

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Order Approving Settlement Agreement Between Southern California Edison Company and Salton Sea Power Generation L.P., et al.

Application 05-01-015
(Filed January 19, 2005)

ADMINISTRATIVE LAW JUDGE'S RULING DENYING MOTION TO FILE UNDER SEAL AND FOR CONFIDENTIAL TREATMENT

By motion filed concurrently with the application, Southern California Edison Company (Edison) seeks leave to file portions of the application and accompanying exhibits under seal and for an order withholding this information from public inspection. The information for which Edison seeks this confidential treatment generally includes (1) the settlement agreement to resolve an "uncontrollable force" claim and a related deration claim; (2) the price index agreement to replace a discontinued labor index used as one component in establishing contractual energy and capacity prices; (3) information relating to the relative merits of the rejected alternative price indices; and (4) Edison's discussion of its litigation risk. We deny Edison's motion.

Our decisions require that, in order for information in a Commission proceeding to be kept from public disclosure, "there must be a demonstration of imminent and direct harm of major consequence, not a showing that there may be harm or that the harm is speculative and incidental." *Re Pacific Bell*, 20 CPUC 2d 237, 252 (1986). Accordingly, the Commission has held confidential

settlement information which, if released, would place utilities at a severe disadvantage in negotiating settlements of similar claims on behalf of its ratepayers and cause competitive harm to the utility. *See, e.g.*, D.04-11-024.

In this case, the settlement and pricing agreements do not concern confidential terms. The disputed contract claims at issue concern the uncontrollable force provision and the related deration terms, both of which Edison discloses and describes in the public version of its application and accompanying documents. As Edison publicly explains, the uncontrollable force term excuses the seller's nonperformance for reasons of an event which is determined to be an uncontrollable force, while the deration terms provide for a reduction in capacity payments to seller as a result of the seller's unexcused failure to provide the level of firm capacity specified in the contract. Edison publicly discloses that the parties' dispute is resolved by the seller withdrawing its uncontrollable force claim and by Edison agreeing not to derate the project. Thus, the substantive terms of the settlement are already public. There is no direct and imminent harm to the parties of the disclosure of the settlement document or further information relating to it.

Similarly, the pricing index at issue in the price index agreement is not confidential. Edison publicly explains that the contract's price index is currently based, in part, on the Standard Industrial Classification System Index (SIC 131) published by the U.S. Department of Labor, Bureau of Labor Statistics. Edison publicly states that this index was discontinued in March 2003. Edison publicly describes the parties' agreed-to replacement index for the SIC 131 component of the price index, and asks that the Commission approve it as reasonable. There is no harm to the parties by disclosing the price index agreement or information relating to it.

Edison justifies its claim for protection on the grounds that: (1) the confidentiality clause in the settlement prohibits Edison from revealing this information, and (2) disclosure of the information, including what concessions Edison gave here, could cause Edison competitive harm in negotiating settlements of future similar disputes and impair Edison's ability to obtain the best possible settlements on behalf of its ratepayers.

The parties' private agreement to keep the settlement confidential is not binding on the Commission, and the fact of such agreement does not outweigh the public interest in open proceedings.¹

Edison's concern that revealing its concessions will create an unfair business or negotiating advantage is inapplicable to these facts. Having publicly disclosed the parties' respective concessions and the recommended replacement index, there is no further negotiating advantage to be gained by disclosure of the further information contained in the agreements and the accompanying exhibits. With respect to Edison's discussion of the relative merits of the alternative price indices, this discussion concerns indices that the parties rejected, not concessions that might be used against Edison in future negotiations.

Edison elaborates that public disclosure may also allow other parties to exploit the concessions it may have given "under the unique circumstances of these particular disputes even though such concessions would not be appropriate in a different context or under different facts." This further explanation confirms our determination that public disclosure in this case will not cause imminent and direct harm of major consequence. First, as discussed

¹ We also note that the price index agreement does not contain any such confidentiality agreement.

above, Edison has publicly disclosed its concessions. Second, as Edison states, the circumstances of this particular case are unique. There is no direct and imminent harm, or advantage to other parties, from disclosing the unique circumstances of this particular dispute to other parties who may have future disputes in a different context or under different facts.

IT IS RULED that Southern California Edison Company's motion is denied.

Dated April 4, 2005, at San Francisco, California.

/s/ Hallie Yacknin

Hallie Yacknin
Law and Motion Judge
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 Denying Motion to File Under Seal and for Confidential Treatment on all parties of record in this proceeding or their attorneys of record.

Dated April 4, 2005, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

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.