



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA

**FILED**

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Verlyn Roschewski, )  
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 Complainant, )  
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 vs. )  
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 Southern California Edison Company (U 338-E), )  
 )  
 Defendant. )  
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Case No. C.11-07-003  
(Filed July 6, 2011)

**SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E)**  
**OPENING BRIEF**

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Dated: **December 9, 2011**

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STATE OF CALIFORNIA**

Verlyn Roschewski,	)	
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**SOUTHERN CALIFORNIA EDISON COMPANY’S (U 338-E)  
OPENING BRIEF**

**I.  
INTRODUCTION**

Pursuant to the Assigned Commissioner’s Ruling and Scoping Memo, dated October 12, 2011 (“Scoping Memo”), Southern California Edison Company (“SCE”) respectfully submits its Opening Brief.

Complainant Verlyn Roschewski (“Mr. Roschewski” or “Complainant”) alleges that SCE improperly billed him for the generation of energy, despite the fact that he is a Direct Access customer who purchases his energy from an independent electric service provider (“ESP”) instead of a regulated investor-owned utility (“IOU”). Under Direct Access service, the IOU delivers the electricity that the customer purchases from the ESP to the customer over the IOU’s

distribution system.<sup>1</sup> Direct Access customers remain responsible for paying the IOU for transmission and distribution services, and other non-bypassable charges, pursuant to rates approved by the California Public Utilities Commission (“CPUC” or “Commission”).<sup>2</sup>

SCE did not bill Mr. Roschewski for the generation of energy, and all charges for his Direct Access service were billed pursuant to Commission-approved tariffs and rate schedules. Mr. Roschewski’s Complaint is based on his misunderstanding of the applicable rules for Direct Access service. SCE has fully complied with its obligations under applicable tariffs and Mr. Roschewski has failed to prove otherwise. Therefore, his request for relief should be denied.

## II.

### **PROCEDURAL BACKGROUND**

On July 6, 2011, Mr. Roschewski filed his formal Complaint against SCE with the Commission. The Complaint appears to allege that SCE improperly billed him for his Direct Access service between 2001 and 2011. Mr. Roschewski primarily seeks reimbursement for the charges he believes were overbilled for “generated energy” between 2001 – 2011.<sup>3</sup>

On August 22, 2011, SCE filed its verified Answer to the Complaint. In its Answer, SCE denied that it inaccurately or wrongfully billed Mr. Roschewski for his Direct Access service, and averred that it billed Complainant for his Direct Access service in accordance with all applicable Commission-approved tariffs and rate schedules. Further, SCE asserted that the Complaint states no actionable claim and should be dismissed.

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<sup>1</sup> See R.07-05-025, Order Granting Petition for Rulemaking and Instituting Rulemaking as to Whether, When, or How Direct Access Service Should be Restored, dated May 24, 2007, pp. 2 & 6.

<sup>2</sup> *Id.*, p. 6.

<sup>3</sup> SCE notes that Attachments 2 and 3 to the Complaint identify four issues Mr. Roschewski apparently wanted to resolve in this proceeding: (1) request for the Commission to investigate his allegation that SCE is “charging” this Direct Access customer for the generation of energy; (2) request for reimbursement for overbilled charges for “generated energy” billed between 2001 – 2011; (3) request to disclose the findings of this proceeding to “legislative bodies so procedural rules and regulations can be made to prevent the overcharging of deregulated energy customers;” and (4) request to “enact some form of expedited financial relief so the deregulated customer will be able to pay the exorbitant electrical utility payments as he is on a fixed income and struggles to make the payments.” SCE believes all other requests reasonably fall under the umbrella of Mr. Roschewski’s request for reimbursement.

On November 18, 2011, the parties appeared for a telephonic evidentiary hearing. At this hearing, Mr. Roschewski conceded that he does not contest the bills attached to his Complaint as Exhibits B1 through B4, and only alleges that the bill attached as Exhibit B5 to his Complaint shows improper charges for the generation of energy.<sup>4</sup> During the hearing, SCE's testimony explained that the charges shown on that bill were properly billed pursuant to its tariffs and demonstrated that no generation charges were included on the bill.<sup>5</sup>

### **III.**

### **DISCUSSION**

Pursuant to the Scoping Memo, the parties met and conferred telephonically on November 28, 2011, to discuss a common outline for their opening briefs. The parties agreed that the opening briefs will address the following issues:

1. The scope of the proceeding;
2. Whether the charges shown in the bills attached to Mr. Roschewski's Complaint were authorized by the Commission for residential Direct Access customers; and
3. Whether a statute of limitations would apply to any refunds of erroneous charges.

#### **A. The Scope of this Proceeding is Limited to the Bills Attached to the Complaint**

The only bills at issue in this proceeding are those attached to Mr. Roschewski's Complaint as Exhibits B1 through B5. At the evidentiary hearing, Mr. Roschewski stated that he may have additional bills he alleges are incorrect that were not attached to his Complaint.<sup>6</sup>

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<sup>4</sup> Hearing Transcript, 7:21-8:3, 43:14-24.

<sup>5</sup> Hearing Transcript, 26:21-41:10.

<sup>6</sup> Hearing Transcript, 42:4-20.

These bills, however, are not within the scope of this proceeding.<sup>7</sup> If Mr. Roschewski wanted to contest additional bills, he should have filed them with his Complaint.

Mr. Roschewski also stated that if the charges reflected on the bills are solely for transmission, “then that’s exorbitant and I think that it’s not right.”<sup>8</sup> To the extent that Mr. Roschewski objects to the rates SCE charged for transmission and distribution pursuant to its tariffs, these concerns were not raised in his Complaint, nor would they be properly raised in this Complaint. The Commission may not consider a complaint contesting the reasonableness of rates absent the required signatures of the appropriate city, county, or number of consumers.<sup>9</sup> Mr. Roschewski’s Complaint does not meet the requirements for challenging the reasonableness of any of SCE’s Commission-approved rates. Therefore, the reasonableness of SCE’s transmission and distribution rates are not at issue in this proceeding.

**B. The Charges on the Bills Attached to the Complaint Were Authorized by Commission-Approved Tariffs**

SCE submitted Commission-approved tariff pages supporting each of SCE’s rates and charges shown on Mr. Roschewski’s bills contained in Exhibits B-1 through B-5 of the Complaint as attachments to SCE’s Prehearing Conference Statement, its Work Papers, and Supplements to its Work Papers. Because Mr. Roschewski conceded that the bills attached to his Complaint as Exhibits B1 through B4 are not in error,<sup>10</sup> SCE limits its discussion here to the charges Mr. Roschewski claims were improperly included in the bill attached to his Complaint as Exhibit B5.

Mr. Roschewski appears to believe that because he did not receive a procured energy credit on the bill attached to his Complaint as Exhibit B5, he was improperly charged for the

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<sup>7</sup> See Scoping Memo, p. 6. “The scope of the evidentiary hearing shall be limited to the following documents submitted in this proceeding: The complaint, SCE’s answer to the complaint, the PHC statements, and SCE’s work papers ....”

<sup>8</sup> *Id.*

<sup>9</sup> CPUC Rules of Practice and Procedure, Rule 4.1(b); Public Utilities Code Section 1702.

<sup>10</sup> Hearing Transcript, 7:21-8:3, 43:14-24.

generation of electricity.<sup>11</sup> SCE explained in its testimony, however, that the methodology for calculating charges for Direct Access customers changed prior to the date of that bill.<sup>12</sup> Before the change in methodology, Direct Access customers were billed as bundled service customers, and a procured energy credit was subtracted so that Direct Access customers did not pay for generation. After the change in methodology, the procured energy credit was eliminated because SCE began simply billing Direct Access customers for the services SCE provided to them (i.e. transmission and distribution services), making the generation credit process unnecessary.<sup>13</sup> Mr. Roschewski appears to misunderstand the manner in which the bill was calculated, but SCE's testimony demonstrates that he was not charged for generation.

Furthermore, Attachments E-1 through E-7 to SCE's Work Papers, filed on October 14, 2011, and Attachments E-8 through E-9 to SCE's Supplement to Work Papers, filed on October 21, 2011, demonstrate in line-by-line detail that each charge on the bill attached as Exhibit B5 to the Complaint was authorized by Commission-approved tariffs.

### **C. Statute of Limitations**

As discussed above, SCE properly billed Mr. Roschewski for his Direct Access service in accordance with all applicable Commission-approved tariffs. Even if Mr. Roschewski's bills were in error, however, any recovery would be limited by the applicable statute of limitations.

California Public Utilities Code Section 736 requires that "[a]ll complaints for damages . . . shall either be filed with the commission, or, where concurrent jurisdiction of the cause of action is vested in the courts of this state, in any court of competent jurisdiction within three years from the time the cause of action accrues, and not after." A cause of action accrues under Section 736, as well as other California statute of limitations provisions, when a

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<sup>11</sup> See Hearing Transcript, 5:4-9, 18:16-21.

<sup>12</sup> SCE's witness mistakenly stated that the change in methodology occurred "around 2006," (Hearing Transcript, 12:22, 19:9-13) but SCE later confirmed that the change occurred on September 1, 2003, pursuant to Advice Letter 1724-E. SCE requests that the Administrative Law Judge take judicial notice of Advice Letter 1724-E, a copy of which is attached hereto as Attachment 1.

<sup>13</sup> Hearing Transcript, 12:23-13:24, 19:5-26.

complainant discovers or should have discovered that it had a claim.<sup>14</sup> More plainly stated, a customer has three years from the date it discovers or should have discovered an overcharge to bring a suit for damages.

With the exercise of reasonable diligence, Mr. Roschewski arguably should have discovered any alleged overcharges upon receipt of the SCE bills he claims are “exorbitant.” Therefore, the statute of limitations bars recovery for alleged overcharges on any bills received more than three years before the date of the Complaint. Mr. Roschewski filed his Complaint on July 6, 2011, so he cannot recover for any bills he received before July 6, 2008. Even if Mr. Roschewski had not conceded that the bills attached to his Complaint as Exhibits B1 through B4 were not in error, recovery for any overcharges on those bills would be barred by the statute of limitations because Mr. Roschewski received them before July 6, 2008.

SCE concedes that the bill attached to the Complaint as Exhibit B5 would not be barred by the statute of limitations. For the reasons stated above, however, SCE properly billed Mr. Roschewski according to its Commission-approved tariffs and Mr. Roschewski has not proven otherwise.

#### IV.

#### **CONCLUSION**

For the foregoing reasons, the Commission should deny Mr. Roschewski’s request for relief. SCE continues to encourage Mr. Roschewski to contact Leticia Hernandez, a customer solutions representative, at (626) 302-0290 to help him determine whether programs like Energy Efficiency and California Alternate Rates for Energy (“CARE”) can help him lower his electric bills.

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<sup>14</sup> See, e.g., *Jolly v. Eli Lilly Co.*, 44 Cal.3d 1103, 1111-1112 (1988) (discussing the accrual of claims under the discovery rule).

Respectfully submitted,

JANET S. COMBS  
ANDREA L. TOZER

*/s/ Andrea L. Tozer*

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By: Andrea L. Tozer

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December 9, 2011

**ATTACHMENT 1**

**Advice Letter 1724-E**

PUBLIC UTILITIES COMMISSION

SAN FRANCISCO, CA 94102-3298



MAY 26 2004

May 19, 2004

REVENUE & TARIFFS DEPT.

Advice Letter 1724-E

Akbar Jazayeri  
Director of Revenue and Tariffs  
Southern California Edison Company  
P O Box 800  
Rosemead, CA 91770

Reference: Separation of tariff rates into SCE delivery, SCE generation and DWR generation categories and implementation of bottoms-up billing for Direct Access customers

Dear Mr. Jazayeri:

Advice Letter 1724-E is effective September 1, 2003. A copy of the advice letter is included herewith for your records.

Sincerely,

A handwritten signature in cursive script that reads "Paul Clanon".

Paul Clanon, Director  
Energy Division

jjr



SOUTHERN CALIFORNIA  
**EDISON**

An EDISON INTERNATIONAL Company

**Akbar Jazayeri**  
Director of Revenue and Tariffs

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July 23, 2003

**ADVICE 1724-E**  
**(U 338-E)**

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
ENERGY DIVISION

**SUBJECT:** Separation of Tariffed Rates into SCE Delivery, SCE Generation and DWR Generation Categories and Implementation of "Bottoms-Up" Billing for Direct Access Customers

Consistent with the Settlement Agreement in the Post-PROACT (Procurement Related Obligations Account) proceeding (Application (A.) 03-01-019) approved by the California Public Utilities Commission (Commission) in Decision (D.) 03-07-029 (Settlement Agreement), Southern California Edison Company (SCE) hereby submits for filing the following changes to its tariff schedules. The revised tariff sheets are listed on Attachment A and are attached hereto.

**PURPOSE**

This advice filing: (1) reorganizes existing rate components into three categories; SCE Delivery, SCE Generation and DWR Generation; and (2) modifies tariff language to implement a revised billing methodology for Direct Access (DA) customers. Pursuant to the Settlement Agreement and D.03-07-029, SCE proposes that the attached rate schedules become effective on September 1, 2003.

**BACKGROUND**

On July 15, 2003 SCE filed Advice 1722-E to implement Post-PROACT rates pursuant to D.03-07-029, which reflect an overall reduction in revenues recovered through rates of \$1.25 billion. In its original application in the Post-PROACT proceeding (A.03-01-019), SCE also proposed revisions to the structure of rate components and the existing methodology for billing DA customers. With the implementation of lower rates on August 1, 2003

following the recovery of the PROACT balance, the Settlement Agreement and D.03-07-029 also authorized SCE's proposed structural and billing methodology changes to be effective September 1, 2003. Post-PROACT rate levels authorized by the Commission in D.03-07-029 and filed by SCE in Advice 1722-E are not modified by this advice filing.

## **PROPOSED MODIFICATIONS IN RATE STRUCTURE AND DA BILLING**

### **Categorization of Rate Components**

All of SCE's primary retail tariff schedules include a rate component table which displays all applicable rates unbundled into their constituent component charges; Transmission, Distribution, Generation, NDC (Nuclear Decommissioning), PPPC (Public Purpose Programs Charge), TOTCA (Transmission Owners Tariff Charge Adjustments), PUCRF (Public Utilities Commission Reimbursement Fee), and DWRBC (Department of Water Resources Bond Charge) and FTAC (Fixed Transition Amount Charge) where applicable. In this advice filing, SCE divides these charges, at the levels authorized by the Commission in D.03-07-029, into two broad categories: Delivery Service and Generation.

Delivery Service consists of T&D (with TOTCA combined into the Transmission charges), NDC, PPPC, PUCRF, DWRBC and FTAC. These charges are summed to provide a total for Delivery Service and are, by definition, applicable to sales to all retail customers, both bundled service and DA.

Charges for Generation Service are further broken down into SCE Generation and DWR Generation components and displayed separately. This separation emphasizes that these charges are applicable to bundled service customers only and are applied to metered consumption differently than charges for Delivery Service. SCE Generation charges apply only to that portion of generation services supplied by SCE, whereas DWR Generation charges apply to the services (energy) supplied by DWR. Consistent with current billing practice, SCE will determine for each billing cycle the percentage of total system energy requirements provided by DWR. This percentage will then be used to separate a customer's total metered usage into SCE and DWR components, to which the appropriate generation charges will be applied. SCE's generation rate is calculated by subtracting the DWR generation rate (Power Charge) from the total generation rate authorized by the Commission in D.03-07-029. The DWR generation component is determined by multiplying the DWR power charge by a forecasted annual DWR percentage of 27%. Subtracting this value from the authorized total generation component and dividing by 73% results in the SCE Generation component.

### **Modifications to the Existing Tariff Format**

One by-product of SCE's categorization of charges for various services is that the delivery and generation service components are not additive. Whereas charges for delivery apply to all metered usage, SCE and DWR generation charges apply to only a portion, which varies by billing cycle. As a result, SCE will no longer display the total customer, demand and energy charge in its tariff schedules. Instead, the revised rate component tables are displayed on the first page(s) and are followed by the provisions and special conditions particular to each tariff schedule. Also, other minor text changes are being made such as, replacing the word "utility" with "SCE" to provide for the consistent use of such terms throughout the tariffs. Lastly, as a result of the change in DA billing methodology described below, SCE is withdrawing Schedule PE, Procured Energy, which sets out the currently effective energy credit for DA customers.

### **"Bottoms-Up" Billing Methodology for Direct Access Customers**

At present, customers who receive generation services from an Energy Service Provider (ESP) are billed the full bundled service rate and then receive a procured energy (PE) credit. This energy credit is currently set equal to the applicable generation component of the tariff under which the DA customer is served. This DA billing methodology was established in early restructuring decisions and, during the rate freeze period, provided a mechanism by which SCE recovered stranded costs. SCE continued this approach when surcharges authorized by the Commission in 2001 were added to rates, essentially insulating DA customers from these surcharges.

With the full recovery of the PROACT balance, and pursuant to D.03-07-029, SCE proposes to implement a revised DA billing methodology commonly referred to as "bottoms-up" billing. Whereas the existing approach works from the total bundled rate down to the applicable DA bill by crediting the customer for services not provided, the revised billing approach works from the bottom up by charging DA customers only for the services provided by SCE, and any other charges authorized by the Commission. In practice, under this new methodology, the DA customer's bill will consist of those charges identified for Delivery Services and the applicable portions of the DA Cost Responsibility Surcharge as provided under Schedule DA. The Billing detail section of each tariff is revised to reflect this new methodology.

Another aspect of the categorization of charges by service and the change to "bottoms-up" billing is that certain tariff provisions will clearly not apply to DA customers. Bill and rate limiter provisions which work to revise or limit the overall bundled rate, including generation charges, cannot be applied to

customers purchasing only Delivery Service. SCE has revised tariff language to indicate that these tariff provisions do not apply to DA customers (or customers receiving Temporary Bundled Service (TBS)). However, this apparent change, which is consistent with both the new categorization of charges and the bottoms-up billing methodology, will not impact DA bills relative to the existing methodology. This is because any benefit the DA customer received from these bill or rate limiters, which lowered their gross bill based on bundled rates, also lowered their PE credit. The result was that the DA customer received no net benefit from these tariff provisions. SCE's modifications now make this effect explicit.

It should be noted that this "restriction" of certain tariff provisions does not apply to credits received by DA customers for participation in certain optional programs. DA customers who participate in air-conditioning cycling or interruptible programs will continue to receive these credits, in spite of the fact that they are generally "generation" related. As described in more detail in Advice 1722-E, which implemented SCE's authorized post-PROACT rates, the credits and surcharges associated with these programs have been moved from the generation component to the distribution component. This change allows these credits to apply to DA customers under the new DA billing methodology.

**EFFECTIVE DATE**

This advice filing will become effective on September 1, 2003.

**NOTICE**

Anyone wishing to protest this advice filing may do so by letter via U.S. Mail, facsimile, or electronically, any of which must be received by the Energy Division and SCE no later than 20 days after the date of this advice filing. Protests should be mailed to:

IMC Program Manager  
c/o Jerry Royer  
Energy Division  
California Public Utilities Commission  
505 Van Ness Avenue, Room 4002  
San Francisco, California 94102  
Facsimile: (415) 703-2200  
E-mail: [jjr@cpuc.ca.gov](mailto:jjr@cpuc.ca.gov)

Copies should also be mailed to the attention of the Director, Energy Division, Room 4004 (same address above).

In addition, protests and all other correspondence regarding this advice letter should also be sent by letter and transmitted via facsimile or electronically to the attention of:

Akbar Jazayeri  
Director of Revenue and Tariffs  
Southern California Edison Company  
2244 Walnut Grove Avenue, Rm. 303  
Rosemead, California 91770  
Facsimile: (626) 302-4829  
E-mail: [AdviceTariffManager@sce.com](mailto:AdviceTariffManager@sce.com)

Bruce Foster  
Vice President of Regulatory Operations  
c/o Karyn Gansecki  
Southern California Edison Company  
601 Van Ness Avenue, Suite 2040  
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There are no restrictions on who may file a protest, but the protest shall set forth specifically the grounds upon which it is based and shall be submitted expeditiously.

In accordance with Section III, Paragraph G, of General Order No. 96-A, SCE is mailing copies of this advice filing to the interested parties shown on the attached service list and A.03-01-019. Address change requests to the attached GO 96-A Service List should be directed to [AdviceTariffManager@sce.com](mailto:AdviceTariffManager@sce.com) or (626) 302-3985. For changes to the A.03-01-019 Service List, please contact the Commission's Process Office at (415) 703-2021 or by electronic mail at [Process\\_Office@cpuc.ca.gov](mailto:Process_Office@cpuc.ca.gov).

Further, in accordance with Public Utilities Code Section 491, notice to the public is hereby given by filing and keeping the advice filing open for public inspection at SCE's corporate headquarters. To view other SCE advice letters filed with the Commission, log on to SCE's web site at <http://www.sce.com/adviceletters>.

For questions, please contact Jim Schichtl at (626) 302-1707 or by electronic mail at [James.Schichtl@sce.com](mailto:James.Schichtl@sce.com).

**Southern California Edison Company**

Akbar Jazayeri

AJ:js  
Enclosures