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**BEFORE THE PUBLIC UTILITIES
COMMISSION OF THE STATE OF CALIFORNIA**

C1108023

CITY OF UPLAND;

Complainant,

v.

SOUTHERN CALIFORNIA EDISON
COMPANY (U338E),
Defendant.

Case No.

COMPLAINT

Representative of Complainant:

Paul Kerkorian
UTILITY COST MANAGEMENT LLC
6475 N. Palm Ave., Suite 105
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August 23, 2011

I. Facts

The complainant in this case is City of Upland (“City”). City is a municipality located in Southern California that receives electricity service from Southern California Edison Company (“SCE”). The 16 City electricity accounts that are the subject of this complaint are listed on the attached **Exhibit A** and incorporated herein by reference (the “Accounts”).

Fifteen of the Accounts were previously served on Schedule GS-1. One of the Accounts was previously served on Schedule TC-1. In September 2009, the City, through its representative Utility Cost Management LLC (“UCM”), requested in writing that SCE switch each of the Accounts to Schedule LS-3 and pay a corresponding refund to City. In September and October of 2009, SCE complied with the request to switch each of the Accounts to Schedule LS-3. However, SCE but did not pay the requested refund.

From the time the refund request was submitted to SCE until the present, UCM has continued to communicate with SCE in effort to secure the refund for the City. At no time has SCE ever suggested that the City is not entitled to a refund and, in fact, all statements and actions by SCE have indicated that SCE was processing the refund. Nevertheless, nearly two years into this process the refund has still not been paid.

By this Complaint, the City seeks a Commission order requiring that SCE forthwith pay a refund to the City for each of the Accounts, plus prejudgment interest.

II. Legal and Factual Basis For City’s Claim

A. Refund

SCE Tariff Rule 17.D provides, in relevant part:

A Billing Error is an error by SCE which results in incorrect billing charges to the customer. *Billing Errors may include* incorrect meter reads or clerical errors by an SCE representative such as *applying the wrong rate*, wrong billing factor, or an incorrect calculation. Billing Error shall also include failure to deliver a bill, actual or estimated, in a timely manner in accordance with Rule 9.A.2....Where SCE overcharges or undercharges a customer as the result of a Billing Error, SCE may render an adjusted bill for the amount of the undercharge, and shall issue a refund or credit to 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 Tariff Rule 1 defines “General Service” as follows:

General Service: Service to any lighting or power installation *except those eligible for service on* single-family and multifamily domestic, *street lighting*, outdoor area lighting, *traffic control*, resale, or standby schedules. No customer for whom a single-family or multifamily schedule is applicable may transfer to or newly take service under a general service schedule. Domestic service which is on a separate meter from a single-family or multifamily dwelling shall be served under a general service schedule.

SCE previously applied a General Service rate, Schedule GS-1, to 15 of the Accounts. By applying Schedule GS-1, SCE was “applying the wrong rate” which constitutes “Billing Error” under Tariff Rule 17. Schedule GS-1 was the “wrong rate” for the Accounts because Tariff Rule 1 provides that an account that is eligible for a street lighting schedule (LS-3) is not eligible for a General Service schedule. Pursuant to Rule Tariff Rule 17 and Public Utilities Code Section 736, SCE must issue three-year a three-year refund for these 15 Accounts.

SCE previously applied a Traffic Control rate, Schedule TC-1, to one of the Accounts. By applying Schedule TC-1, SCE was “applying the wrong rate” which constitutes “Billing Error” under Tariff Rule 17. Schedule TC-1 is the “wrong rate” for this Account because it applies to energy usage “for public thoroughfare lighting that is utilized 24 hours per day”. This Account does not provide 24-hour lighting. Instead, it provides dusk to dawn street lighting. As above, SCE must issue a three-year refund for this Account pursuant to Tariff Rule 17 and Public Utilities Code Section 736.

Aside from the crystal clear mandate of Tariff Rule 17 and Tariff Rule 1, SCE’s legal duty to issue a refund for the Accounts is also based on the anti-discrimination provisions of Public Utilities Code Section 453, which provides in relevant part:

(a) No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage....

(c) No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

SCE has in the past regularly and repeatedly issued refunds, pursuant to Tariff Rule 17, for customers who were served on Schedule GS-1 or TC-1 but were eligible for Schedule LS-3. To now fail to issue a

refund to City's Accounts under precisely the same circumstances violates the anti-discrimination provisions of Section 453 of the Public Utilities Code.

B. Prejudgment Interest

As noted above, UCM requested a refund for the Accounts back on September 2, 2009. In the nearly two years since then, UCM has been in regular communication with SCE's representatives. UCM has frequently volunteered to assist SCE, in any way deemed necessary by SCE, to process the refunds in a timely manner. It has promptly provided information requested by SCE. And it has repeatedly made follow up communications to SCE to ensure that the refund request was not overlooked. At no time during this two-year process has SCE ever suggested or implied that the City was not entitled to a refund. In fact, every statement and action by SCE has indicated that SCE was working to issue the refund and would issue the refund. Nevertheless, two years into this process the refunds have still not been paid and the City has still not been made whole for SCE's billing error.

SCE has been derelict in its duty to pay the refund to City in a reasonably timely manner. In the circumstances of this case, the Commission is justified in awarding prejudgment interest on the refund amount, pursuant to Public Utilities Code Section 734. The prejudgment interest should run from the date of each overpayment by the City through the date SCE pays the refund for such overpayment.¹

III. Issue To Be Considered

There are two issues in this proceeding. First, is City entitled to a refund on the Accounts? Second, is City entitled to prejudgment interest on the refund amounts?

IV. Relief Requested

Complainants request that the Commission order SCE to:

¹ SCE's unreasonable delay in making simple rate changes and processing customer refunds has, in recent years, become a serious problem that warrants the Commission's attention. UCM regularly deals with SCE to obtain rate changes and refunds on behalf of other business and institutional customers. Unfortunately, the lengthy delays experienced by the City of Upland now appear to be the norm in SCE's handling of other customer's rate change and refund requests. Whether and how the Commission addresses this problem is not relevant in this complaint proceeding. Nevertheless, it is a matter of public interest that the Commission should investigate.

1. Pay the City a refund equal to the difference between (a) the amount that each Account was actually charged by SCE on Schedule GS-1 or TC-1 during the period from September 2, 2006 (i.e., three years prior to the refund request) through the date such Account was switched to Schedule LS-3 as set forth on Exhibit A, and (b) the amount that such Account would have been charged on Schedule LS-3 during such period.

2. Pay the City prejudgment interest on such refund amounts in an amount determined by the Commission.

3. Provide such other relief as the Commission deems appropriate.

V. Information Required by Commission Rules

This matter has not previously been brought to the Commission staff for informal resolution.

The suggested categorization of this proceeding is “adjudicatory”.

The City’s mailing address and phone number are: 460 N. Euclid Avenue, Upland, CA 91786, (909) 931-4100.

Defendant SCE’s mailing address and phone number are: P.O. Box 800, 2244 Walnut Grove Avenue, Rosemead, CA 91770, (800) 990-7788 (Business Customer Service).

The City believes that a hearing will be necessary.

The City proposes the following schedule for this proceeding:

Prehearing conference	November 4, 2011
Complainants’ Opening Testimony	December 30, 2011
SCE’s Response Testimony	January 27, 2012
Complainants’ Rebuttal Testimony	February 24, 2012
Hearing	March 2, 2012
Opening Briefs (Concurrently filed)	April 6, 2012
Response Briefs (Concurrently filed)	April 27, 2012

UTILITY COST MANAGEMENT LLC

By: 
Paul Kerkorian

Dated: 8/23/11

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Representative of Complainant

CUSTOMER	END USE	SERVICE ADDRESS	ACCOUNT #	PRIOR RATE	CURRENT RATE	RATE CHANGE & REFUND REQUEST	RATE CHANGE EFFECTIVE
City of Upland	Street Lights	891 E. 20th Street Ped	3-023-0048-95	GS-1	LS-3	9/2/09	9/30/09
City of Upland	Street Lights	301 San Antonio B	3-026-5152-10	GS-1	LS-3	9/2/09	9/24/09
City of Upland	Street Lights	275 Benson B	3-026-5152-37	TC-1	LS-3	9/2/09	9/24/09
City of Upland	City Sign & Street Lights	55 E. 9th Street	3-029-5575-53	GS-1	LS-3	9/2/09	10/6/09
City of Upland	Street Lights	151 E. 9th Street A	3-015-1787-88	GS-1	LS-3	9/2/09	10/6/09
City of Upland	Street Lights	251 E. 9th Street A	3-015-1787-89	GS-1	LS-3	9/2/09	10/6/09
City of Upland	Street Lights	252 E. C Street A	3-015-1787-95	GS-1	LS-3	9/2/09	10/6/09
City of Upland	Street Lights	102 N. 2nd Avenue A	3-015-1787-94	GS-1	LS-3	9/2/09	10/6/09
City of Upland	Street Lights	1958 W. 11th	3-032-2485-79	GS-1	LS-3	9/2/09	9/22/09
City of Upland	Street Lights	1032 N. Euclid Avenue	3-023-2845-29	GS-1	LS-3	9/2/09	10/6/09
City of Upland	Parking Lot / Street Lights	290 N. 1st Avenue Ped	3-010-6907-23	GS-1	LS-3	9/2/09	10/6/09
City of Upland	Street Lights	460 W. 8th Street	3-001-1069-25	GS-1	LS-3	9/2/09	9/25/09
City of Upland	Street Lights	Euclid & 7th	3-001-3781-33	GS-1	LS-3	9/2/09	10/8/09
City of Upland	Metrolink Parking Lot	500 A Street	3-005-0541-93	GS-1	LS-3	9/2/09	9/30/09
City of Upland	Street Lights	Mountain & 22nd	3-001-3780-85	GS-1	LS-3	9/2/09	10/1/09
City of Upland	Street Lights	1951 N. San Antonio Ped	3-016-3721-66	GS-1	LS-3	9/2/09	9/18/09

EXHIBIT "A"

VERIFICATION

I, Paul Kerkorian, am a managing member of Utility Cost Management LLC (UCM), and am authorized to make this verification on its behalf. UCM is the authorized representative of the Complainant in this proceeding. I have read the foregoing complaint and know its contents. I am informed and believe, and on that basis allege, that the matters stated therein are true. This verification is being made by UCM, as representative of the Complainant, in accordance with CPUC Rules of Practice and Procedure, Rule 2.4(e). The Complainant is absent from the county in which UCM's office is located (Fresno County).

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on the date indicated below at Fresno, California.

By: 
Paul Kerkorian

Dated: 8/23/11