

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Southern California Edison Company and San Diego Gas & Electric Company for the 2005 Nuclear Decommissioning Cost Triennial Proceeding to Set Contribution Levels for the Companies' Nuclear Decommissioning Trust Funds and Address Other Related Decommissioning Issues.

Application 05-11-008
(Filed November 10, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING
ON THE DIVISION OF RATEPAYER ADVOCATES' MOTION TO COMPEL**

This matter came before the Commission on January 27, 2006, on the Division of Ratepayer Advocates' (DRA) Motion for Order Compelling Response Data Request ORA-1, Item 4, dated December 2, 2005. DRA sought complete income tax returns for Southern California Edison Company's (Edison) Nuclear Decommissioning Trusts for six sites.¹ Specifically, from 2000 to date, DRA asks for:

- A. Form 1041, US Income Tax Return for Estates and Trusts
- B. Form 8800, Application for an Additional Extension of Time to File a U.S. Return for a Partnership, REMIC or for Certain Trusts
- C. Form 541, California Fiduciary Income Tax Return

¹ As indicated in the Motion, p. 1. The forms' captions were found on the websites of the Internal Revenue Service (IRS) and the California Franchise Tax Board (CFTB).

- D. Form 2220, Underpayment of Estimated Tax by Corporations (IRS)
- E. Form 5806, Underpayment of Estimated Tax by Corporations (CFTB)
- F. Form 100, California Corporate Franchise or Income Tax Return, and
- G. Form 1120ND, Return for Nuclear Decommissioning Funds and Certain Related Persons.

DRA filed its motion pursuant to Rule 45 of the Commission's Rules of Practice and Procedure (Rules), omitting citation to Resolution ALJ-164, a declaration and a draft order.² Nevertheless, exercising our discretion under Rule 87, we will consider DRA's motion for an order to compel due to the significant nature of the request as filed.

Edison did not reply to the motion within 10 days, on or before February 5, 2006, as permitted by Resolution ALJ-164.

DRA's Justification

According to the Motion, on January 3, 2006, one month after the Data Request, Edison informed DRA that it would not provide the requested tax forms but instead allowed DRA to review them in Edison's office, a month later, for approximately two hours. DRA asserts it was not allowed to take photocopies, nor did it have sufficient opportunity to complete its analysis at that time. DRA does not indicate why there was a further one-month's delay, or

² Resolution ALJ-164, dated September 16, 1992: *Establishes a Law and Motion Procedure to Hear Discovery Disputes and Other Procedural Motions.*

whether it agreed to the restricted time, although DRA did indicate to Edison its objections to these restrictions. DRA asserts it requires access in order to examine Edison's request regarding the decommission trusts' actual return, including annual gains and losses, expenses, including fees and compensation, portfolio composition, tax overpayments, and disbursements.³

DRA asserts that it has the right and authority to obtain copies and review Edison's state and federal income tax returns, citing the Public Utilities Code which grants the Commission staff broad discovery powers under §§ 314(a) and 582.⁴

Edison's Response

Edison did not respond within 10 days.

Discussion

Public policy favors the submission of utility tax returns to the Commission - here to DRA - so that the financial affairs of the utility are better understood and therefore the public and ratepayers are protected. But the most compelling issue raised by DRA is its need to examine the underlying historical facts of the tax treatment and benefits associated with nuclear decommissioning trust funds which are relevant to the calculation of Edison's revenue requirement forecast. The tax returns therefore lie at the heart of this proceeding.

³ Motion, p. 2.

⁴ § 314(a): "The commission, each commissioner, and each office and person employed by the commission may, at any time, inspect the accounts, books, paper, and documents of any public utility." § 582: "Whenever required by the commission, every public utility shall deliver to the commission copies of any or all maps, profiles, contracts, agreements, franchises, reports, books, accounts, papers, and records in its possession or in any way relating to its property or affecting its business . . ."

Even without a response by Edison, we can foresee a concern about the confidential nature of tax returns. Edison's limited expectation of confidentiality may be protected by submitting the tax records to the Commission and DRA with a request that they be held confidential in the case of third-party inquiries. Edison is ordered to provide the requested state and federal tax income returns for tax years 2000 through to the most recently filed returns.

Confidentiality

DRA is directed to treat the data as confidential under the conditions established by § 583⁵ and the Commission's General Order (GO) 66-C which governs public disclosure of information obtained by the Commission. As relevant here, exclusions from disclosure may apply to:

Reports, records, and information requested or required by the Commission, which, if revealed, would place the regulated company at an unfair business disadvantage. (GO 66-C (2.2)(b).)

And to:

Information obtained in confidence from other than a business regulated by this Commission where the disclosure would be against the public interest. (GO 66-C (2.8).)

Confidential or redacted testimony is unwieldy. Therefore, DRA and Edison are directed to employ every reasonable effort to avoid either redacted or

⁵ § 583: "No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor."

confidential exhibits. DRA shall meet and confer with Edison prior to serving testimony in order to resolve any disclosure disputes. DRA and Edison should expeditiously bring testimony disclosure disputes to the Law & Motion ALJs or the assigned ALJ for a prompt resolution.

Extension of Time

DRA requests a two-week delay to serve testimony on tax issues from April 7 to April 21, 2006.⁶ We will grant this extension and also allow Edison to serve rebuttal, to this testimony only, on May 10, 2006.

IT IS RULED that:

1. Southern California Edison Company (Edison) shall immediately provide copies of the income tax forms as described herein to the Division of Ratepayer Advocates (DRA).
2. DRA shall treat the information as confidential, as provided by Code § 583 and shall ensure there is no public disclosure of the materials in testimony - or any other means - unless Edison consents to publication following a meet and confer session, or either the Assigned Commissioner or the Commission authorizes its disclosure.

⁶ Interested parties are to serve testimony on April 7, 2006. See, Scoping Memo, dated January 18, 2006.

3. DRA may serve testimony on tax issues on April 5, 2006 and Edison may serve rebuttal on that testimony only on May 10, 2006.

Dated February 9, 2006, at San Francisco, California.

/s/ DOUGLAS M. LONG
Douglas M. Long
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 Division of Ratepayer Advocates' Motion to Compel on all parties of record in this proceeding or their attorneys of record.

Dated February 9, 2006, 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.