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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DCOR, LLC,

Complainant,

vs.

Southern California Edison Company
(U338E),

Defendant.

Case 12-02-012
(Filed February 16, 2012)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER
AND ADMINISTRATIVE LAW JUDGE**

1. Summary

This scoping memo and ruling sets forth the category, scope, and schedule of the proceeding pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure. As set forth in greater detail, *infra*, we will first address certain threshold legal issues, on which concurrent opening briefs will be filed and served on June 4, 2012, and concurrent reply briefs will be filed and served on June 15, 2012. If this case is not resolved on the basis of these issues, direct testimony will be served on August 17, 2012, rebuttal testimony will be served on August 31, 2012, and evidentiary hearings will be held on September 6 and 7, 2012 in San Francisco, California.

2. Background

On February 16, 2012, DCOR, LLC (DCOR) filed a complaint “to recover the full amount erroneously overbilled and collected from DCOR, INC by Southern California Edison Company.” DCOR alleges that from December 1, 2004 through March 2011, Southern California Edison Company (SCE) erroneously overbilled and collected from DCOR for 33 kilovolt (kV) service at DCOR’s Mandalay Onshore Separation Facility (Mandalay) when SCE actually was providing Mandalay with much less expensive 66kV service. DCOR further alleges that it first discovered the overbilling in March of 2011. DCOR alleges that while it notified SCE and that SCE calculated that it had over collected \$1,546,197.17 from DCOR for the period of April 28, 2008 to March 25, 2011 and has refunded this amount to DCOR. SCE refuses to refund the overcollected amount from December 1, 2004 to April 28, 2008 on the grounds that SCE’s Tariff Rule 17 relieves SCE of any obligation to refund erroneously overbilled amounts that occurred more than three years prior to the time DCOR notified SCE of the overbilling error. DCOR identifies the following two issues for consideration: (1) whether SCE should refund to DCOR the amount SCE erroneously overbilled and collected for DCOR for the period December 1, 2004 to April 28, 2008; and (2) whether SCE should pay interest calculated at the applicable commercial paper rate.

On April 2, 2012, SCE filed an answer to the complaint, alleging that the Commission-approved Tariff Rule 17.D provides, in part, that when SCE overcharges a customer as a result of a billing error, SCE must refund or credit the customer for the amount of the overcharge for the period of the billing error, “but not exceeding three years in the case of an overcharge for all service accounts[.]” SCE maintains that for this reason, and for other reasons “not fully

described in this answer,” the Commission should deny DCOR’s requested relief. SCE also asserts eleven affirmative defenses.

On May 2, 2012, the parties filed a joint prehearing conference (PHC) statement and proposed that the case be divided into two phases: the first being the legal phase and the second being the evidentiary phase. In the first phase, the parties identified the issue for resolution as follows:

Is SCE’s Tariff Rule 17, which provides that refunds for SCE billing errors cannot “exceed[] three years in the case of an overcharge for all service accounts,” a limitation of SCE’s liability that “caps” the refund period for overcharges at three years? Or is Rule 17 subject to the “discovery rule,” as described in *TURN v. PacBell*, D.94-04-057, which tolls the running of any limitation on refunding overcharges for billing errors until such time as the Complainant has actual knowledge of the billing error or could reasonably have discovered the billing error through sources open to it?

At the PHC, it was discussed that a Commission ruling in SCE’s favor on this legal issue would result in the complaint being dismissed. If the Commission ruled in DCOR’s favor on this legal issue, then the case would proceed to hearing and would be conducted in accordance with the schedule discussed at the PHC and adopted herein.

3. Bifurcation of Legal and Evidentiary Phases.

Phase One of this case will resolve the legal issues identified by the parties in the joint PHC statement and quoted, *supra*. If the Commission rules in DCOR’s favor at the conclusion of Phase One, then the case will proceed to Phase Two, the evidentiary phase.

4. Scope of the Proceeding

4.1. Legal Issues

1. Is SCE's Tariff Rule 17 a limitation of SCE's liability that caps the refund period for overcharges at three years?
2. Is SCE's Tariff Rule 17 subject to the discovery rule described in *TURN v. PacBell*, D.94-04-057?

4.2. Evidentiary Hearings

1. Did DCOR know, or could it reasonably have discovered through sources open to it, that SCE was incorrectly billing it at 33kV service instead of 66kV service?
2. Did SCE know, or should it reasonably have discovered through sources open to it, that SCE was incorrectly billing DCOR at 33kV service instead of 66kV service?

5. Category

This ruling confirms the Commission's preliminary determination that this proceeding is adjudicatory.

6. Need for Hearings

Hearings will not be necessary for the threshold legal issues.

If this case proceeds to evidentiary hearings, they are scheduled for September 11 and 12, 2012. When parties file testimony, they should indicate whether they believe hearings are necessary, on which issues, who will be presenting testimony, and how much hearing time is anticipated to be necessary.

7. Schedule for the Proceeding

Event	Scheduled Dates
LEGAL ISSUES	
Concurrent Opening Briefs on Legal Issue	June 4, 2012
Concurrent Reply briefs on Legal Issue	June 15, 2012

Ruling on legal issue	TBD
EVIDENTIARY HEARINGS (if necessary)	
Discovery Cutoff	August 10, 2012
Direct Testimony	August 17, 2012
Rebuttal Testimony	August 31, 2012
Evidentiary Hearings (if necessary)	September 6 and 7, 2012 at 10:00 a.m. Commission Courtroom, State Office Building 505 Van Ness Avenue San Francisco, CA 94102
Opening Briefs	September 28, 2012
Reply Briefs	October 13, 2012
Proposed Decision	December 12, 2012

8. Service List

The official service list is now on the Commission's web page, www.cpuc.ca.gov. Parties should confirm that the information on the service list is correct, and serve notice of any errors on the Commission's Process Office, the service list, and the judge. Parties shall e-mail courtesy copies of all served and filed documents on the entire service list, including those appearing on the list as "State Service" and "Information Only."

Electronic service is now the standard under Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Parties are reminded that, when serving copies of documents, the document format must be consistent with the requirements set forth in Rule 1.10(a). When serving the assigned Commissioner's office, electronic service shall be sufficient and there is no need to serve them a paper copy.

Rules 1.9 and 1.10 govern service of documents only and do not change the Rules regarding the tendering of documents for filing. All documents formally

filed with the Commission's Docket Office must include the caption approved by the Docket Office and this caption must be accurate.

Other documents, including prepared testimony, are served on the service list but not filed with the Docket Office. We will follow the electronic service protocols adopted by the Commission in Rule 1.10, whether formally filed or just served. This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by United States mail. Additionally, parties shall serve paper copies of all filings on the presiding officer (ALJ Mason) and assigned Commissioner.

9. Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner. Robert M. Mason III is the assigned Administrative Law Judge and also designated as the presiding hearing officer pursuant to Rule 13.2 (a).

10. Ex Parte Rules

Ex parte communications as to the issues within the scope of this proceeding are prohibited under Pub. Util. Code § 1701.2(b) and Rule 7(b).

Therefore **IT IS RULED** that:

1. The scope of this proceeding is as described above.
2. The schedule of this proceeding is as set forth above.
3. This proceeding is categorized as adjudicatory.
4. Hearings will not be needed in Phase One of this proceeding.
5. If there is a Phase Two, there will be hearings as described above.

6. Administrative Law Judge (ALJ) Robert M. Mason III is the assigned ALJ and is designated as the presiding hearing officer.

7. Parties shall follow the service list rules as set forth herein.

Dated May 22, 2012, at San Francisco, California.

/s/ ROBERT M. MASON III

Robert M. Mason III
Administrative Law Judge

/s/ MARK J. FERRON

Mark J. Ferron
Assigned Commissioner