

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY AND
COMPLIANCE DIVISION
Energy Branch

RESOLUTION B-3426*
May 8, 1996

R E S O L U T I O N

RESOLUTION B-3426. SOUTHERN CALIFORNIA EDISON COMPANY
REQUESTS REVISION OF THE BILL LIMITER PROVISION OF
TARIFF SCHEDULE I-6 TO EXCLUDE STANDBY CUSTOMERS.

BY ADVICE LETTER 1105-R, FILED ON JUNE 2, 1995.

SUMMARY

1. Southern California Edison Company [Edison] filed Advice Letter [AL] 1105-E on June 2, 1995 requesting authority to revise its tariffs to exclude standby customers from the Bill Limiter provision of Tariff Schedule I-6 [Special Condition 14].
2. THUMS Long Beach Company [THUMS] protested the Advice Letter. THUMS claims that Edison's filing:
 - a. Contravenes existing California Law,
 - b. Unduly restricts the Bill Limiter,
 - c. Subjects the Long Beach Unit [LBU] to undue discrimination,
 - d. Discriminates against qualifying facilities [QFs] in violation of the federal Public Utility Regulatory Policies Act [PURPA] of 1978,
 - e. Is not in the proper venue.
3. This Resolution partially grants Edison's request. It would remove the bill limiter protections to any customer who self-generates, but only if that customer commences self-generation after January 1, 1998. Customers who commence self-generation prior to January 1, 1998 will continue to be eligible to use the bill limiter. This resolution also reiterates the applicability to THUMS of the Competition Transition Charge (CTC) adopted by the Commission in D.95-12-063, as modified by D.96-01-009.

BACKGROUND

History of the I-6 Bill Limiter

1. Under interruptible rate schedules, a utility may curtail service in the event of capacity or energy shortages. Lower rates compensate interruptible customers for such potential service interruptions.

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2. Edison has offered six interruptible rate schedules at one time or another, titled Schedules Nos. I-1 through I-6. By 1992, Schedules I-1 and I-2 expired. Schedule I-4 was eliminated in 1987 by Decision [D.] 87-12-016. Schedules I-3 and I-5 terminated on January 1, 1993. This left Tariff Schedule I-6 as Edison's sole interruptible schedule in this series.
3. In 1987, by D.87-12-066, Edison was directed to permit I-3 and I-5 customers to switch to the I-6 schedule at any time with the condition that the remaining terms of the I-3 and I-5 contracts be completed under the I-6 schedule.
4. Five years later, D.92-06-020 added Special Condition 14, Bill Limiter, to Schedule I-6. The Bill Limiter is applicable to interruptible customers formerly served under Schedules I-3 and I-5 who were transferred to Schedule I-6 on January 1, 1993. This bill limiter was proposed by Edison in the interests of promoting "rate stability" and minimizing rate increases to the existing I-3/I-5 customers who were transferred to the I-6 schedule.
5. The Bill Limiter requires the calculation of two bills. The first bill is calculated in two steps. The first step is to calculate what the bill would be based on the I-3 or I-5 rates in effect on December 31, 1992. The second step increases the bill by 15 percent. A second bill is calculated using the present I-6 rates. The bill to the customer is limited to the lesser of the two bills.
6. In D.92-06-020, the Commission envisioned that the bill limiter would be phased out by 1995. However, in 1993, Edison applied to the Commission for permission to freeze the bill limiter at its current level through 1995. Edison justified this request based on the "state's deteriorating economic climate" and the need to continue to provide rate relief to California's large power interruptible customers.
7. Although the Commission rejected Edison's arguments to extend the bill limiter based on the state of the California economy, in D.93-12-034 the Commission did extend the bill limiter. It did so in order to comply with the requirements of Senate Bill 809 (Stats. 1993, Chapter 453) which added PU Code Section 743.1 which requires that:

"(a) Electrical corporations shall make available to qualifying heavy industrial customers optional interruptible or curtailable service. The effective rate for interruptible or curtailable service to qualifying customers shall reflect a pricing incentive for electing to operate under the interruptible or curtailable service option. In no event shall the level of the pricing incentive for interruptible or curtailable service be altered from those levels in effect on January 30, 1993.

Subsequent legislation extended this rate freeze through 1999.

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8. In its recently completed Phase II General Rate Case decision, Edison again requested, and the Commission approved, Edison's request to continue the bill limiter at its current level.

Ability to Self-Generate under the Interruptible Tariff

9. The previous interruptible schedules (I-1 through I-5) contained a Special Condition restricting the use of customer owned auxiliary and emergency generation equipment in parallel with Edison's system. The terms and conditions of Schedules I-3/I-5 expired as of January 1, 1993 as a result of D.92-06-020.

10. Edison's replacement interruptible schedule (Schedule I-6) contains no similar prohibition. Special Condition 13 of Schedule I-6, "Customer-Owned Electrical Generation Equipment", permits the parallel operation by customers of auxiliary and emergency generation equipment. Special Condition 13 also requires that "Where customer-owned electrical generation equipment is used to meet a part or all of the customer's electrical requirements, service shall be provided concurrently under the terms and conditions of Schedule S and this schedule."

11. Tariff Schedule S is the Standby Schedule. It applies to customers taking service under a regular rate schedule where a part or all of the electrical requirements of the customer can be supplied from a cogeneration facility.

12. The Bill Limiter in Schedule I-6 does not address standby service. Thus, Special Condition 13 in Schedule I-6 allows former Schedule I-3 and I-5 customers to construct cogeneration facilities, bypass the Edison system, take interruptible standby service, and still benefit from the Bill Limiter.

13. In this Advice Letter, Edison proposes to add the following sentence to the Bill Limiter (Special Condition 14 of Tariff Schedule I-6):

This special condition is not applicable to customers taking service concurrently under Schedule S.

Applicability of Special Condition 14 to THUMS

14. THUMS is currently an I-6 customer of Edison and a former I-3/I-5 customer. As a result, it is eligible for the I-6 bill limiter. THUMS has an average interruptible load of approximately 48 MW used to operate oil pumping operations within the City of Long Beach.

15. THUMS is planning to construct a 40 Megawatt (MW) cogeneration facility at its Long Beach Unit. In addition, THUMS anticipated continuing to meet the remaining 8 MW of its energy needs by continuing to take interruptible service from Edison under Tariff Schedule I-6.

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16. In the summer of 1994, Edison and THUMS were negotiating a self-generation deferral agreement in lieu of THUMS installing a cogeneration plant. In May 1995, the parties had agreed on many material terms of the agreement. The parties differed on the applicability of the Bill Limiter to THUMS' residual load.

17. Soon after negotiations with THUMS ceased without an agreement, Edison filed AL 1105-E in June 1995. THUMS protested Edison's filing on June 22, 1995.

NOTICE

1. Edison served notice of AL 1105-E by mailing copies to other utilities, government agencies, and all parties that requested such information. AL 1105-E was noticed in the Commission Calendar.

PROTESTS

1. On June 22, 1995, THUMS Long Beach Company, an agent of Long Beach Unit (LBU), protested AL 1105-E on behalf of LBU. THUMS claims that Edison's filing:

- a. Contravenes existing California Law,
- b. Unduly restricts the Bill Limiter,
- c. Subjects LBU to undue discrimination,
- d. Discriminates against QFs in violation of the federal Public Utility Regulatory Policies Act (PURPA) of 1978,
- e. Is not in the proper venue to decide this issue.

2. Edison responded to THUMS' protest on July 14, 1995.

DISCUSSION

Contravenes existing California Law

1. THUMS argues that denying the Bill Limiter to standby interruptible customers violates the provisions of PU Code Section 743.1 that froze the pricing incentives for interruptible service to the levels in effect on January 30, 1993.

2. To implement Section 743.1, the Commission, in D.93-12-034, determined that the Bill Limiter should be frozen at its 1993 level for customers that previously took service under Tariff Schedules I-3 and I-5.

3. THUMS contends that by making standby customers ineligible for the Bill Limiter, AL 1105-E would raise the interruptible rates for these customers in excess of the 1993 levels, in violation of Code Section 743.1(a).

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4. THUMS interpretation of PU Code 743.1 is overly broad. Although PU Code 743.1 froze the rate levels (i.e. "pricing incentives") it is unclear if it also prohibited the Commission from modifying the "terms and conditions" of service. Additionally, PU Code 743.1 applies only to "qualifying heavy industrial customers", the presumption being that customers who no longer qualify for interruptible rates are thereby ineligible for the rate protections of PU Code 743.1. In the past, the Commission has had to address the question of a customer's continued eligibility for the rate limiter when the customer's load changed due to changing circumstances. These changed circumstances include such events as a customer's load being reduced below the levels needed to qualify for interruptible service; a customer consolidating operations within a plant site; and a customer relocating from one site to another. Finally, PU Code Section 743.1 does not directly mandate continuation of the bill limiter. As the Commission noted in D.93-12-034:

We do not rule out the possibility that there could be other means to accomplish compliance with Section 743.1, but Edison's petition [to continue the bill limiter] appears to be an effective and procedurally efficient way to do so. (D.93-12-034, p. 7-8)

5. Edison's answer to THUMS is that Section 743.1 requires lower rates for heavy industrial customers who rely only on their franchise utility company for energy service. Edison appears to be arguing that THUMS is no longer a "qualifying heavy industrial customer" when it chooses to cogenerate and thereby loses its eligibility for the bill limiter.

6. Edison also states that PU Code Section 743.1 prohibits the shifting of revenue deficiencies to other customer groups. The revenue deficiency associated with the Bill Limiter is spread to Edison's other large power customers who take full service from Edison. Edison believes that extending the Bill Limiter to former I-3 and I-5 customers who opt for standby service would increase rates for Edison's other industrial customers in violation of Section 743.1.

7. Similar to THUMS, Edison's response also relies on an overly broad determination of the applicability of PU Code 743.1. Nowhere in PU Code 743.1 is there an explicit prohibition against customers who self-generate continuing to receive discounted rates. The only prohibition against self-generation contained in Edison's tariffs expired on January 1, 1993. PU Code 743.1 is explicit in freezing pricing incentives to "those levels in effect on January 30, 1993." Had the legislature specifically meant to exclude the ability to self-generate, they could either have made the legislation effective January 1, 1993 or made a specific finding as to inapplicability, neither of which they did.

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8. Edison's interpretation of PU Code 743.1 and its implementation also appears inconsistent with Edison's own application in support of continuing the bill limiter. In filing its petition to continue the bill limiter Edison justified it almost exclusively on the basis of economic development, stating that:

Since Decision No. 92-06-020 was issued, the state's deteriorating economic climate and the high cost of doing business has threatened California's large-power interruptible customers, many of whom use large amounts of electricity. These customers represent large employers and consumers of California products and their plight will aggravate the state's poor economic condition. Moreover, losing them as customers will result in a greater share of Edison's fixed costs being borne by Edison's other customers.

9. As D.93-12-034 goes on to note, "Edison requests that the Commission alleviate financial hardships facing large industrial customers by authorizing it to freeze the bill limiter" (See D.93-12-034, p. 3). Although minimizing bypass may have been a secondary consideration in Edison's proposal, the Commission specifically rejected this contention, noting that:

The justification offered by Edison for delaying the full implementation of rate increases which have been ordered since 1987 is that doing so will both improve the California economy and help avoid bypass by interruptible customers. We agree with DGS that there is little if any record evidence to support either aspect of this justification. (D.93-12-034, p. 6, emphasis added)

10. Instead, the Commission adopted Edison's proposal solely as a means to comply with PU Code Section 743.1. Although the Commission could choose to limit the applicability of the bill limiter to "qualifying heavy industrial customers", this did not appear to be the intent of the Commission when it adopted continuation of the bill limiter in D.93-12-034.

Unduly restricts the Bill Limiter

11. THUMS argues that when the Bill Limiter was established in Schedule I-6, it was clearly understood that it would apply to all customers, including former Schedules I-3 and I-5 customers. THUMS further argues that the Commission policy in this regard was characterized by equity, rate stability, and legislative concerns. Since the Bill Limiter Special Condition of Schedule I-6 was ordered by the Commission and has been in effect for three years, Edison should not now be allowed to change it by an Advice Letter.

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12. Edison argues that disqualifying standby customers from the Bill Limiter is equitable and not an exercise in undue discrimination. Edison thinks that it would be inequitable to Edison's other customers if LBU was provided a benefit that was designed as an incentive to mitigate potential bypass.

13. As noted above, the ability of the Commission to restrict the bill limiter to "qualifying heavy industrial customers" would allow it to limit applicability of the bill limiter to customers who don't self-generate. However, we are concerned that this is the third time since 1991 that Edison has sought to continue use of the bill limiter yet it has never once sought to clarify its inapplicability to self-generators. Instead, Edison seems to continually rely on the prohibition against self-generation contained in the I-3/I-5 rate schedules which expired on January 1, 1993. Edison appears to be arguing that these expired tariffs can somehow reach beyond their grave to still bind former I-3/I-5 customers to the expired tariff language. While we are supportive of the need to limit bypass of the utility system, we are unpersuaded by Edison's continued reliance on expired tariffs to effectuate that result.

Subjects LBU to undue discrimination

14. THUMS states that had it been aware that the Bill Limiter would not be applicable to its residual [8 MW] load, it would have altered its cogeneration project perhaps by increasing its size to minimize or totally eliminate the amount of residual load to be served under I-6. The timing of the Advice Letter coincides with the impasse in the negotiations. LBU is the only customer under I-6 that can economically develop a viable cogeneration plant. Approval of AL 1105-E would disadvantage LBU and would not disadvantage others. PU Code Section 453(c) prohibits unreasonable differences between classes of service.

13. Edison replies that it only gives the Bill Limiter to non-standby customers. Edison claims that the mere filing of this Advice Letter to clarify the Bill Limiter provision demonstrates its desire to promote a consistent interpretation of the Bill Limiter.

14. Although we disagree with THUMS' argument that approval of AL 1105-E will subject LBU to undue disadvantage under Section 453 of the PU Code, we agree with THUMS that customers should be able to place some reliance that existing tariffs are fairly applied and based upon the underlying Commission decision. To do otherwise would help to undermine a sound business climate that customers need to rely on when making business decisions.

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Discriminates against QFs in violation of PURPA.

15. THUMS points out that the Public Utilities Regulatory Policy Act (PURPA) requires non-discriminatory electricity sales to Qualifying Facilities (QFs). Section 210(c)(2) of PURPA requires that rates for electricity sales from electric utilities to QFs:

...shall not discriminate against the qualifying cogeneration facility or qualifying small power production facility.

The Federal Energy Regulatory Commission [FERC] rules [18 CFR 292.305(a)(1)(ii)] implementing PURPA specify that such rates:

...shall not discriminate against qualifying facilities in comparison to rates for sales to other customers served by the electric utility.

THUMS claims that removing the Bill Limiter would violate PURPA because Edison would be charging higher and discriminatory rates to QFs than other Bill Limiter customers. Disqualifying QF customers from the Bill Limiter would have the effect of charging higher rates to such customers. This would be discrimination against QF's.

16. In Edison's view, excluding QF's from the Bill Limiter is consistent with the PURPA mandate for rates to QFs that are just and reasonable, in the public interest, and non-discriminatory. Because the Bill Limiter provides credits designed to discourage bypass, it should not be made available to customers that have bypassed Edison's system.

17. Bypass comes from sources of self-generation that include, but are not limited to, qualifying facilities. Therefore, we reject the contention in the first instance that discrimination occurs by the result herein ordered, or that such discrimination, had it occurred, would violate PURPA. The qualifying factor applicable to Schedules I-3 and I-5 relate to "any other source" of generation, not just QF generation. Therefore, QF generation is being treated in a non-discriminatory fashion relative to all other customers with any other source of generation.

Improper venue issue

18. Edison argues that Section III.C of General Order 96-A, Contents of Advice Letters, anticipates filings for increases or decreases in rates or changes in conditions of service. Edison says that its intent is only to clarify an existing tariff provision. Therefore the topic does not have to be considered in a general rate case proceeding.

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19. CACD notes that Section VI of General Order 96A provides that a utility may file an Advice Letter for a minor increase in rates. The Commission may accept such an Advice Letter filing when justification for the increase is fully set forth in the Advice Letter. CACD agrees with Edison's position that General Order 96A provides for Advice Letter filings to effect increases and decreases in rates and changes in service. Edison's AL 1105-E is an appropriate filing to accomplish the minor change that Edison seeks.

Prospective Adoption of Edison's Proposal

20. As noted above, it is within the Commission's authority to impose restrictions on the eligibility of the bill limiter to customers who self-generate. This authority is consistent with the legislative mandates of PU Code Section 743.1 to limit pricing incentives only to "qualifying heavy industrial customers." Although Edison's request has not identified that it was the original intent of the Commission to preclude applicability of the bill limiter to customers who self-generate, Edison has identified several compelling policy reasons that it may be desirable to do so. These include limiting the revenue shortfall that must be paid by other customers due to the application of the bill limiter, attempting to limit bypass of the utility system, and the Commission's policy of making electric rates cost-based where possible.

21. As noted above, we are also concerned over the lack of notice that affected customers, such as THUMS, would have to any proposed change. The existing I-6 tariffs, which allow for self-generation for customers using the bill limiter has now been in effect for over three years. Edison has had at least three previous opportunities to clarify its eligibility and has not done so.

22. Therefore we will partially grant Edison's request. We will remove the bill limiter protections for any customer who self-generates, but only if that customer commences self-generation after January 1, 1998. Customers who commence self-generating prior to January 1, 1998 will continue to be eligible to use the bill limiter. This will allow ample time for customers, such as THUMS, to complete any pending projects the design and operation of which was at least partially based on their reliance on the clear language of the I-6 tariffs. Other customers who may be planning future self-generation projects, will now have sufficient time to plan their projects accordingly.

Applicability of the Competitive Transition Charge (CTC)

23. THUMS was a customer of record of the Edison system as of December 20, 1995. Therefore, according to D.95-12-063, as modified by D.96-01-009, THUMS is reminded of its obligation to pay any Competition Transition Charges (CTC) adopted by the Commission and applied to its retail load as of December 20, 1995.

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FINDINGS

1. Edison filed Advice Letter [AL] 1105-E on June 2, 1995 requesting revision of the Bill Limiter provision of Tariff Schedule I-6 to exclude standby customers.
2. THUMS, an agent of Long Beach Unit [LBU], filed a timely protest on the grounds that AL 1105-E would
 - o contravene existing California Law on interruptible electricity rates,
 - o unduly restrict the Bill Limiter in conflict with the Commission policy,
 - o subject LBU to undue discrimination,
 - o discriminate against qualifying facilities [QFs] in violation of the federal Public Utility Regulatory Policies Act [PURPA] of 1978, and
 - o not be the proper venue for the request.
3. Edison did not demonstrate that cogeneration plants were prohibited under Tariff Schedules I-3 and I-5.
4. Decision 87-12-066 directed Edison to allow customers served under Schedules I-3 and I-5 to switch to Schedule I-6.
5. Although PU Code 743.1 froze the rate levels (i.e. "pricing incentives") it is unclear if it also prohibited the Commission from modifying the "terms and conditions" of service.
6. PU Code 743.1 applies only to "qualifying heavy industrial customers", the presumption being that customers who no longer qualify for interruptible rates are thereby ineligible for the rate protections of PU Code 743.1.
7. In the past, the Commission has had to address the question of a customer's continued eligibility for the rate limiter when the customer's load changed due to changing circumstances.
8. There is no explicit prohibition against customers who self-generate continuing to receive discounted rates under the bill limiter.
9. The bill limiter was extended in 1993 based on a petition to modify D.92-06-020 that was filed by Edison. Edison based its request on alleviating claimed financial hardships facing large industrial customers.
10. In D.93-12-034, the Commission extended the bill limiter as a means of complying with PU Code Section 743.1.
11. The ability of the Commission to restrict the bill limiter to "qualifying heavy industrial customers" would allow it to limit applicability of the bill limiter to customers who don't self-generate.

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12. This is the third time since 1991 that Edison has sought to continue use of the bill limiter yet it has never once sought to clarify its inapplicability to self-generators.

13. Limiting the bill limiter only to non-standby customers would not violate PU Code Section 453(c)'s prohibition against undue discrimination.

14. Utility customers should be able to place some reliance that existing tariffs are fairly applied and based upon the underlying Commission decision. To do otherwise would help to undermine a sound business climate that customers need to rely on when making business decisions.

15. Restricting the bill limiter would not violate PURPA.

16. Section VI of General Order 96A provides that a utility may file an Advice Letter for a minor increase in rates. The Commission may accept such an Advice Letter filing when justification for the increase is fully set forth in the Advice Letter.

17. Edison has identified several compelling policy reasons that it is desirable to limit applicability of the bill limiter. These include limiting the revenue shortfall that must be paid by other customers due to the application of the bill limiter, attempting to limit bypass of the utility system, and the Commission's policy of making electric rates cost-based where possible.

18. Partially adopting Edison's request to remove the bill limiter protections for any customer who self-generates, but only if that customer commences self-generation after January 1, 1998 while allowing customers who commence self-generating prior to January 1, 1998 to continue to be eligible to use the bill limiter is fair and reasonable. This will allow ample time for customers, such as THUMS, to complete any pending projects the design and operation of which was at least partially based on their reliance on the existing language of the I-6 tariffs, while other customers who may be planning future self-generation projects will now have sufficient time to plan their projects accordingly.

19. THUMS, as a customer of record of the Edison system as of December 20, 1995 will be subject to a Competition Transition Charge (CTC) as determined by the Commission.

THEREFORE, IT IS ORDERED that:

1. Southern California Edison Company's request to modify Special Condition 14 of its Interruptible Tariff Schedule I-6 is partially granted. Eligible customers who self-generate will not receive the protections of the bill limiter, but only if that customer commences self-generation after January 1, 1998. Customers who commence self-generating prior to January 1, 1998 will continue to be eligible to use the bill limiter.

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2. Southern California Edison Company shall file revised tariff sheets reflecting the above modifications to Special Condition 14 of its Interruptible Tariff Schedule I-6.

3. This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on May 8, 1996. The following Commissioners approved it:

Wesley Franklin

WESLEY M. FRANKLIN
Executive Director

P. GREGORY CONLON
President
DANIEL WM. FESSLER
JESSIE J. KNIGHT, Jr.
HENRY M. DUQUE
Commissioners

I abstain.

/s/ JOSIAH L. NEEPER
Commissioner