

Decision 04-01-031

January 8, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of THE UTILITY
REFORM NETWORK for Rehearing
of Resolution E-3765

A.02-02-024
(Filed February 25, 2002)

**ORDER DENYING REHEARING OF
RESOLUTION (RES.) E-3765**

On February 25, 2002, The Utility Reform Network (“TURN”) filed an application for rehearing of Resolution (Res.) E-3765. Res. E-3765 grants, with some modifications, Southern California Edison Company’s (“Edison’s”) Advice Letter (“AL”) 1586-E, in which it requests the establishment of a Procurement Related Obligations Account (“PROACT”) and associated ratemaking structure. Edison’s request was intended to implement the terms of its October 2, 2001 Settlement Agreement (“Settlement”) with the Commission. TURN’s application for rehearing has been held in abeyance by the Commission pending Court resolution of many of the issues TURN raises. (*Southern California Edison Co. v. Peevey* (“*Edison*”) (2003) 31 Cal. 4th 781.) The California Supreme Court’s consideration of these issues is now final.

We have carefully considered the arguments presented by TURN and are of the opinion that good cause for rehearing has not been demonstrated. We note that the Commission’s actions in adopting the Settlement have now been conclusively determined by the California Supreme Court to be consistent with state law. Moreover, TURN’s application for rehearing confuses the resolution, which implements the terms of the Settlement, with the Settlement itself. TURN’s arguments are not properly directed to Res. E-3765. Accordingly, we are denying TURN’s application for rehearing.

I. ISSUES RESOLVED IN SOUTHERN CALIFORNIA EDISON CO. V. PEEVEY

TURN contends that the Commission committed legal error in enacting Res. E-3765 because the resolution “implements a stipulated judgment that is void because the CPUC lacked capacity to consent to its entry.” (TURN App., at p. 2.) TURN attacks the Settlement alleging that it violates the California Constitution, the Bagley-Keene Open Meeting Act, Public Utilities Codes section 454, and AB 1890. The California Supreme Court recently affirmed the validity of the Settlement in rejecting these TURN arguments. (See *Edison*, 34 Cal.4th 781.) Since these issues now have been conclusively resolved there is no reason to discuss them further. The Court’s resolution of TURN’s allegations is res judicata and TURN now has no basis for claiming that the Settlement is not valid.

Moreover, TURN’s arguments would fail in any event because TURN is mistakenly challenging Res. E-3765, rather than the Settlement itself. Res. E-3765 did not adopt the Settlement. The stipulated judgment was a binding federal court order when we issued Res. E-3765. Contrary to TURN’s suggestion the Settlement is not “void,” and TURN has no court support for its suggestion that it is. Moreover, the Settlement was not subject to reconsideration in the Advice Letter proceeding. As the resolution states, Res. E-3765 only implemented the provisions of the Settlement. Therefore, TURN’s challenges to the Settlement itself are misplaced.

II. OTHER ARGUMENTS

TURN next contends that the Commission may not implement the Settlement through an Advice Letter from Edison. Again, TURN appears to confuse the tariff implementation issues with the adoption of the Settlement itself.

TURN provides no persuasive reason that the Settlement implementation issues could not be handled through the Advice Letter process. General Order 96-A(V)(A) expressly states that “a changed tariff sheet not increasing or resulting in an increase, or which will result in a decrease, in any rate, toll, rental or charge, may be filed by the advice letter designated in Section III.” As the California Supreme Court now has

conclusively held, the Settlement provisions do not result in a rate change. (*Edison*, at p. 804.) The Advice Letter process is therefore an appropriate vehicle for instituting the PROACT account.

TURN also suggests that the Advice Letter process was inappropriate because allowing the cost recovery was a change in Commission policy. (TURN App., at p. 12.) Again, TURN's argument is really challenging the Settlement, because it was the Settlement and not Res. E-3765, which determined what costs could be recovered. The Settlement was not adopted in Res. E-3765.

TURN further asserts that Res. E-3765 violates Public Utilities Code section 1705 because there are no separately stated findings of fact and conclusions of law on the material issues addressed by the underlying Settlement. TURN's section 1705 argument is also misdirected. The resolution contains all the findings relevant to the implementation of the Settlement, which is what the resolution does. Because the resolution does not adopt the Settlement there is no reason for it to contain findings regarding the "material issues addressed in [the] Settlement," as TURN suggests it should. (TURN App., at p. 12.) TURN does not identify or suggest any finding relevant to implementation that was omitted in the resolution.

TURN's final argument is that Res. E-3765 violates Public Utilities Code section 1708 because the Commission did not provide notice and an opportunity to be heard before altering or amending prior Commission decisions. According to TURN, the Commission decisions authorizing rate increases, or surcharges, stated that such funds may only be used for future procurement costs and may not be used to pay off past procurement related liabilities. Once again, TURN's challenge is to the Settlement, which allowed for this cost recovery, rather than Res. E-3765, which only implemented the Settlement's terms. Furthermore, the Commission lifted its original restriction on the use of the surcharge revenue in D.02-11-026. In that proceeding there was notice and opportunity to be heard.

No further discussion of TURN's arguments is warranted.

Therefore, **IT IS ORDERED** that rehearing of Resolution E-3765 is hereby denied.

This order is effective today.

Dated January 8, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners