necessary to comply with this interim order.

3. On December 23, 1991 Edison filed Advice Letter 923-E to include language in its Rule No. 9 allowing Edison to impose late payment charges on overdue accounts, but the tariff specified no rate or fixed amount. The Advice Letter was allowed to become effective on January 1, 1992. Following that, on January 21, 1992, Edison filed Advice Letter 927-E providing for a fixed late charge payment of 0.9 percent of the unpaid amount which became effective on the same date.

4. The California Department of General Services (Department), through its attorneys Grueneich, Ellison & Schneider, contacted both Edison and the Energy Branch of the Commission Advisory and Compliance Division (CACD) alleging that the filing did not meet the requirements of GC 926.17. The Department claims that a 50 day grace period is mandated by GC 926.17 before late charges can be applied.

5. As a result of the discussions with the Department, on May 5, 1992, CACD mailed a letter to Edison directing Edison to:

"demonstrate why you should not refund, with interest, charges made on a basis other than the Government Code. If you cannot, please file revised tariffs by May 20, 1992 in compliance with D. 91-122-076 and Government Code Section 926.17. This filing would be made

effective on the date of your previously submitted compliance Advice Letter 927-E. That effective date was January 21, 1992."

Edison responded to this letter by filing Advice Letter 944-E to include the limitation on the amount of the late payment charge in its filed tariffs.

NOTICE:

1. Public notice of this filing has been made by publication in the Commission's calendar on May 22, 1992, and by mailing copies to adjacent utilities.

PROTESTS:

1. On June 9, 1992 attorneys for the Department of General Services (Department) filed a timely protest to Advice Letter 944-E.

2. The protest letter claims that Advice Letter 944-E is deficient in the following;

- (1) it does not provide for the 50 day grace period as specified in GC 926.17,
- (2) the Advice Letter imposes a requirement upon Department to serve written notice that the account is a "State" account, and
- (3) Edison proposes that Advice Letter 944-E not become final until 40 days after its May 20, 1992 filing date with the Commission.

3. Edison, in a letter dated June 19, 1992, responded to these three issues as follows:

The 50 day grace period specified in the statute applies only in the absence of a time period in the contract. Edison's tariffs "constitute the terms and conditions of the agreement between the Utility and applicant/customer.

As long as the account name clearly indicates it is a State of California account, Edison can code the account for the Pooled Money Investment Account (PMIA) rate. Edison has been working to identify such accounts and will continue to do so in the future. However, the State may also have to participate in this identification process so that all accounts which are state agencies, as defined by the Government Code, can be identified and properly coded for the PMIA rate.

The 40 day time period for approval of advice letters without resolution is a requirement of the Commission's General Order 96-A.

An effective date as of January 21, 1992 for this filing as directed by CACD would be, in Edison's view, "retroactive ratemaking".

DISCUSSION

1. The language of GC 926.17 establishes the rate at which state agencies will pay late payment charges to any of their suppliers. Both Edison and the Department agree that GC 926.17 governs this situation. Thus, in effect, they both concede that Edison's tariff is a "contract" within the meaning of GC 926.17. Edison's tariffs containing the specified 0.9% late payment charge are not in conformance with GC 926.17's limitation on late payment charges. The relevant sections of the Code, GC 926.17 (a)(1) and (b)(1) are quoted under "Background" above.

Advice Letter 944-E, as submitted, would revise the tariffs by incorporating language from the legislation setting the rate for late payment charges.

2. The most recent amendments to Government Code Section 926.17 became effective on September 26, 1987. Following that date the rate for any late charges to be paid by the agencies of the State of California was set by law, regardless of what may have been stated in any tariff filed with the Commission. Thus we agree with the Department that GC 926.17 has always limited the amount of late charges that Edison can impose.

3. On the other hand, we cannot agree with Department that GC 926.17 automatically provides the 50 day grace period within which to pay bills that Department seeks. Pursuant to GC 926.17, the 50 day rule only applies when the "contract" does not specify a payment date. Edison's tariff is a "contract" within the meaning of GC 926.17. (Compare Ellickson v. General Telephone, 6 Cal. P.U.C. 2d 432, 437.) Department concedes as much by arguing that GC 926.17 applies here. If there were no "contract," GC 926.17 would not apply at all. Since, the tariff is a "contract" within the meaning of GC 926.17, a different payment date specified in the tariff would prevail over the 50 day period mentioned in the statute.

4. However, as a matter of policy, we will impose a 50 day grace period for all future payments. One policy of GC 926.17 appears to be to allow state agencies 50 days to pay unless they agree by contract to an earlier date. Although a tariff is a contract, it is not one whose terms are voluntarily set by negotiation between the state agency purchasing services and the utility. Therefore, the statutory policy could be frustrated if we did not require Edison to give state agencies 50 days to pay. Moreover, Department argues that the 50 day time period is necessary for

Department to process invoices from suppliers and issue the warrants to pay for the services received. Thus, one of the purposes of Edison's late charge, namely ensuring prompt payment, would not be served by imposing a late charge on state agencies at any earlier date. For all these reasons we will order Edison to add language to its tariffs allowing state agencies 50 days from the date of the postmark on the bills before late payment charges begin accruing.

5. Edison is able to identify some state agency accounts. However, Department is indeed in a better position than Edison to identify which accounts it has, and is able to notify Edison of these accounts in writing.

FINDINGS

1. Government Code Section 926.17 underlying the present dispute between Department and Edison was most recently amended effective September 26, 1987.

2. The late payment charge specified in Edison's Tariff Rule No. 9, as filed on January 21, 1992, does not conform with the requirements of GC 926.17 applicable to state agencies.

3. The language change proposed in Advice Letter 944-E would amend the filed Rule No 9 to include language referencing GC 926.17's limitation on the rate of interest penalty applicable to contracts with state agencies.

4. Because the date on which late payment charges begin accruing is set by tariff, Department cannot negotiate for the 50 day period which it needs to process bills. Edison should allow state agencies 50 days from the date of the postmark on its bills before late payment charges begin accruing.

5. Edison is able to identify some state agency accounts. The Department of General Services can readily identify all of its accounts with Edison and notify Edison in writing as to which accounts are state agency accounts.

THEREFORE, IT IS ORDERED that:

1. Advice Letter 944-E shall be marked to show that it was approved by Commission Resolution E-3286 with the proposed tariff language modified as specified below.

2. Southern California Edison shall within five days after the date of this Resolution file revised tariff sheets as directed in Ordering Paragraph 3. The revised tariff sheets shall be effective as of the date of this Resolution.

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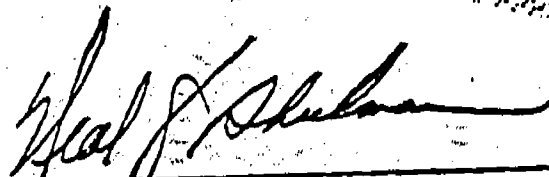
3. Southern California Edison Company shall submit Cal PUC sheet No 16610-E with the second paragraph in section F replaced by the following:

"Where an account serves a state agency and payment is not received within 50 calendar days after the postmark date of the bill, the late payment charge applicable to that account will be at a rate of one (1) percent above the rate accrued on June 30th of the prior year by the Pooled Money Investment Account (PMIA), but not to exceed 15 percent, all as set forth in Government Code Section 926.17(b)(1). Such rate shall be applied to and accrue on a state agency account only after 50 days from the date of the postmark on the bill has elapsed."

"The State of California shall notify the Company as to which accounts serve state agencies. The provisions of the above paragraph shall apply after such notification, except where Edison has previously identified the account as one belonging to a state agency."

5. This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on November 6, 1992. The following Commissioners approved it:


NEAL J. SHULMAN
Executive Director

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