

Decision 08-03-014 March 13, 2008

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

California Building Industry Association,

Complainant,

vs.

Southern California Edison Company (U338E),

Defendant.

Case 07-03-026  
(Filed March 27, 2007)

**ORDER EXTENDING STATUTORY DEADLINE**

Pub. Util. Code § 1701.2(d) provides that adjudicatory matters such as this complaint case shall be resolved within 12 months after they are initiated, unless the Commission makes findings why that deadline cannot be met and issues an order extending the 12-month deadline. In this proceeding, the 12-month deadline for resolving the case is March 27, 2008. Although it is likely that a Presiding Officer's Decision (POD) will be served on the parties by that date, it is possible that one of the parties will file an appeal of the POD within the 30-day period provided for such appeals in Rule 14.4(a) of the Commission's Rules of Practice and Procedure, or that a Commissioner will file a request for review of the POD within the 30-day period provided for such requests in Rule 14.4(b).

Thus, even if a POD were to be issued by the end of February 2008, it would not be possible to resolve this case within the one-year period provided in Pub. Util. Code § 1701.2(d). Because of these circumstances, we have concluded

that it is appropriate to extend the 12-month deadline in this case for six months, until September 26, 2008.

## **1. Background**

The complaint in this case alleges that defendant Southern California Edison Company (Edison) has recently changed its interpretation of and collection practices under Edison Electric Rule 15.E.6, and that these changes violate Pub. Util. Code § 454. Rule 15.E.6 deals with the circumstances under which real estate developers must pay Edison monthly ownership charges to cover the administrative and general and other costs related to an “unsupported” (*i.e.*, not yet fully used) distribution line extension. Complainant California Building Industry Association (CBIA) contends that until 2006, Edison would deduct these monthly charges from the advance paid by the developer before construction begins, even when no refund was due under the accounting formula used by Edison. Since 2006, however, Edison has begun to bill CBIA members for the monthly charge when a refund is not considered due to the developer. CBIA contends that this change of practice violates both § 454<sup>1</sup> and General Order (GO) 96-A,<sup>2</sup> because the change represents the imposition of a new charge that the Commission has not authorized.

---

<sup>1</sup> Pub. Util. Code § 454 provides in pertinent part that “no public utility shall change any rate or so alter any classification, contract, practice, or rule as to result in any new rate except upon a showing before the commission that the new rate is justified.”

<sup>2</sup> Section VI of GO 96-A provides in pertinent part:

“The tariff schedules of a utility may not be changed whereby any rate or charge is increased, or any condition or classification charged so as to result in an increase, or any change made which will result in a lesser service or more restrictive conditions at the same rate or charge, until a

*Footnote continued on next page*

Edison, on the other hand, argues that the admitted change in its interpretation of Rule 15.E.6 has been authorized by the relevant tariff language since at least 1995, and thus does not constitute a change for which prior Commission approval is required. The parties agree that as of September 2007, the amount in dispute was approximately \$1.5 million.

## **2. Procedural History**

After Edison filed a timely answer to the complaint, a telephonic prehearing conference (PHC) was held on June 13, 2007. During this PHC, it was agreed that the parties would attempt to reach agreement on a stipulated set of facts, and that the stipulation would be filed on August 15, 2007. To the extent the parties could not agree, opening testimony would be filed on September 12, 2007 and rebuttal testimony on September 26, 2007. If necessary, hearings would be held during the week beginning on October 29, 2007.

The parties adhered to this schedule, and hearings were held on October 29 and 30, 2007. Following the hearings, both parties submitted opening briefs on November 30, 2007, and reply briefs on December 14, 2007.

## **3. Discussion**

Although the parties have adhered to the schedule established at the June PHC, it has not proven possible for the assigned Administrative Law Judge (ALJ) to draft a POD, and for the parties and Commissioners to decide whether

---

showing has been made before the Commission and a finding by the Commission that such increase is justified.”

CBIA points out that GO 96-A applies to this case rather than GO 96-B, because this is a formal rather than an informal matter, and because the complaint herein was submitted for filing prior to July 1, 2007. (CBIA Opening Brief, p. 2, fn. 3.)

to accept the POD or to file an appeal or request for review, prior to the March 27, 2008 deadline for this proceeding established by Pub. Util. Code § 1701.2(d).

The reason for this is that after the submission of reply briefs in this case, the ALJ had to devote his time to two related, high-priority matters involving gas storage. In the first, Application (A.) 07-07-025, the applicants sought Commission approval to transfer control of Lodi Gas Storage, L.L.C. (LGS), one of the two principal independent gas storage providers in Northern California, from the private equity partnerships that controlled LGS to an affiliate of a publicly-traded firm. In A.07-07-025, a proposed decision (PD) approving the transfer was issued on December 21, 2007 and the matter was placed on the agenda for the Commission's January 10, 2008 meeting, which resulted in the issuance of Decision (D.) 08-01-018.

In the second gas storage matter, A.07-05-009, LGS sought to amend the certificate of public convenience and necessity (CPCN) it had been granted in D.06-03-012 to authorize construction and operation of the second phase of the company's Kirby Hills Natural Gas Storage Facility, which is located in Solano County. In its application, LGS emphasized that it was seeking the requested authority in time to allow operation of the second phase of the Kirby Hills Facility beginning in late Fall of 2008. A PD in A.07-05-009 was issued on February 8, 2008, was placed on the agenda for the Commission's February 28, 2008 meeting, and resulted in the issuance of D.08-02-035.

While we recognize that complaint cases like this one are always important to the parties involved in them, we cannot fault the assigned ALJ for turning his attention to A.07-07-025 and A.07-05-009 prior to this matter. As we pointed out in D.08-01-018, one of the advantages of granting the requested transfer of

control was that it would give LGS long-term financial stability and capital for its expansion plans. (D.08-01-018, p. 25.) With respect to the expansion of the Kirby Hills Facility, as we pointed out in *Energy Action Plan II*, issued in October 2005, one of our key policies concerning natural gas is to “encourage the development of additional in-state natural gas storage to enhance reliability and mitigate price volatility.” (D.08-02-035, p. 24 and Finding of Fact 13.)

Under all the circumstances of this case, we believe that a six-month extension of time, until September 26, 2008, should be sufficient to allow for the drafting and issuance of a POD and a decision by the Commission and the parties whether to adopt it or to consider an appeal.

#### **4. Waiver of Comments on Proposed Decision**

Under Rule 14.6(c)(4) of the Rules of Practice and Procedure, the Commission may waive the otherwise applicable 30-day period for public review and comment on a decision that extends the 12-month deadline set forth in Pub. Util. Code § 1701.2(d). Under the circumstances of this case, it is appropriate to waive the 30-day period for public review and comment.

#### **5. Assignment of Proceeding**

Timothy Alan Simon is the assigned Commissioner and A. Kirk McKenzie is the assigned ALJ and presiding officer in this proceeding.

#### **Findings of Fact**

1. The complaint in this case was filed on March 27, 2007.
2. Pursuant to the schedule established during the June 13, 2007 PHC, the parties filed a joint factual stipulation on August 15, 2007, opening testimony on September 12, 2007, and rebuttal testimony on September 26, 2007.
3. Hearings in this case were held on October 29 and 30, 2007.

4. Pursuant to the schedule established at the hearings, both parties filed opening briefs on November 30, 2007, and reply briefs on December 14, 2007.

5. Because of the urgency of the gas storage matters at issue in A.07-07-025 and A.07-05-009, the assigned ALJ was not able to turn his attention to drafting a POD in this case until the latter half of February 2008.

6. An extension of time until September 26, 2008 should allow the ALJ adequate time to draft a POD, the losing party time to decide whether to file an appeal of the POD pursuant to Rule 14.4(a) of the Rules of Practice and Procedure, and any concerned Commissioner to decide whether to request review of the POD pursuant to Rule 14.4(b).

### **Conclusions of Law**

1. Because of the urgency of the gas storage issues presented by A.07-07-025 and A.07-05-009, it will not be possible to resolve this case within the 12-month period provided for in Pub. Util. Code § 1701.2(d).

2. The 12-month statutory deadline should be extended for six months to allow for resolution of this proceeding.

**IT IS ORDERED** that the 12-month statutory deadline in this proceeding, March 27, 2008, is extended to and including September 26, 2008.

This order is effective today.

Dated March 13, 2008, at San Francisco, California.

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