

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-3487
JULY 16, 1997

R E S O L U T I O N

RESOLUTION E-3487. SOUTHERN CALIFORNIA EDISON COMPANY REQUESTS APPROVAL TO ADD A NON-DISCLOSURE AGREEMENT TO SCHEDULE RTP-3. GRANTED FOR LIMITED TERM.

BY ADVICE LETTER 1205-E, FILED ON DECEMBER 15, 1996.

SUMMARY

1. By Advice Letter (AL) 1205-E, Southern California Edison Company (Edison) requests a restriction be added to Schedule RTP-3, requiring customers to sign a real-time-pricing (RTP) non-disclosure agreement before taking service. In addition, the current non-disclosure agreement used for Schedule RTP-3-GS, Form 14-641, is revised to make it generic so that it can be used with Schedule RTP-3 or RTP-3-GS.
2. Utili-Tech Inc. (Util-Tech) protested the proposed restrictive conditions of the non-disclosure agreement.
3. This Resolution authorizes the changes requested in AL 1205-E on a temporary basis, until a new generic agreement can be established to limit the time during which information is subject to the non-disclosure agreement. Utili-Tech's protest is denied.

BACKGROUND

1. By AL 1205-E, Edison seeks to add a new restriction to Schedule RTP-3, General Service - Large, Real Time Pricing. Customers will be required to sign a non-disclosure agreement before taking service. The proposed agreement is essentially similar to the agreement used for Schedule RTP-3-GS, General Service Real Time Pricing. This advice letter proposes to modify Form 14-641, Schedule RTP Non-Disclosure Agreement, the non-disclosure agreement currently required by Schedule RTP-3-GS, so it can be used by both schedules.
2. The proposed non-disclosure agreement is intended to protect forecast pricing information released to RTP customers at the beginning of each month. Edison is concerned that the forecast price information reveals proprietary system information and could be used by competitors during the transition period.

3. Schedule RTP-3 was authorized by Decision (D.) 96-04-050. The decision did not discuss the merits or need for a non-disclosure agreement.

4. Schedule RTP-3-GS was authorized by D.96-08-025. The decision did not discuss the merits or need for a non-disclosure agreement, but a non-disclosure agreement was included in the approved tariff pages attached in the appendix.

D.95-12-063, Findings of Fact 17 and 18, stress the importance of transparent pricing during the transition to foster a competitive market.

NOTICE

1. Notice of AL 1205-E was made by publication in the Commission's Calendar on December 20, 1996, and by mailing copies of the filing to adjacent utilities and interested parties.

PROTESTS

1. Utili-Tech filed a protest of AL 1205-E on January 16, 1997. Utili-Tech opposes the proposed non-disclosure agreement because it is unfair to third party consultants and agents and deprives customers of the benefits of their services. Specifically Utili-Tech claims the advice letter restricts the customers' ability to:

- 1) Have a third party review and advise on the projected annual costs of the RTP-3/RTP-3-GS as determined by Edison;
- 2) Allow a third party to recommend RTP-3/RTP-3-GS to a client;
- 3) Allow a third party to prove savings to a client;
- 4) Allow third parties to verify the integrity of Edison's billing.

2. Edison responded to Utili-Tech's protest on January 14, 1997. Edison states items 1 and 2, above, involve marketing and will rely on historical data not subject to the non-disclosure agreement. The subject pricing information is not available until 4:00 p.m. the day before prices are effective so Edison is also unable to use it in its own marketing. Edison also states that while the forecast pricing information is necessary for items 3 and 4, these activities can be performed after the pricing information ceases to be confidential. Edison says "it must maintain strict confidentiality of its price information for a reasonable period of time. This period of time is generally believed to be thirty days or the length of the billing period."

DISCUSSION

1. Utili-Tech argues it has a legitimate need for the forecast price information. Edison responds that the information Utili-Tech requires is available within the constraints of the non-disclosure agreement and that it will not contest the release of forecast price information after a reasonable period of time.

2. Edison and Utili-Tech disagree on what the proposed tariff changes mean in plain language. Energy Division agrees with Utili-Tech that the proposed language is more restrictive than Edison's response indicates was intended. Rather than rely on intent and application, tariff rules should be explicit and unambiguous. The proposed language of the tariff needs to be changed for both Schedule RTP-3 and Schedule RTP-3-GS, stating a date after which the information is no longer covered by the non-disclosure agreement. The longer of one billing period or 30 days is a reasonable compromise.

3. Edison has expressed concern to Energy Division that until a non-disclosure agreement is in place it is at risk for the competitive information released to RTP-3 customers. In response we will temporarily approve AL 1205-E, but limit its effect to September 1, 1997. The tariff sheets attached to AL 1205-E shall be cancelled on September 2, 1997. In the interim, Edison may prepare a revision to its tariff schedules, limiting the duration of its non-disclosure agreement, and file it by advice letter.

4. To ensure the transition to the new non-disclosure agreement, all customers of Schedules RTP-3 and RTP-3-GS will be required to sign the revised non-disclosure agreement within 30 days of its effective date. In addition, all non-disclosure agreements signed prior to September 2, 1997 and pursuant to Schedules RTP-3 and RTP-3-GS are cancelled as of September 2, 1997. This cancelling of the non-disclosure agreement will only apply to information provided after September 1, 1997.

FINDINGS

1. Edison filed Advice Letter 1205-E, on December 16, 1996, requesting a non-disclosure agreement be required to obtain service under Schedule RTP-3.

2. Utili-Tech filed a protest on January 2, 1997 requesting the Commission reject Advice Letter 1205-E.

3. Edison and Utili-Tech agree that the forecast pricing information provided to Schedule RTP-3 and Schedule RTP-3-GS customers should be released after a reasonable period of time.

4. The current language of Schedule RTP-3-GS and the proposed language for Schedule RTP-3 does not provide for the release of information subject to a non-disclosure agreement after a reasonable period of time.

5. It is reasonable to allow Edison to use the proposed non-disclosure agreement for a short time while it prepares the revisions ordered by this Resolution.

6. Utili-Tech's protest should be denied.

THEREFORE, IT IS ORDERED THAT:

1. Advice Letter 1205-E is authorized until September 1, 1997. The tariff sheets attached to Advice Letter 1205-E shall be cancelled on September 2, 1997.

2. Southern California Edison Company (Edison) may file an advice letter revising Schedules RTP-3 and RTP-3-GS to limit non-disclosure of forecast price information to a reasonable period of time. The tariff changes submitted with this advice letter shall be strictly limited to changes proposed in paragraph 2 of the discussion. If Edison files a non-disclosure agreement consistent with paragraph 2 of the discussion, customers of Schedules RTP-3 and RTP-3-GS shall be required to sign the new non-disclosure agreement within 30 days of its approval. All non-disclosure agreements signed prior September 1, 1997 and pursuant to Schedules RTP-3 and RTP-3-GS are cancelled as of September 1, 1997.

3. An advice letter filed in accordance with Ordering Paragraph 2 shall become effective upon filing.

4. The protest of Utili-Tech Inc. is denied.

5. This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on July 16, 1997. The following Commissioners approved it:



WESLEY FRANKLIN
Executive Director

P. Gregory Conlon, President
Jessie J. Knight, Jr.
Josiah L. Neeper
Richard A. Bilas
Commissioners

I dissent.

/s/ Henry M. Duque
Commissioner