

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060.

Rulemaking 02-01-011
(Filed January 9, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
ON THE MOTION OF THE CITY OF CORONA TO STRIKE**

On December 30, 2002, a motion was filed by the City of Corona (the City or Corona) to strike statements made by Southern California Edison Company (SCE) in its Reply Brief in this proceeding regarding the establishment of a Municipal Departing Load (MDL) Cost Responsibility Surcharge (CRS).

Corona moves to strike two separate parts of SCE's reply brief: (1) a portion of SCE's arguments regarding Corona's eminent domain action to condemn SCE electric distribution facilities,¹ and (2) SCE's arguments regarding the actions the New York Public Service Commission (NYPSC) has taken to require MDL customers to pay a share of stranded costs.²

¹ The statements Corona proposes to strike are contained in the last two paragraphs of the Section III(H) of SCE's reply brief and are specifically identified on pages 2 and 3 of Corona's motion to strike.

² Corona proposes to strike the last paragraph of Section III(B)(1) of SCE's reply brief on pages 10 and 11.

Motion to Strike References to Corona's Municipalization

Corona's Opening Brief addressed Corona's offer to take over all of SCE's service territory within its city limits, along with portions of Riverside County. Corona states that it included the information (and an updated status in its Reply Brief) as a courtesy to the Commission, so that the Commission and all interested parties would fully understand Corona's progress towards municipalization.

SCE's Reply Brief then provides its own update of the status of Corona's municipalization effort, which Corona contends includes two false and unsupported statements as underlined in the excerpt below:

SCE understands that the City officials project that the creation of a municipal utility will save the ratepayers in its city 15 percent, on average, on their electric bills. This entire savings is associated with Corona's ability to avoid stranded costs responsibility. In fact, the distribution rates the residents of Corona will pay the municipal utility are higher than SCE's distribution charges, which means that the level of stranded costs they are avoiding is actually higher than 15 percent.

Corona states that it is attempting to take over SCE's service territory to provide "a stable and reasonably-priced supply of electricity." However, it is attempting to achieve this goal by creating a situation wherein its customers would avoid all stranded-costs responsibility.

Corona objects and moves to strike the underlined statements as false. Corona contends that the above-underlined statements are not supported by any evidence in the record, and that SCE intentionally misstates facts. Corona argues that the false statements violate the Commission's Rule 1.

Corona provided a copy of its Municipalization Feasibility Study in its motion for the limited purpose of supporting its claims as to the extent of SCE's misrepresentation of fact. The Feasibility Study does not propose or assume that

Corona will achieve any, let alone all, of its anticipated cost savings through the avoidance of stranded cost responsibility. Accordingly, Corona argues SCE's statements that Corona's entire projected rate savings is based upon Corona's ability to avoid responsibility for stranded costs, and that Corona is trying to provide municipal electric services by avoiding all stranded-costs responsibility, are completely false.

SCE argues that its reply to Corona's arguments regarding its eminent domain action was based upon a misunderstanding of the basis for the alleged savings its customers would receive if it succeeded in its eminent domain action, facts which are not on the record in this proceeding. Moreover, SCE argues, the point to which the language speaks is not material to the resolution of issues the Commission is considering. For these reasons, SCE requests permission to withdraw that portion of its reply brief and asks the Commission not to consider the portions of Corona's opening and reply briefs on the subject.

SCE argues that there is no evidence on the record associated with any of Corona's eminent domain actions and any such facts – while of enormous potential consequences to California – are immaterial to the Commission's resolution of the issues being considered in this proceeding.

SCE, however, objects to any characterization that it may have violated Rule 1 in submitting its reply brief in this proceeding. Rule 1 was intended to guarantee the veracity of the statements made by parties appearing before the Commission. While SCE's counsel misunderstood a portion of Corona's Feasibility Study, SCE argues that its comments reflecting that misunderstanding do not constitute a violation of Rule 1.

Discussion

SCE admits that the statements in its reply brief were erroneous concerning Corona's eminent domain actions, but denies that it intentionally made false statements. SCE requests permission to withdraw that portion of its brief, together with withdrawal of that portion of Corona's brief dealing with Corona's municipalization of SCE facilities. Granting permission for the withdrawal of the erroneous statements in SCE's brief renders moot Corona's motion to strike since it accomplishes the same result. Accordingly, SCE is granted permission to withdraw those identified erroneous portions of its reply brief relating to this topic.

Correspondingly, the related portions of Corona's opening and reply briefs dealing with the same subject shall not be considered for purposes of rendering a decision in this phase of the proceeding. This action is consistent with Corona's intent. As stated in its motion to strike, Corona did not cite to this information in its arguments, but included the references to Corona's eminent domain actions only as a courtesy to the Commission to report on Corona's progress towards municipalization.

With respect to Corona's claim that SCE violated Rule 1 and should be assessed penalties, SCE acknowledges an error was made, but contends that its error was unintentional. SCE argues that although its counsel misunderstood a portion of Corona's Feasibility Study and reflected that misunderstanding in its comments, that an unintentional error does not constitute a Rule 1 violation.

There is no indication that SCE intentionally misrepresented facts to the Commission concerning the source of any savings associated with Corona's municipalization of SCE electric distribution facilities. As SCE points out, it thoroughly discussed its position regarding the source of any savings Corona

would realize in SCE's response to Corona's Feasibility Study. Moreover, SCE has voluntarily offered to withdraw the portion of its brief dealing with this topic.

Thus, while SCE is admonished to exercise due care to ensure that its representations to the Commission are communicated accurately, there is no evidence of any intention of SCE to mislead the Commission in this instance. Rule 1 is intended to guarantee the truthfulness of statements made by parties appearing before the Commission, and to prohibit misleading the Commission by false statements. Thus, because there was no intention to produce false statements or to mislead the Commission in this instance, no finding of a Rule 1 violation is warranted here.

Motion to Strike Discussion of NYPSC Authority

Corona also moves to strike the portion of SCE's reply brief that discusses actions taken by the NYPSC. Corona argues that SCE's discussion of New York law is inappropriate, incomplete and irrelevant to the current proceeding. Corona argues that New York law does not control the Commission's jurisdiction, nor does it even provide any type of analogy to the current discussion. Even if the Commission decided to emulate the NYPSC, "the PUC cannot create jurisdiction where it does not otherwise exist."

The NYPSC's constitutional and statutory jurisdiction is undoubtedly different than that of the Commission; broader in some areas, narrower in others. There is no case imaginable in which the NYPSC's jurisdiction (or lack thereof) in a particular area would be relevant to the Commission's areas of jurisdiction.

SCE responds that it never stated, implied, or even hinted, that New York law and/or precedent should govern or control this case, but merely argued by analogy that a Commission's authority to authorize stranded cost recovery does

not need to come from a specific grant from the legislature. Rather, a Commission may have such power inherently, in its statutory authority to set rates and/or its authority to regulate public utilities generally. SCE argues that precedent from other states on the issue of whether a Commission, based on its broad regulatory authority, can order stranded cost recovery in the absence of a state law specifically addressing the issue is certainly informative, and may even be influential, although quite obviously not binding in any way.

SCE agrees that the NYPSC acts under a different set of laws and a different constitution and indeed likely has greater jurisdiction over municipal utilities than the Commission, but that does not believe that detracts from the point SCE was rebutting – that statutory authority is necessary to assess stranded costs on the departing load customers themselves. SCE argues that the portion of the SCE reply brief Corona is discussion does not even focus on the Commission’s authority over municipal utilities, it focuses on its authority over the departing load customers themselves.

Discussion

There is no disagreement that the discussion of the NYPSC authority does not govern this Commission’s jurisdiction, and thus that portion of SCE’s reply brief has no probative value in that respect. SCE, however, seeks to salvage its discussion of NYPSC authority to asserting that precedent from other states still has relevance to this proceeding as an analogy that a Commission can authorize stranded cost recovery without an express legislative grant.

Without prejudging the merits of either parties’ legal arguments concerning this Commission’s authority to authorize stranded cost recovery, there is no basis to give consideration to the law in effect in the State of New York in deliberating on this issue. Even on the basis of its claimed anecdotal

relevance as an analogy to the situation in California, SCE has failed to lay any foundation that the law in effect in New York has any analogous application or meaning in the context of California law. While comparisons of legal statutes governing other states might be interesting in an anecdotal sense, no basis has been laid to conclude that any relevant probative value can be gleaned from such anecdotal information useful in deliberations in this proceeding. Accordingly, Corona's motion to strike the portions of SCE's reply brief relating to NYPSC authority is granted.

IT IS RULED that:

1. Southern California Edison Company (SCE) is granted leave to withdraw the portions of its brief identified in the City of Corona's (the City or Corona) motion to strike relating to Corona's eminent domain proceeding to condemn SCE distribution facilities.
2. The related portions of the Corona brief, which were presented merely as a courtesy for informational purposes will not be considered for purposes of deliberations in this phase of the proceeding.
3. In view of the withdrawal of the above-cited portions of SCE's reply brief, Corona's motion to strike the portion of SCE's reply brief regarding Corona's eminent domain actions is moot.
4. There is no basis to find that SCE committed a Rule 1 violation with respect to its unintentional erroneous statements relating to Corona's municipalization of SCE facilities as set forth in SCE's reply brief.
5. Corona's motion to strike is granted to the extent it relates to those portions of SCE's reply brief relating to the discussion of NYPSC authority.

Dated April 21, 2003, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on the Motion of the City of Corona to Strike on all parties of record in this proceeding or their attorneys of record. In addition, service was also performed by electronic mail.

Dated April 21, 2003, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.