

Decision 07-09-048

September 20, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the League of
California Cities for Rehearing of
Resolution E-4101.

Application 07-08-020
(Filed on August 15, 2007)

**ORDER GRANTING REHEARING OF RESOLUTION E-4101,
AND VACATING RESOLUTION**

I. INTRODUCTION

On March 15, 2007, Southern California Edison Company (“Edison”) filed Advice Letter (“AL”) 2110-E requesting deviation from its Electric Rule 20A to amortize an undergrounding project in the City of La Habra (“La Habra”) over ten years instead of five years.

The Commission adopted Resolution E-4101 (“the Resolution”) on July 12, 2007. In the Resolution, the Commission denied Edison’s AL and instead ordered that Edison transfer other cities’ unused Rule 20A allocations to La Habra to bring that city’s project within the five-year amortization limit. (Resolution E-4101, p. 11.) The Commission further ordered Edison to act in time for La Habra to avoid forfeiting the funds conditionally made available to it from Orange County. (Resolution E-4101, p. 11.)

Appendix A of the Resolution is a list of cities and counties who have not completed a project using Rule 20A allocations since 1999 and who do not have a current undergrounding district. The Resolution instructed Edison to begin with Appendix A as a guide to identify its inactive and least active communities from which to transfer accumulated balances to meet the shortfall needed by the La Habra Project. (Resolution E-4101, p. 8.)

The League filed a timely application for rehearing of the Resolution. In the rehearing application, the League alleges that the Commission acted arbitrarily and capriciously in adopting the Resolution because the findings in the Resolution lack evidentiary support. (Rehrg. App., p. 1.)¹ Further, the League raises a concern about the transfer of unused allocations without notice to the affected cities and counties (or “public entities” or “communities”). (Rehrg. App., p. 4.) The League requests that the Commission reverse the Resolution and adopt Edison’s AL. The League additionally requests oral argument on the application for rehearing.

Edison filed a response to the League’s application for rehearing. In its response, Edison stated that it “fully supports the League’s Application for Rehearing.” (Edison’s Response, p. 2.)

We have reviewed each and every argument raised in the application for rehearing and are persuaded that the granting of a rehearing is warranted. With this grant of rehearing, we will vacate Resolution E-4101, and remand to the Energy Division for further proceeding on the AL, and on the issues set forth below.

II. DISCUSSION

A. Notice

In the rehearing application, the League raises a concern that the Resolution does not indicate that the affected cities or counties in Appendix A were notified that their Rule 20A funds were potentially in jeopardy. Thus, the League claims that these affected public entities were denied any meaningful opportunity to comment on the resolution.

Upon review of the administrative record, we are concerned that the affected cities and counties in Appendix A were inadvertently not notified that their Rule 20A funds were potentially in jeopardy. They were not on the service list for the AL, the draft Resolution or the Resolution. They were not served with the comments and reply

¹ The League did not number the pages of its rehearing application. For purposes of this order, the pages of the rehearing application are numbered starting with the Introduction being on page 1.

comments. Further, the names of the affected cities or counties were not specifically known until after the Resolution was issued since the draft Resolution did not include Appendix A and did not specify which communities were inactive.

Therefore, the administrative record demonstrates that the affected cities or counties were inadvertently not given the proper notice. Accordingly, we grant rehearing of the Resolution and vacate the Resolution. We also remand the matter to the Energy Division for further proceeding.

B. Evidentiary Record

In the rehearing application, the League alleges that the Commission acted arbitrarily and capriciously in adopting the Resolution because the findings in the Resolution lack evidentiary support. Specifically, the League contends that the following findings lack evidentiary support: (1) the cities listed in Appendix A do not plan on using their rule 20A allocations; (2) the reallocation of Rule 20A would not have an adverse effect on the cities listed in Appendix A; (3) the cities listed in Appendix A have “inactive” undergrounding programs; and (4) the benefits of reallocation offset the reduction. Generally, the sufficiency of the record argument lacks merit. The Commission staff compiled the list in Appendix A based on information from Edison and its Rule 20A annual reports from 1999 to 2006. (See Staff’s Data Request, dated June 6, 2007 (email); Edison’s response to the Staff’s Data Request, dated June 26, 2007 (email); Edison’s Rule 20A Annual Reports from 1999 to 2006.)

The League also challenges the Resolution’s determination of which cities or counties were “inactive.” The Commission Staff considered two factors in determining which communities were “inactive” and to be included in Appendix A. First, they looked for communities that had not completed an undergrounding project since 1999. Second, they relied on the definition of an active undergrounding program in Edison’s Rule 20.A.2.e, which states: “In order to qualify as a community with an active undergrounding program, the governing body must have adopted an ordinance or ordinances creating an underground district and/or districts....” However, there is no clarity as to the definition of what constitutes an “active” or “inactive” community.

Although the Resolution instructs Edison to begin with Appendix A as a guide to identify its inactive and least active communities from which to transfer accumulated balances, Edison itself is uncertain about what constitutes an “active” or “inactive” community. In its response to the rehearing application, Edison states, “Even with Exhibit A as a guide, it is very difficult to assess which communities should be deemed ‘inactive’ as defined in the Resolution.” (Edison’s Response, p. 2.)

Further, the sole source of the information about the “inactive” status of the cities or counties was from Edison, and there was no input from the affected communities. The League’s rehearing request calls into question the accuracy of some of the information. It claims that some of the cities listed in Appendix A indicated that they had undergrounding projects in the pipeline. (See Rehr. App., p. 3.) It also claims that other cities indicated they had identified where they would like to underground utilities but were waiting to accumulate sufficient Rule 20A funds to fund the projects. (See Rehr. App., p. 3.)

The concerns raised above regarding the determination of the “inactive” status of the affected communities and questions about the accuracy of the information available to the Commission warrant further consideration during the rehearing granted.

Accordingly, during the rehearing, the parties, including Edison and the affected public entities, will be given an opportunity to be heard on the following: (1) the verification of the information related to “inactive” status of the affected public entities relied upon by the Resolution; and (2) how the “inactive” status should be determined for the purpose of reallocating the unused funds to La Habra.

Energy Division is to handle the rehearing. The rehearing would include, but is not limited to: (1) notifying the affected public entities about the rehearing by mailing them a copy of today’s decision² and establishing a new service list of the parties for this proceeding; (2) issuing data requests to all parties so as to verify the information regarding a community’s “active” or “inactive” status; and (3) setting up a schedule for

² We expect Edison to coordinate with Energy Division in notifying the affected public entities.

comments and reply comments on the issue as to how “inactive” status should be determined for purposes of any reallocation.

C. Request for Oral Argument

The League requests oral argument on its Application for Rehearing pursuant to Rule 16.3 of the Commission’s Rules of Practice and Procedure. According to Commission Rule 16.3(a), a request for oral argument:

... should explain how oral argument will materially assist the Commission in resolving the application, and demonstrate that the application raises issues of major significance for the Commission

(Cal. Code of Regs., tit. 20, §16.3, subd. (a).) Here, the League summarily requests oral argument and does not present any arguments in support of its request. As the League’s request does not meet the criteria for oral argument, we deny the League’s request for oral argument.

Therefore **IT IS ORDERED** that:

1. Rehearing of Resolution E-4101 is granted.
2. Resolution E-4101 is vacated.
3. The matter involving Edison’s Advice Letter 2110-E is remanded to Energy Division for further proceeding.
4. The request for oral argument is denied.

This order is effective today.

Dated September 20, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners