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Decision 02-01-033 January 9, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into Implementation of Pub. Util. Code § 390.	Rulemaking 99-11-022 (Filed November 18, 1999)

OPINION REGARDING SOUTHERN CALIFORNIA EDISON COMPANY'S PETITION FOR MODIFICATION OF DECISION 01-07-031

Summary

By this decision we approve, in part, Southern California Edison Company's (Edison) Petition to Modify Decision (D.) 01-07-031, and extend the reasonableness findings of D.01-07-031 to voluntary agreements with qualifying facilities (QFs) concerning payment and pricing terms. We do not approve the City of Long Beach's agreement included in the Petition, but provide Edison an opportunity to submit this agreement separately for approval.

Background

On November 29, 2001, Edison filed a Petition to Modify D.01-07-031 (Petition), and a Motion to Shorten Time for Filing and Serving Responses to the Petition to Modify D.01-07-031 (Motion). Edison's Petition, filed under Rule 47 of the Rules of Practice and Procedure,[1] requests that the Commission modify D.01-07-031 to extend the reasonableness findings to additional contract

[1] All references are to the Commission's Rules of Practice and Procedure unless otherwise noted.

modifications and agreements concerning pricing and payment terms approved by D.01-07-031. The Petition includes proposed agreements with QFs and a summary of QFs who have committed to sign agreement amendments (Exhibit I).[2] Edison's Motion requests that the time for interested parties to file responses to its Petition be shortened from December 29, 2001, to December 5, 2001.

On December 3, the Office of Ratepayer Advocates (ORA) filed a response opposing Edison's Motion and requesting the full 30-day period provided by Rule 47(f) to respond to Edison's Petition. ORA's response states that Edison's Petition includes several anomalous contractual provisions, including a contract with the City of Long Beach, requiring heightened scrutiny.

In response to Edison's Motion, the assigned Administrative Law Judge (ALJ) issued a ruling December 7, 2001 shortening the time for response to Edison's Petition to December 14, 2001.

Caithness Energy (Caithness), CE Generation LLC (CE Generation) and the California Cogeneration Council (CCC), filed responses supporting Edison's Petition, and the need for expedited action by the Commission. No protests or other responses were filed regarding Edison's Petition. Caithness represents that it has an ownership interest in several of the QFs with fixed price agreements approved in D.01-06-015 and D.01-07-031, and the amendments submitted with Edison's Petition. Caithness contends that the Commission has already found reasonable all of the elements of the amendments in Edison's Petition and further consideration and approval is unnecessary. Caithness also states that the

[2] Edison filed a revised version of Exhibit I on December 7, 2001.

underlying documents approved by D.01-06-015 and D.01-07-031 have already been found reasonable. Caithness maintains that the Settlement Agreement[3] between Edison and the Commission now defines Edison's return to creditworthiness.

The CCC and CE Generation also argue that the Commission has already found reasonable the form agreements on which the underlying agreements are based, and the amendments in D.01-07-031. CCC and CE Generation contend that without approval of the proposed amendments litigation may commence and jeopardize Edison's attempt to restore creditworthiness. CCC reiterates Edison's argument that approval is necessary to resolve the uncertainty regarding termination of the amendments.

Discussion

In D.01-07-031, we clarified our conclusions in D.01-06-015 regarding the reasonableness of various amendments proposed by Edison for agreements with QFs. These amendments between Edison and gas-fired cogenerators (the Gas Amendments) and the Fixed Energy Rate Agreement were submitted for approval by Edison in various motions filed in June, 2001, and were found reasonable by D.01-07-031. The Fixed Rate Agreement included both energy pricing terms and terms concerning payment of previously-suspended payments for energy and capacity. The Fixed Rate Agreement established a Memorandum of Understanding (MOU) Effective Date based on certain events, including

[3] See Settlement Agreement, October 2, 2001 (Exhibit A), filed in Southern California Edison Co. v. Lynch, Case No. 00-12056-RSWL (Mcx) in United States District Court for the Central District of California.

legislation, to restore Edison to creditworthiness. Certain gas-fired cogenerators accepted terms of the Fixed Rate Agreement and an implementing agreement

providing terms for payments. Edison states that the Fixed Rate Agreement, the Implementing Agreement and related agreements based on these forms of agreement terminate automatically if a "Final Payment Date" has not occurred by June 1, 2002. Edison argues that this Final Payment Date is extremely unlikely given the adjournment of the Legislature or other mechanism to restore Edison to creditworthiness before January 2003.

Edison contends that these circumstances cause considerable uncertainty for both QFs and Edison, which can lead to the potential for litigation regarding payments, and could potentially negate an objective of the Settlement Agreement, i.e., to restore Edison to creditworthiness. Therefore, Edison requests approval of revisions to those agreements regarding payment and pricing terms. A primary revision is the replacement of the occurrence of the MOU Effective Date with a payment mechanism linking QF payments with payments of other Edison indebtedness. The amendments relieve Edison of the obligation to make advance or semi-monthly payments to QFs after Edison has paid all outstanding principal and interest owed to QFs for the period November 1, 2000, through March 26, 2001. The amendments also include provisions requiring Commission approval, defined as a final decision, no longer subject to appeal. Other terms include a standstill provision,[4] dates initiating and concluding fixed energy rates, and an option for an alternative fixed energy rate between December 1, 2001 and April 30, 2002, in lieu of Short Run Avoided Cost (SRAC) rates.

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[4] A standstill provision requires parties to forebear from asserting claims on the issue of dates regarding Edison's return to creditworthiness

As of this date, the California Legislature has not enacted legislation intended to restore Edison's creditworthiness. As a result, the terms leading to payments to QFs within the agreements which we approved in D.01-07-031 are uncertain. We will approve these proposed amendments that will serve to clarify these issues and remove the inherent uncertainty for parties. As we stated in D.01-10-069 (p.11), we provide utilities the opportunity to seek Commission approval of contract amendments entered into after July 31, 2001. We will approve those amendments necessary and reasonable to improve the contracting process between utilities and QFs. The proposed modification to replace the contingency of legislation being enacted with a condition related to Edison paying other "Specified Indebtedness" will assist in the contracting process and is thus reasonable and necessary. The amendments also relieve Edison of the obligation to make advance or semi-monthly payments after it has paid all outstanding principal and interest to QFs for energy and capacity deliveries made during the period November 2000 through March, 26, 2001. In addition, the proposed amendments to the fixed energy rate agreements previously approved by D.01-07-031 provide that the date on which such rate is to commence is no longer tied to legislation being enacted, but instead will commence on May 1, 2002. This proposed amendment provides for an interim rate of 3.25 cents/kilowatt-hour (kWh) as an alternate to SRAC prior to the commencement of the 5.37 cents/kWh rate approved in D.01-06-015. Each of these amendments eliminates uncertainty, aids the contracting process, and should be approved.

Although we approve elements of Edison's Petition, we reiterate our policy regarding amendments and agreements entered into after July 31, 2001. Any agreements negotiated after July 31, 2001 will have to be approved by the

Commission through the filing of a new application. We will not grant approval to amendments or agreements negotiated after this date in this decision. Therefore, we are not approving the City of Long Beach agreement reached October 3, 2001 and included in the Petition, but give Edison the opportunity to file an application on this, or any other future agreements or amendments, including those with Edison affiliates.

Comments on Draft Decision

Section 311(g)(1) generally requires that the Commission's draft decision be served on all parties, and subject to at least 30 days of public review and comment prior to a vote of the Commission. Rule 77.7(f)(9) provides that the Commission may reduce or waive the period for public review and comment where the Commission determines "that public necessity requires reduction or waiver of the 30-day period for public review and comment."

The time for public review and comment on this decision should be waived. Edison's motion to shorten time emphasized the need for action at the December 11, 2001 Commission meeting to avoid the possibility of continued litigation, and Edison's ability to make payments to QFs under agreements approved in D.01-07-031. Furthermore, while ORA expressed concern about certain contract provisions, no party has opposed the merits of Edison's petition, and three parties have supported both the petition and the need for expeditious action by the Commission. The public necessity of acting on this decision in a timely manner outweighs the public's interest for review and comment.

Findings of Fact

1. Edison's proposed amendments will serve to clarify the terms leading to QF payments.

2. The proposed amendments are necessary and reasonable to improve the contracting process between utilities and QFs.

3. The proposed modifications to QF contracts replace the contingency of enacted legislation with a condition related to Edison paying other "Specified Indebtedness."

4. The proposed amendments will assist in the QF contracting process.

5. The proposed amendments relieve Edison of the obligation to make advance or semi-monthly payments to QFs after Edison has paid all outstanding principal and interest for energy and capacity deliveries made during the period November 2000 through March, 26, 2001.

6. The proposed amendments to the "fixed energy rate agreements" provide that the date on which such rate is to commence is no longer tied to enacted legislation but will commence on May 1, 2002.

7. The proposed amendment to the fixed energy rate agreement provides for an interim rate of 3.25 cents/kilowatt-hour (kWh) as an alternate to SRAC prior to the commencement of the 5.37 cents/kWh rate approved in D.01-06-015.

8. The City of Long Beach settlement agreement was reached on October 3, 2001.

9. Utilities may seek approval of contract amendments and agreements negotiated after July 31, 2001 through the filing of an application.

Conclusions of Law

1. D.01-07-031 should be modified to approve the proposed amendments submitted with Edison's Petition in their entirety, without modification.

2. Consistent with D.01-10-069, we do not approve the City of Long Beach agreement included in the petition.

3. D.01-10-069 provides utilities, including Edison, an opportunity to seek Commission approval of contract agreements and amendments entered into after July 31, 2001 by filing an application with the Commission.

4. This order should be effective today in order to allow the amendments to be implemented expeditiously.

O R D E R

IT IS ORDERED that:

1. The petition for modification of Decision (D.) 01-07-031, filed by Southern California Edison Company (Edison), is granted to the extent set forth below:

a. Findings of Fact 11 through 13 are added:

> "11. On September 14, 2001, the California Legislature adjourned without enacting legislation intended to restore Edison to creditworthiness.
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> "12. In view of the changed circumstances that have developed since July 13, 2001, the proposed voluntary amendments are necessary and reasonable in order to eliminate uncertainty concerning certain terms and conditions of the agreements approved as reasonable above.
>
> "14. On October 2, 2001, the Commission entered into a Settlement Agreement with Edison. One objective of this agreement was to restore Edison to creditworthiness.

b. Conclusion of Law 1. is modified as follows:

> "Edison should be authorized to recover all costs associated with payments made under the Gas Amendments and the Fixed Rate Agreements submitted by Edison with its June 13, June 26 and 28 motions, as well as all costs associated with the payments made under the Gas Amendments and the Fixed Energy Rate Agreements as amended by The Amendments submitted by Edison with its Petition to

Modify on November 29, 2001, subject to Commission review of the reasonableness of future administration of the amendments."

This order is effective today.

Dated January 9, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners