

Decision 10-05-023

May 6, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338-E) to Establish Marginal Costs, Allocate Revenues, And Design Rates.

Application 08-03-002
(Filed March 4, 2008)

In the Matter of the Application of Southern California Edison Company (U338-E) for Authority to Make Various Electric Rate Design Changes.

Application 07-12-020
(Filed December 21, 2007)

**ORDER DENYING REHEARING
OF DECISION (D.) 09-08-028**

I. INTRODUCTION

In this Order we dispose of the application for rehearing of Decision (D.) 09-08-028 (or “Decision”), filed by Transphase Company (“Transphase”). In D.09-08-028, we addressed the applications of Southern California Edison Company (“SCE”) to establish marginal costs, allocate revenues, and design rates for service provided to its customers for service in 2009 – 2012, and to establish a Conservation Incentive Adjustment and modify an existing Low Emission Vehicle rate schedule. The Decision approved three settlement agreements (the Revenue Allocation Settlement Agreement, the Street Light Rate Group Settlement Agreement, and the Commercial Submetering Settlement Agreement), and also modified three other settlement agreements (the Residential and Small Commercial Rate Design Settlement Agreement, the Medium and Large Power Rate Group Rate Design Settlement Agreement, and the Agriculture and Pumping Rate Group Rate Design Settlement Agreement) to ensure that the provisions concerning participation in more than one demand response program are

consistent with the policies ultimately adopted in the Commission's demand response proceeding (Application (A.) 08-06-001 *et al.*).¹

Our Decision provided for revised rates to become effective on October 1, 2009, and allows SCE to collect the revenue requirement determined in Phase 1 of its 2009 General Rate Case.² It also required SCE to file an application proposing additional dynamic pricing rates for its customers by September 1, 2010,³ denied a request by Citrus Packers to revise SCE's agricultural criteria, and denied a motion filed by Transphase Company ("Transphase") to disqualify President Michael R. Peevey from serving as the assigned Commissioner in the proceeding or from voting on the decision. Finally, we granted SCE's motion to update the settlement agreements to reflect updated revenue requirements and proposed rates.

Transphase filed a timely application for rehearing raising issues in connection with two Settlement Agreements: the Revenue Allocation Settlement Agreement; and the Medium and Large Power Rate Group Rate Design Settlement Agreement.⁴ Specifically, Transphase challenges D.09-08-028 on the following grounds: (1) Transphase's motion to disqualify President Peevey should be granted; (2) the Decision stated and applied an incorrect standard of review; (3) the Decision violated

¹ The Settlement Agreements are attached to D.09-08-028 as follows: Attachment B - Revenue Allocation Settlement Agreement; Attachment C - Residential and Small Commercial Rate Design Settlement Agreement; Attachment D - Medium and Large Power Rate Group Rate Design Settlement Agreement; Attachment E - Agricultural and Pumping Rate Group Rate Design Settlement Agreement; Attachment F - Street Light Rate Group Settlement Agreement; and Attachment G - Commercial Submetering Settlement Agreement.

² D.09-08-028 resolves Phase 2 of SCE's 2009 General Rate Case.

³ The Commission directed SCE to propose, in its application, default and/or mandatory time of use and time of use/critical peak pricing rates as specified in the Decision, and stated that rates would be proposed to be effective on January 1, 2012.

⁴ Fourteen parties to the proceeding joined in the Revenue Allocation Settlement Agreement, including: SCE; the Division of Ratepayer Advocates ("DRA"); The Utility Reform Network ("TURN"); the Federal Executive Agencies ("FEA"); the Energy Producers and Users Coalition ("EPUC"); the California Manufacturers and Technology Association ("CMTA"); and the Energy Users Forum ("EUF"). Nine parties joined in the Medium and Large Power Rate Group Rate Design Settlement agreement, including: SCE; FEA; CMTA; EUF; EPUC; and the California Large Energy Consumers Association.

Public Utilities Code section 1705 by failing to provide findings of fact and conclusions of law on all material issues;⁵ (4) adoption of SCE's application and settlement agreements should be reversed because the proposed rate designs violate state and national energy policies to reduce peak demand, increase system load factor, and promote thermal storage air conditioning; (5) the Decision erred in approving SCE's flat, non-time differentiated Department of Water Resources ("DWR") energy charge; (6) there was no record evidence to support the blending methodology used to derive on-peak/off-peak energy charge ratios; (7) there was no justification for the drastic reduction in on-peak/off-peak energy charge ratios and on-peak charges, at the same time off-peak charges have risen; (8) the Decision failed to address the near disappearance of the on-peak demand charge; and (9) there was no record evidence to support the adopted marginal costs. SCE filed a response to Transphase's rehearing application on September 30, 2009.

We have carefully considered the arguments raised in the application for rehearing, and are of the opinion that good cause has not been established to grant rehearing. Accordingly, we deny the application for rehearing of D.09-08-028.

II. DISCUSSION

A. The Commission Did Not Err In Denying Transphase's Motion To Disqualify President Peevey.

Transphase claims that the Decision erred in declining to disqualify President Peevey from participating in the proceeding. Specifically, Transphase continues to allege (as it did in its March 6, 2009 disqualification motion) that President Peevey has demonstrated actual bias, prejudice and gross partiality in favor of SCE, and that as such he should have been disqualified or recused from the proceeding. Transphase further asserts that President Peevey's past employment with SCE

⁵ All subsequent section references are to the Public Utilities code unless otherwise stated.

demonstrates actual bias, and for that reason he should have been barred from participating in the proceeding. (Rhg. App., pp. 4-6.)

We fully considered the issue of any potential bias on the part of President Peevey in conjunction with Transphase's March 6, 2009 motion to disqualify. In the Decision, we articulated the appropriate legal standards, including the presumption of impartiality and the requirement that a decisionmaker may be disqualified "only when there has been a clear and convincing showing that the agency member has an unalterably closed mind on matters critical to the disposition of the proceeding." (D.09-08-028, p. 51; *see also Association of National Advertisers, Inc. v. Federal Trade Commission* (hereafter "ANA") (D.C. Cir. 1979) 627 F.2d 1151, 1170.) Nothing alleged in Transphase's original motion to disqualify or in its rehearing application comes close to meeting this standard.

Rules of due process require an impartial decisionmaker in administrative proceedings. With limited exceptions, decisionmakers at administrative agencies are presumed to be impartial.⁶ In a ratesetting proceeding, which is considered a quasi-legislative proceeding for the purpose of due process analysis, the appropriate standard is articulated in *ANA, supra*. Any challenge to a decisionmaker's presumed impartiality must meet the "clear and convincing" test in order to rebut the presumption of administrative regularity.⁷

In *ANA*, the Court specifically noted that the disqualification of every decisionmaker who held opinions on the appropriate course of future action "would eviscerate the proper evolution of policymaking" and substantially interfere with the development of agency policy.⁸ In the present case, the fact that President Peevey was previously employed by SCE more than fifteen years ago, and the fact that he stated in a

⁶ *Morongo Band of Mission Indians v. State Water Resources Control Board* (2009) 45 Cal.4th 731, 737.

⁷ *ANA, supra*, 627 F.2d at p. 1170.

⁸ *Id.* at p. 1174.

ruling that he “applaud[s]” SCE’s movement to provide dynamic pricing options,⁹ does not even approach the required legal standards for disqualification of a decisionmaker.

There was no evidence whatsoever that President Peevey has an actual bias in favor of SCE or against Transphase. Similarly there was no evidence that President Peevey maintained an “unalterably closed mind” with respect to the issues presented by Transphase in the underlying Commission proceeding. Transphase’s argument is based largely on unsubstantiated conjecture and innuendo, which does not in any material way approximate the evidentiary showing required to disqualify a decisionmaker. As such, we find no basis or merit to Transphase’s arguments regarding disqualification.¹⁰

B. The Decision Applied The Correct Standard Of Review.

Transphase contends the Decision erred as a matter of law, because it applied an incorrect standard of review in stating the Commission’s role was to determine whether the settlement agreements were reasonable, consistent with the law, and in the public interest.¹¹ Transphase argues the Decision wrongly ignored that SCE has the burden to affirmatively establish the reasonableness of its application. (Rhg. App., at pp. 6-7.)

⁹ See D.09-08-028, at p. 50.

¹⁰ It should be noted that, at its request, Transphase was provided with copies of President Peevey’s Form 700 Statements of Economic Interests. (See D.09-08-028, at p. 52.)

¹¹ Transphase also suggests the Decision is flawed because it refers to “significant give and take” that occurred between the settling parties, without disclosing what that “give and take” was. Pursuant to Commission rules, it would have been improper to disclose any specific information about the particulars of settlement negotiations, and/or the compromises parties may have made. Commission Rule of Practice and Procedure 12.6 entitled Confidentiality and Inadmissibility, states in pertinent part:

No discussion, admission, concession or offer to settle, whether oral or written, made during any negotiation on a settlement shall be subject to discovery, or admissible in any evidentiary hearing against any participant who object to its admission....

(Cal. Code of Regs., tit 20, § 12.6.)

Transphase's argument appears to conflate the related, but not synonymous, concepts of standard of review and burden of proof. The standard of review for Commission evaluation of proposed settlements is governed primarily by Commission Rule of Practice and Procedure 12.1, entitled Proposal of Settlements. The Rule provides in pertinent part:

- (d) The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.

(Cal. Code of Regs., tit. 20, § 12.1, subd. (d).)

Consistent with Rule 21.1, the Decision properly stated the standard of review and made associated findings.¹² That said, we did not lose sight of the burden of proof. We have consistently recognized that in rate case proceedings the utility bears the ultimate burden of proof to establish the reasonableness of the proposed rates.¹³ If a utility proposal is incorporated in a settlement, the utility has the burden to establish its reasonableness. If a settlement incorporates compromise proposals, or specific proposals of other parties, the settling parties share the burden to establish the reasonableness of those proposals. Nothing in the Decision demonstrates that we failed to hold SCE or the other settling parties to their respective burdens. We explicitly identified record evidence to support the conclusion that SCE and the settling parties established that the settlement was reasonable based on the record.¹⁴

¹² D.09-08-028, at pp. 6-8. Also see D.09-08-028, at pp. 7-14 [Concerning the Revenue Allocation Settlement contested by Transphase.], and pp. 22-25 [Concerning the Medium and Large Power Rate Group Settlement Agreement contested by Transphase.].

¹³ See e.g., *Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 1999* [D.00-02-046] (2000) __ Cal.P.U.C.3d __, at pp. 36-37 (slip op.); *In the Matter of the Application of Pacific Bell, a Corporation, for authority to Increase Certain Intrastate Rates and charges Applicable to Telephone Services Furnished Within the State of California* [D.87-12-067] (1987) 27 Cal.P.U.C.2d 1, 21-22. See also Pub. Util. Code, §§ 451 & 454.

¹⁴ See e.g., D.09-08-028, at pp. 11-12. In addition, the Commission has broad discretion in evaluating the reasonableness of evidence in any proceeding. (See e.g., *Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 1999* [D.00-02-046], *supra*, __ Cal.P.U.C.3d __, at p. 38 (slip op).)

Finally, Transphase asserts that other parties do not have the burden of proving the unreasonableness of SCE's showing. As a general principle that is true, and nothing in the Decision indicates imposition of such a requirement. Nevertheless, when parties propose a result that differs from that proposed by the utility, or differs from that of the setting parties in the case of a settlement, they do have the burden of going forward to produce evidence to support the counter position.¹⁵

C. The Decision Provided Findings Of Fact And Conclusions Of Law On All Material Issues As Required By Public Utilities Code Section 1705.

Transphase contends the Decision failed to make adequate findings of fact as required by section 1705 and relevant case law. (Rhg. App., at pp. 7-8.)

Section 1705 states in pertinent part:

...the decision shall contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision.

(Pub. Util. Code, § 1705.) Relevant case law instructs that among other things, the Commission's findings and decisions must be adequate to afford a rational basis for judicial review, and allow parties to understand why the case was lost.¹⁶

Transphase views the findings and conclusions as being too few and nebulous, suggesting that rate design decisions must contain individual findings and conclusions for each rate design issue or methodology in the proceeding.¹⁷

The law does not require our decisions to contain such extraordinary detail. Even Transphase notes this proceeding involved hundreds of separate rate schedules,

¹⁵ D.87-12-067, *supra*, 27 Cal.P.U.C.2d at pp. 21-22.

¹⁶ *Utility Consumers' Action Network v. Public Utilities Commission* (2004) 120 Cal.App.4th 644, 662; *Greyhound Lines, Inc. v. Public Utilities Commission* (1967) 65 Cal.2d 811, 813.

¹⁷ Transphase also suggests the Decision is flawed because it fails to include a statement as to California energy policy regarding marginal costs. A general statement of existing policy is not a material issue. Nothing requires our decisions to state every State policy that may apply in a given case. Further, Transphase ignores that the Decision does in fact state why the adopted rate design is consistent with California's broad policies and goals. (See D.09-08-028, at pp. 13-14, 24.)

options, adjustments, and terms and conditions, which spanned six settlements. (Rhg. App., at p. 8.) It would be unreasonably burdensome, if not impossible to enumerate separate findings and conclusions for each individual aspect.

More importantly, our findings, conclusions, and discussion are sufficient to enable a reviewing court to understand why the settlements were adopted, and assist Transphase to know why its challenges were rejected. We explained why the settlements met the requirements of rule 12.1, why Transphase's main challenges were rejected, and what evidence we relied upon to come to our conclusions.¹⁸ In addition, the settlement agreements which accompany the Decision contain information regarding the methodologies and rate tables underlying the rate design.¹⁹

Finally, Transphase claims the settlement clauses which disavow any precedential value amount to an admission that they are contrary to substantive policies and principles. In fact, virtually all settlement agreements adopted by the Commission contain such clauses, consistent with Rule 12.5. The Rule states:

Commission adoption of a settlement is binding on all parties to the proceeding in which the settlement is proposed. Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.

(Cal. Code of Regs, tit. 20, § 12.5.)

D. The Proposed Rate Designs Do Not Violate State Or National Energy Policies.

As its next allegation of error, Transphase claims that our adoption of the settlement agreements violates state and national energy policies to reduce peak demand,

¹⁸ D.09-08-028, at pp. 7-14, 22-25. Transphase suggests the Decision is flawed because it fails to discuss every issue Transphase raised in its Opening Brief. However, there is no legal requirement that a Commission decision discuss or make findings on each and every issue raised by a party. (Goldin v. Public Utilities Commission (1979) 23 Cal.3d 638, 670; In re San Diego Gas & Electric Company [D.03-08-072] (2003) __ Cal.P.U.C.3d __, at p. 12 (slip op.)) The Decision reasonably focuses on the primarily issues that were raised, or which warranted modification of the settlements.

¹⁹ See ante, fn. 1.

increase system load factor and promote thermal storage air conditioning. (Rhg. App., at pp. 8-11.) Transphase asserts that SCE's rate designs, as proposed in its application and the settlement agreements, act in direct contravention of these state and national policies. (Rhg. App., at p. 9.) This allegation of error is without merit.

Contrary to Transphase's assertion, many of the rate design proposals advanced by SCE in this proceeding are consistent with the rate design issues we resolved in SCE's last General Rate Case, which was D.06-06-067.²⁰ In addition, the rate design proposals offered by SCE in this proceeding advance important state and national energy policies by moving toward efficient cost-based revenue allocation, which is consistent with Commission policy and the California Energy Action Plan.²¹ As noted in the Decision, the revenue allocation settlement agreement moves toward cost-based rates. This is consistent with specific goals articulated in the EAP, including the creation of increased transparency in consumer electricity rates and the adoption of rates based on clear cost-causation principles.²² The Decision further noted that the Revenue Allocation Settlement Agreement is consistent with important state policies, including mitigation of potential adverse rate impacts on any individual rate group and meeting the ultimate goals contained in the State's EAP.²³

In addition, the Decision specifically addresses Transphase's contention that the medium and large power rate group ("MLP") settlement agreement is contrary to state energy policy.²⁴ The Decision notes that the MLP "settlement agreement adopts a default TOU schedule with CPP overlay for the customers with demands greater than 500 kW (Schedule TOU-8)" and finds that "[t]his rate schedule is consistent with California's

²⁰ Application of Southern California Edison Company (U 338-E) to Establish Marginal Costs, Allocate Revenues, and Design Rates (Opinion Approving Settlement) [D.06-06-067] (2006) __ Cal.P.U.C.3d __.

²¹ See Exh. 2, at pp. 1-8 (SCE/Garwacki); see also Energy Action Plan ("EAP") II, October, 2005, www.cpuc.ca.gov/PUC/energy/Resources/Energy+Action+Plan/

²² See EAP II, p. 9; see also D.09-08-028, pp. 13-14.

²³ D.09-08-028, at pp. 13-14.

²⁴ D.09-08-028, at pp. 24-25.

overall goals to encourage customers to reduce peak energy consumption by setting different rates during predefined time-periods.”²⁵ The Decision points out that “the settlement agreement also adopts an alternative tariff specifically for customers with demands greater than 500 kW who employ cold ironing and PLS technologies (Schedule TOU-8, Option A)” and concludes that “this schedule provides adequate incentive for the installation of PLS technology.”²⁶

Finally, the Decision addresses Transphase’s claim that adoption of the MLP settlement agreement would reduce the monthly savings of a customer with a thermal energy storage (“TES”) system, and its allegation that SCE’s proposed rate designs were intended, at least in part, to make TES systems uneconomical.²⁷ As the Decision notes, “[i]n designing a rate to provide incentives for PLS [permanent load shifting], however, the focus is on the entire customer group, not specific PLS technology.”²⁸ “The fact that Schedule TOU-8, Option A may result in less savings for TES customers is not sufficient grounds to find that the settlement agreement is unreasonable or discourages PLS technologies.”²⁹ In setting rates and evaluating proposed rate designs, our obligation is to ensure reasonable rates and reliable service for the entire customer group, not for a specific, discrete subset of customers. The fact that Transphase believes that the adopted rate designs do not maximize savings for purchasers of TES systems, thus allegedly making it more difficult for Transphase to market and sell its TES system, is not relevant to the complex, technical rate design issues involved in this General Rate Case. Our obligation is to promote fairness for the overall customer group, not to advance the interests of a specific company or technology.

²⁵ D.09-08-028, at p. 24.

²⁶ D.09-08-028, at pp. 23-24.

²⁷ D.09-08-028, at p. 25, fn. 34.

²⁸ D.09-08-028, at p. 25, fn. 34.

²⁹ D.09-08-028, at p. 25, fn. 34.

Thus, our adoption of the settlement agreements in D.09-08-028 is entirely consistent with state and national energy policies and with past Commission precedent, including SCE's last General Rate Case, EAP and EAP II.³⁰ Transphase's allegations to the contrary lack merit.

E. The Decision Does Not Approve The DWR Power Charge.

Transphase next alleges that the Decision erred in approving a flat, non-time differentiated DWR power charge. (Rhg. App., at pp. 11-14.) According to Transphase, there is no requirement that the DWR power charge be flat and non-time differentiated, and Transphase claims that the incorporation of the DWR power charge into the various settlement agreements at issue in this proceeding was erroneous. (Rhg. App., at p. 12.) This argument has no merit.

As the Decision specifically noted, this proceeding does not establish the DWR power charge.³¹ D.02-02-052 made the determination of an equal cents per therm allocation among customers for each utility. (See D.02-02-052, at pp. 23, 116, Ordering Paragraphs 3 & 4.) This decision is final, and cannot be collaterally attacked. (See Pub. Util. Code, §1709.)

Further, the revenue requirement of the DWR power charge is determined in a separate annual proceeding in which the Commission "adopts DWR's revenue requirement and allocates this revenue requirement among the three utilities and this

³⁰ With respect to federal energy policy, Transphase asserts, at page 9 of its rehearing application, that the Decision is inconsistent with section 1301 of the federal Energy Independence and Security Act of 2008, which is codified as 42 U.S.C. 17381. That is the only federal authority cited by Transphase in support of this argument. Section 17381(7) merely states that the deployment of energy storage technologies like thermal-storage air conditioning should be supported. Nothing in the Decision is inconsistent with this statement. However, as noted above, our obligation is to set just and reasonable rates for the entire customer group, not to single out a particular customer subset for preferential treatment. In addition, it is the Commission, not the federal government or the Federal Energy Regulatory Commission, that sets retail electric rates and policies within the State of California. Federal jurisdiction extends only to regulation of the interstate, wholesale electricity market.

³¹ D.09-08-028, at p. 11.

allocation is a flat cents/kWh rate.”³² Our most recent allocation of DWR’s revenue requirement determination for 2010 was in D.09-12-005.³³ We expect DWR to submit its 2011 revenue requirement determination to the Commission in approximately August 2010. Transphase is surely aware that it may seek status as a party in the Commission’s annual DWR revenue requirement allocation proceeding pursuant to Rule 1.4 of the Commission’s Rules of Practice and Procedure, if it wishes to challenge the allocation of the revenue requirement of the DWR power charge among the three utilities. As noted in the Decision, it is entirely outside the scope of this proceeding to establish or examine issues involving the DWR power charge.

F. The Decision Properly Considered And Approved SCE’s Blending Methodology And Associated On-Peak/Off-Peak Energy Charge Ratio

The Revenue Allocation Settlement Agreement incorporates SCE’s blending methodology, which is used to derive the on-peak/off-peak energy charge ratio, or rate differential. The ratio is based on a blending of the utility retained generation (“URG”) rate and the DWR power charge. Transphase argues the blending methodology should be rejected because: (1) no valid findings could be made because there was no record evidence to support the methodology; and (2) SCE’s workpapers were not in the record as required by section 1822. (Rhg. App., at pp. 14-17.)

1. Evidence Supporting The Blending Methodology

Transphase contends the Decision erred because there was no evidence to describe the blending methodology, to show URG component costs and how they are blended with the DWR component, to demonstrate how on-peak or off-peak ratios are developed, or to establish how time-of-use (“TOU”) rates are broken down.³⁴

³² *Id.*, fn. omitted.

³³ See *Decision Allocating the Revised 2010 Revenue Requirement Determination of the California Department of Water Resources* [D.09-12-005] (2009) __ Cal.P.U.C.3d __, p __ (slip op.).

³⁴ Transphase’s challenges arise in the context of TOU-8 customers and rates. The TOU-8 rates applies to customers who have installed or will install Permanent Load Shifting technologies such as those marketed (continued on next page)

Our Decision rejected these allegations because we found there was specific evidence which addressed the issues Transphase raises.³⁵ It appears Transphase either ignores or does not understand that evidence.

For example, there was in fact evidence to: described SCE's blending methodology and the rationale for blending URG and DWR rates;³⁶ illustrate the on-peak/off-peak blending ratios;³⁷ address the URG and DWR component costs;³⁸ and show how URG and DWR generation revenues are allocated by rate group.³⁹ And there was also evidence regarding how on-peak/off-peak charges are established,⁴⁰ as well as evidence regarding the TOU breakdowns.⁴¹

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by Transphase. Permanent Load Shifting technologies operate to encourage customers to move energy usage from peak periods when energy usage and rates are higher to off-peak periods when rates are lower. Examples of Permanent Load Shifting technologies include Thermal Energy Storage, battery storage, and the pumping and storing of water.

³⁵ D.09-08-028, at pp. 11-14, referring to Exh. 100 (SCE/Garwhacki), Exh. 104 (SCE/Garwacki), and Appendix B of the Revenue Allocation Settlement Agreement.

³⁶ Exh. 100, at p. 19 (SCE/Garwacki) ["...Transphase misunderstands SCE's basic rate designs. While it is true that the DWR energy charges are billed on an equal cents per kWh basis (i.e., a "flat" rate), SCE establishes its URG rates residually such that the total TOU energy rates (after accounting for the fixed DWR power charge component of energy rates) reflect marginal cost differences between energy supplied during different TOU periods. The weighted average of the URG and DWR energy rates reflect the appropriate marginal cost-based differences. The net impact of this adjustment on URG energy rates is that they are set artificially high in the on-peak period and artificially low in the off-peak period to offset the flat DWR energy charges...."].

³⁷ Exh. 104 (SCE/Garwacki). Transphase criticizes Exh. 104 as being just a "hypothetical." However, Exhibit 104 was not intended to reflect a specific charge at a specific point in time. It illustrates the ratio that is used in the blending methodology for allocating the on-peak/off-peak URG and DWR charges.

³⁸ See e.g., Revenue Allocation Settlement Agreement, Revised Appendix B, p. B-2 [As amended by Exh. 108]; Exhs. 200-212 [SCE TOU-8 Rate tariffs from 2002 through 2008]; Reporter's Transcript ("RT") Vol. 5, at pp. 370-375 (SCE/Garwacki) [Addressing specific Transphase questions regarding particular URG component rates.].

³⁹ Revenue Allocation Settlement Agreement, Appendix B; Exh. 108 (SCE) [Showing the URG and DWR generation revenues that are allocated to both bundled service and direct access rate groups]; RT Vol. 5, at pp. 298-300 (SCE/Garwacki); RT Vol. 5, at pp. 341 (SCE/Garwacki); and RT Vol. 5, at pp. 345-348 (SCE/Garwacki).

⁴⁰ See e.g., RT Vol. 5, at pp. 323-336 (SCE/Garwacki); RT Vol. 5, at pp. 361-362; Exh. 100, at pp. 16-19 (SCE/Garwacki) [Also noting two errors in Transphase's on-peak/off-peak rate differentials].

⁴¹ See e.g., Revenue Allocation Settlement Agreement, Appendix B; RT Vol. 5, at pp. 345-351 (SCE/Garwacki); Exh. 200-212 (Transphase/Ames) [Showing SCE's TOU-8 rates.]; Exh. 5, at pp. 38-42 (SCE/Thomas); Exh. 100, at pp. 17-18, 20-24 [Including TOU-8 rates at on-peak/off-peak contained in Tables II-1, II-2, and II-3.].

Transphase also argues the rate design methodology lacks any connection to California energy policy to reduce peak demand. (Rhg. App., at p. 14.) We disagree. Many of SCE's proposals are consistent rate design issues we resolved in SCE's last General Rate Case. Further, the methodologies support California policies by moving toward efficient cost-based revenue allocation consistent with Commission policies and the California Energy Action Plan.⁴² We specifically noted that the Revenue Allocation Settlement Agreement supports policies to mitigate potential adverse rate impacts on any individual rate group, to move toward cost based rates, and to meet the overarching goal of the State's Energy Action Plan.⁴³

2. Public Utilities Code Section 1822

Transphase contends the Decision is without adequate support because the record did not contain SCE's workpapers as required by section 1822.⁴⁴ (Rhg. App., at pp. 16-17.)

Section 1822 provides in pertinent part:

(a) Any computer model that is the basis for any testimony or exhibit in a hearing or proceeding before the commission **shall be available to, and subject to verification by**, the commission and parties to the hearing or proceedings to the extent necessary for cross-examination or rebuttal, subject to applicable rules of evidence.... (emphasis added)⁴⁵

We agree SCE's workpapers are not in the record, however, that is not required by section 1822. Models and data bases need only be "available" for

⁴² Exh. 2, at pp. 1-8 (SCE/Garwacki). (The Energy Action Plan II, dated October 2005 can be located at: www.cpuc.ca.gov/PUC/energy/Resources/Energy+Action+Plan/)

⁴³ D.09-08-028, at pp. 13-14 citing to the Energy Action Plan II.

⁴⁴ See also Commission Rule of Practice and Procedure 10.3 entitled Computer Model Documentation. (Cal. Code of Regs., tit 20, § 10.3.)

⁴⁵ See Pub. Util. Code, § 1822, subd. (a). See also Commission Rule of Practice and Procedure 10.3 Computer Model Documentation, which provides in pertinent part: (a) Any party who sponsors testimony or exhibits which are based in whole, or in part, on a computer model shall provide to any party upon request the following information:.... (Cal. Code of Regs, tit. 20, § 10.3, subd. (a).)

verification.⁴⁶ No statute or rule requires such information to be included in the formal record of a proceeding, and most times they are not.

Additionally, our rules require that any party seeking access to such information must serve on the sponsoring party a written explanation of why it requests access to the information and how its request relates to its interest or position in the proceeding.⁴⁷ Typically, that is accomplished by a written data request. Here, the record reflects three data requests by Transphase.⁴⁸ None show that Transphase ever explicitly requested workpapers that may have been used to develop or support SCE's blending methodology.⁴⁹

G. The Record Substantiated The On-Peak/Off-Peak Energy Charge Ratios Adopted By The Decision.

Transphase contends there was no evidence to substantiate or justify an alleged drastic reduction in SCE's on-peak/off-peak energy charge ratios and on-peak charges,⁵⁰ at the same time that its off-peak rates have climbed. Transphase states nothing in the record explained any variation of the ratios over time.⁵¹ (Rhg. App., at pp. 17-18.) We disagree.

As discussed in greater detail in Part H of this Order, there has not been a drastic reduction in the referenced charges.⁵² We also found satisfactory explanation of

⁴⁶ Neither Section 1822 nor Rule 10.3 specifically refer to work papers, although it is reasonable to presume they may contain assumptions and inputs also contemplated by section 1822. However, Commission proceedings do not routinely include work papers as part of the evidentiary record. Such information, if desired, is generally exchanged by parties during pre-litigation discovery.

⁴⁷ Commission Rule of Practice and Procedure 10.4, entitled Computer Model and Data Base Access. (Cal. Code of Regs., tit. 20, § 10.4, subd. (a).)

⁴⁸ Exhs. 219, 222, 225 [including SCE's responses].

⁴⁹ See Exhs. 219, 222, and 225.

⁵⁰ Transphase states this reduction occurred at the same time off-peak rates climbed. However, Transphase offered no evidence to support that claim, or argument to why any such changes would have been unreasonable and unlawful.

⁵¹ This argument is raised in connection with the Medium and Large Power Rate Group Rate Design Settlement Agreement. (See e.g., D.09-08-028, at pp. 22-25.)

⁵² Revised Appendix A to Medium and Large Power Rate Design Settlement Agreement, page A-6, TOU-8-Secondary (below 2 kV) [Demonstrating an on-peak/off-peak ratio of 2.27, not 1.79 as Transphase asserts]. Transphase also points to a motion filed by SCE on behalf of itself and the settling

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relevant factors that may impact on-peak/off-peak charges, accounting for changes in the ratios over time.⁵³

Nevertheless, Transphase suggests we erred because the Decision does not address all of its evidence and arguments. We are not required to, nor can we reasonably, discuss and make findings on every issue or piece of evidence presented by a party.⁵⁴ Yet we did explicitly discuss what we viewed as Transphase's key allegations, and we did consider and weigh the evidence Transphase presented.⁵⁵ The Decision explains we were not persuaded that the proposed rate design was unreasonable or that a different rate design should be adopted.⁵⁶

H. The Record Demonstrated That On-Peak Demand Charges Have Not Disappeared

Transphase contends the record contained no evidence to support SCE's elimination of the on-peak distribution demand charge. Accordingly, Transphase argues the Medium and Large Power Rate Group Rate Design Settlement Agreement should be rejected. Transphase also asserts that in rejecting its arguments, we improperly placed the burden of proof on Transphase.⁵⁷ (Rhig. App., at pp. 18-23.)

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parties which allegedly reduces the on-peak/off-peak energy charge ratio to 1.55. (Motion of Southern California Edison Company to Update Settlement Agreements to Reflect Updated Revenue Requirements and Proposed Rates, dated July 6, 2009.) It is not clear, and Transphase does not identify, where in the motion this ratio is reflected or how Transphase developed that number.

⁵³ See, e.g., Exh. 100, at p. 18 (SCE/Garwacki). See also RT Vol. 5, at pp. 322-336 (SCE/Garwacki) [Discussing SCE Exhs. 200, 201, 202, 203, 204 and 224]; RT Vol. 5, at pp. 357-362 (SCE/Garwacki) [Discussing SCE Exhs. 206, 208, 224 and 226]; Exh. 100, at pp. 16-19 (SCE/Garwacki).

⁵⁴ *Goldin v. Public Utilities Commission* (1979) 23 Cal.3d 638, 670; *In re San Diego Gas & Electric Company* [D.03-08-072] (2003) __ Cal.P.U.C.3d __, at p. 12 (slip op.).

⁵⁵ D.09-08-028, at pp. 22-25.

⁵⁶ D.09-08-028, at pp. 23-24.

⁵⁷ Transphase also suggests the Decision erred in relying on a loss of load expectation study referred to by SCE's expert witness in explaining why there has been some lowering of the on-peak demand charge. The study was performed as part of SCE's 2006 General Rate Case, but Transphase argues the study can not be relied on here since it was not part of this record as required by section 1822 and rule 10.3. As previously indicated, section 1822 and rule 10.3 apply to computer models. They impose no requirement that a study used to inform an expert witness be included in the record. (See Part F.2. above) The study was discussed by SCE as part of its expert testimony (Exh. 100, at p. 18 (SCE/Garwacki), as well as in a data response SCE provided to Transphase (Exh. 223, Response to Question 15.), both without challenge

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Transphase deems any evidence contrary to its assertions as “manifestly inaccurate and untrue.” (Rhg. App., at pp. 19-20.) Despite this claim, Transphase fails to disprove the evidence which indicates the distribution demand charges were not eliminated, but were instead moved and accounted for differently in the rate design.⁵⁸ The distribution demand charges are currently reflected as part of SCE’s non-time related (or differentiated) facilities charges.⁵⁹

Transphase’s confusion appears to stem from the fact it continues to mix and match charges applicable to different types of service and different groups of customers. For example, it relies on 2006 TOU-8 tariffs to argue distribution demand charges dropped from \$8.38 in February 2006, to zero in October 2006.⁶⁰ That is incorrect. The referenced charges are not distribution demand charges. They are time-related demand charges.⁶¹ Moreover, the elimination of those charges was proper and approved by the Commission subsequent to February 2006 as part of SCE’s General Rate Case.⁶² The current rate design merely incorporates that change.

Similarly, it is not true that the 2006 facilities demand charges decreased. (Rhg. App., at p. 20.) Here again, Transphase points to generation charges, not facilities related distribution charges. The evidence actually showed that facilities related distribution demand charges increased from \$5.22 in February 2006, to \$7.03 in October 2006.⁶³ Further, even if certain charges fluctuated or decreased, there is nothing

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or further inquiry by Transphase. Transphase offers no authority to establish reliance on the study by SCE’s witness was improper. Even if it was, nothing in the Decision relied on that study as the basis for our conclusions.

⁵⁸ Rhg. App., at p. 19 referring to RT Vol. 5, at pp. 363 l: 28 to 364 l: 12 (SCE/Garwacki).

⁵⁹ RT Vol. 5, at pp. 363-370 generally, and specifically at p. 366 l: 2-4; Exh. 3, at p. 12 (SCE/Nelson).

⁶⁰ Exh. 206 [February 2006 TOU-8 rates]; Exh. 208 [October 2006 TOU-8 rates].

⁶¹ Exh. 206, Sheet 2; Exh. 208, Sheet 2.

⁶² *Application of Southern California Edison Company (U 338-E) to Establish Marginal Costs, Allocate Revenues, and Design Rates (Opinion Approving Settlement)* [D.06-06-067] (2006) __ Cal.P.U.C.3d __, at pp. 10, 11 (slip op.).

⁶³ Exh. 206, Sheet 1; Exh. 208, Sheet 1.

to prove that would have been improper or unlawful. Transphase did not challenge any factor that naturally cause such changes.

Next, Transphase challenges the Critical Peak Pricing (“CPP”) rate structure for TOU-8 customers, arguing that the Summer On-Peak Demand Credit was merely an artifice to further reduce the on-peak demand charge.⁶⁴ To arrive at that result, Transphase states the rate design deducts the \$12.20 per kW credit from the \$13.43 per kW on-peak demand charge. Then it points to a \$23.82 charge to argue the rate design is inconsistent and confusing. (Rhg. App., at pp. 21-22.)

Again, Transphase simply dismisses relevant evidence.⁶⁵ Evidence showed that the credit is not deducted from the \$13.43 charge, as it claims.⁶⁶ Evidence also described how any revenue differential is recovered in rates to ensure the on-peak demand charges are not eliminated.⁶⁷ Further, the record shows that the credit applies to TOU-8 Primary customers who *participate* in the CPP program,⁶⁸ while the \$23.82

⁶⁴ Critical Peak Pricing is a dynamic pricing structure which is intended to lower energy costs and lower peak energy usage by more closely aligning retail rates and wholesale system conditions. CPP encourages customers to reduce load through a rate design which responds to price signals during critical peak (high energy use) events. Participation in a CPP program results in a customer being charged a significantly higher energy charge during event periods, in exchange for lower rates for energy use during non-event periods.

⁶⁵ See Exh. 5, at pp. 8-11 (SCE/Thomas), and Appendix D; RT Vol. 5, at pp. 375 l:11 to 376 l: 7 (SCE/Garwacki); Medium and Large Power Rate Group Rate Design Settlement Agreement, at pp. 9-10, Appendix A, at p. A-12.]

⁶⁶ RT Vol. 5, at pp. 375 l:11 to 376 l: 7 (SCE/Garwacki). [The \$12.20 per kW credit is in effect deducted from a \$19.46 per kW demand charge.] The \$13.43 per kW demand charge Transphase cites applies to Standby Backup customers. However, the Summer On-Peak Demand Credit does not apply to these customers and thus would have no impact on the \$13.43 charge.

⁶⁷ RT Vol. 5, at pp. 375 l:11 to 376 l: 7 (SCE/Garwacki). Transphase also asserts the Settlement Agreement is improper because it introduces the new concept of a phased-in Standby Time-Related demand charge. It is not unlawful for a settlement agreement to introduce a compromise proposal. The Settlement Agreement explains the Standby rate design and that a phase-in approach is designed to mitigate bill impacts. Further, the Commission properly ensured that parties’ were afforded adequate due process, by conducting hearings on the Settlement Agreement. (See Medium and Large Power Rate Group Rate Design Settlement Agreement, at pp. 21-25.) There is no evidence that Transphase challenged the phase-in approach during hearings, nor does it offer argument or evidence to show it is improper.

⁶⁸ Medium and Large Power Rate Group Rate Design Settlement Agreement, at pp. 9-10, Appendix A, at p. A-12.

charge applies to TOU-8 Primary customers who opt out and *do not participate* in the CPP program.⁶⁹ The credit does not apply at all to those customers.

Transphase also contends that the rates for secondary, primary, and sub-transmission TOU-8 customers vary widely, without any explanation or support for such differences.⁷⁰ (Rhg. App., at pp. 22-23.)

The charges in question apply to customers served at different levels of the transmission and distribution system.⁷¹ The evidence clearly explained that differences in charges are attributable to the differing cost of service and different usage profiles of customers at different voltage levels.⁷²

Finally, we did not hold Transphase to an improper or unlawful burden of proof. As discussed in Part B of this Order, we recognize that the utility and/or settling parties bear the ultimate burden to establish reasonableness of the proposed rates.⁷³ However, as a challenging party, Transphase was reasonably held to its burden of going forward to produce evidence to support any counter positions.⁷⁴

⁶⁹ Medium and Large Power Rate Group Rate Design Settlement Agreement, Appendix A, at p. A-6.

⁷⁰ Transphase points to charges of \$19.73, \$23.82, and \$20.26, respectively for the three groups.

⁷¹ The charges are time-related generation demand charges for customers served under 2 kV, from 2 to 50 kV, and over 50 kV. (See Medium and Large Power Rate Group Rate Design Settlement Agreement, at pp. A-6, A-7.)

⁷² Exh. 5, at pp. 38-39 (SCE/Thomas). See also Medium and Large Power Rate Group Rate Design Settlement Agreement, at pp. 15, 23. Transphase questions whether the charges mean anything, given that the Settlement Agreement represents only “estimated” demand charges. Rate design exhibits often reflect illustrative and/or estimated rates. It is not unusual for rates to be adjusted during a rate case cycle, and after the newly adopted revenue requirement becomes effective. In addition, the Settlement Agreement clarifies that any adjustments to time-related demand charges must be consistent with the Revenue Allocation Settlement Agreement and generation scalar after SCE’s authorized revenues change in 2009. (See Medium and Large Power Rate Group Rate Design Settlement Agreement, at p. 24, subd. b.)

⁷³ See e.g., D.87-12-067, *supra*, 27 Cal.P.U.C.2d at pp. 21-22.

⁷⁴ *Id.*

I. The Record Evidence Supported The Marginal Costs Adopted By The Decision.

Transphase contends the Decision erred because the record did not support the adopted marginal costs, and did not contain SCE's models, data bases, inputs and assumptions as required by section 1822 and rule 10.3.⁷⁵ (Rhg. App., at pp. 23-25.)

As explained in Part F.2. of this Order, Transphase misstates the requirement of the section 1822 and rule 10.3. Such information need only be made available for inspection, to the extent necessary for cross-examination and rebuttal.⁷⁶

We reviewed the evidence and found Transphase sought only explanation of SCE's model "approach," not the actual models or data bases.⁷⁷ Transphase does not dispute that particular point, but argues we erroneously overlooked the fact that its data request also requested the variables and assumptions used in SCE's proposal.

We did not ignore Transphase's request. However, evidence showed that SCE did respond to the request by directing Transphase to portions of certain SCE exhibits.⁷⁸ There was also a reasonable amount of other evidence discussing the marginal costs proposal.⁷⁹ After SCE's reply, nothing indicates Transphase sought any further information, or asked this Commission to intervene to require SCE to produce any. We

⁷⁵ Transphase indicates SCE refused to produce its models on the grounds they are proprietary. However, Transphase offers no evidence that it requested the models, or that SCE refused to provide them. It is also relevant to note the evidence shows that certain models and databases appear to be owned by other companies. (See e.g., Exh. 3, at p.23, fn. 26.) Section 1822 provides additional protection for such independently owned data. (Pub. Util. Code, § 1822, subd. (d).)

⁷⁶ Section 1822, subd. (a) providing in pertinent part: "Any computer model that is the basis for any testimony or exhibit...shall be available to, and subject to verification by, the commission and parties to the hearing or proceedings to the extent necessary for cross-examination or rebuttal, subject to applicable rules of evidence...." (Pub. Util. Code, § 1822; see also Cal. Code of Regs., tit. 20, § 10.3, subd. (a).)

⁷⁷ D.09-08-028, at p. 12, fn. 14, referring specifically to Exh. 225, Data Request Question No. 22. The Decision also rejected Transphase's argument on the basis of specific evidence in the record describing marginal costs assumptions, methodologies, and proposals. (D.09-08-027, at p. 12, noting as examples, Exh. 3 (SCE), Exh. 9 (Division of Ratepayer Advocates) and Exh. 11 (The Utility Reform Network).)

⁷⁸ Exh. 225, SCE response to Data Request Question No. 22, referring Transphase to the inputs and assumptions contained in Exh. 3 and accompanying Appendix D.

⁷⁹ See e.g., Exh. 3, at pp. 5-12; 17-29, and Appendix D; Exhs. 8 & 102; Exh. 221; Exh. 224, at pp. 8-8; Exh. 226, at pp. 7-8; Exh. 9 & 9C (confidential), at pp. 2-16; Exh. 11, at pp. 7-30 [TURN testimony and proposed adjustments].

also noted that Transphase did not challenge the marginal costs in either cross-examination or rebuttal. We had no reason to believe Transphase was not satisfied with, or did not understand, the marginal costs evidence contained in the record. Once evidentiary hearings are done it is too late to argue that the record and/or SCE's response was inadequate when a party does not take the opportunity to challenge the evidence provided.

III. CONCLUSION

For the reasons stated above, the application for rehearing of D.09-08-028 is denied because no legal error has been shown.

Therefore **IT IS ORDERED** that:

1. The application for rehearing of D.09-08-028 is denied.
2. The proceedings, Applications (A.) 08-03-002 and A. 07-12-020, are closed.

This order is effective today.

Dated May 6, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners