PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

November 10, 2010

TO PARTIES OF RECORD IN CASE 09-11-009, DECISION 10-11-001

On October 8, 2010, a Presiding Officer's Decision in this proceeding was mailed to all parties. Public Utilities Code Section 1701.2 and Rule 15.5(a) of the Commission's Rules of Practice and Procedure provide that the Presiding Officer's Decision becomes the decision of the Commission 30 days after its mailing unless an appeal to the Commission or a request for review has been filed.

No timely appeals to the Commission or requests for review have been filed. Therefore, the Presiding Officer's Decision is now the decision of the Commission.

The decision number is shown above.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:jyc

Attachment

Decision 10-11-001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Peter Solomon, dba Regency Homes, Complainant, vs. Southern California Edison Company (U338E), Defendant.	Case 09-11-009 (Filed November 10, 2009)

Peter Solomon, Representative, Utility Consumer's Action for Complainant.
Sharon C. Yang, Attorney for Defendant.

DECISION GRANTING IN PART AND DENYING THE REMAINDER OF THE COMPLAINT

1. Summary

Complainant Peter Solomon, dba Regency Homes, alleges that Southern California Edison Company (SCE) has failed to remit refunds of refundable monies advanced to SCE for Distribution Line Extension construction costs in violation of executed Contracts for Extension of Electric Distribution (Rule 15 Contracts).

We find that SCE is not obligated to refund advances made by Solomon under Rule 15 or the Rule 15 Contracts at issue, with one exception. SCE paid refunds while this case was pending. However, SCE failed to timely issue the refund within 90 days of the date of first service to a commercial pump to

operate the Coachella Valley Water District (CVWD) well in violation of Rule 15. We order SCE to pay interest on the refund beginning 90 days after SCE initiated service to the CVWD well. The remainder of the complaint is denied, and the proceeding is closed.

2. Procedural Background

The complaint in this case was filed on November 20, 2009. On December 18, 2009, SCE filed its answer, stating that the complaint was without merit and should be dismissed.

A Prehearing Conference (PHC) was held on January 20, 2010. During the PHC, complainant declined the opportunity to resolve the case through alternative dispute resolution. During the PHC, the assigned Administrative Law Judge (ALJ) requested that both parties complete a Joint Statement and List of Authorities by February 10, 2010. In addition, a schedule for hearings was worked out. Parties agreed to file opening testimony on March 9, 2010, and reply testimony on April 9, 2010. Two days were set aside for hearings beginning on April 14, 2010, although it was generally agreed that not all of this hearing time was likely to be necessary. Due to the constraints of the Commission's calendar, hearings were scheduled to begin May 24, 2010.

The parties were unable to adhere to this schedule. A short extension of time to complete the Joint Statement was requested and granted. Subsequently, complainant requested a one-week extension of time in which to submit opening testimony, which was granted. Defendant was also provided an additional week in which to submit reply testimony. As a result of this extension, evidentiary hearings were rescheduled from May 24, 2010 to June 14, 2010. The briefing period was similarly extended.

Evidentiary hearings were held on June 14, 2010. The case was submitted on August 9, 2010, with the filing of reply briefs.

3. Line Extension Rules and Terms

When a new residential development is constructed in an area without exiting utility services, the developer must apply to the electric utility to be connected to the utility's system. The facilities that will have to be built to make the connection are of two kinds. First, the utility's distribution line will have to be extended to the edge of the new development if not already there. This is called a distribution line extension which is governed by Rule 15. Second, the utility's distribution line will have to be connected to the meters at each dwelling. These are called service extensions which are governed by Rule 16. As used herein, the term "Distribution Line Extension" refers to both the line and service extension.

The cost to the developer for the line extension depends on the utility's total estimated installed cost which is offset by allowances granted to the developer. The utility may complete a line extension without charge, provided the total estimated installed cost does not exceed the allowances from permanent bona fide load to be served.[1] The cost of a residential Distribution Line Extension is divided into two parts: non-refundable and refundable.[2] The non-refundable costs (trenching, conduit, etc.) are paid for by the applicant. The refundable costs are covered in whole or in part by the line extension allowance. The allowance is a fixed amount for each utility which is based on a revenue-supported

[1] Rule 15.C.1.

[2] Rule 15.D.5.

methodology.[3] For example, the line extension allowance for electric service during the period Victoria Falls was constructed ranged from $2,073 to $1,247.[4] The refundable costs (electric wire, etc.), in excess of the allowance, are advanced by the applicant to the utility.[5]

The developer has two payment options to choose from in Distribution Line Extensions; the Refundable option and the Discount Option. The Refundable option requires the developer to advance the utility's total estimated cost to install the line extension, including the income tax component of contribution (ITCC) minus any applicable up-front allowances. The Discount Option requires the developer to contribute, on a non-refundable basis, a percentage of the total line extension refundable advance payment plus any applicable non-refundable costs. However, if the developer chooses the discount option, the total payment is non-refundable.

Under the Refundable Option, refunds are paid to the developer based on the additional revenues generated (above allowances granted) from the new or incremental residential and or non-residential loads and continue for up to 10 years from the date the utility is first ready to serve.[6] SCE is required to make refunds within 90 days after the date of first service to new permanent loads, but may accumulate refunds to a minimum $50 total or the refundable balance if less than $50.[7]

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[3] Rule 15.C.2.

[4] Prepared Testimony of SCE at 9.

[5] Rule 15.D.5.

[6] Rule 15.E.

[7] Rule 15.E.7.

4. The Controversy

4.1. Summary

It is undisputed that complainant is a developer/builder and was the developer/builder of the subdivided community known as Victoria Falls. Victoria Falls consisted of 337 single family homes. Complainant and defendant entered into 19 separate residential service Contracts for Extension of Electric Distribution (Rule 15 Contracts) during the course of Victoria Falls construction in the late 1990's and early 2000's.

Complainant chose the Refundable Option for 16 of the Rule 15 Contracts it entered into with Defendant. The Discount Option was elected by complainant for the remaining three contracts entered into with defendant. Each of the

19 contracts was the Commission approved form Rule 15 Contract.

4.2. Complaint

Complainant contends that defendant has failed to properly refund all amounts due in refundable construction costs advanced to defendant. Complainant seeks to recover $116,945.38 in refundable construction costs.[8]

Complainant contends that it has fulfilled all contractual obligations in a timely manner and, as a result, is entitled to a refund of all remaining refundable amounts. Specifically, complainant argues that it paid all refundable advances upon choosing the Refundable Option, constructed a distribution line extension

[8] However, after this complaint was filed, defendant refunded $43,212.56 on April 6, 2010 to complainant. On April 19, 2010, defendant also refunded $1,584.26 to complainant. As a result of these refunds, the remaining amount sought by complainant is $72,148.56.

where none had previously existed, constructed homes and set every meter within six months of the ready-to-serve date, and established permanent loads generating revenue for defendant. Complainant asserts that defendant's failure to refund the refundable deposits paid by complainant violates the executed Rule 15 Contracts.

Complainant argues that, contrary to defendant's assertion, Rule 15 is not at issue here. Complainant asserts that this case is governed solely by the contract language contained in the executed Rule 15 Contracts. Complainant maintains that defendant never informed him that the Rule 15 Contracts were not the sole agreement governing the line extensions to Victoria Falls nor did they provide him with a copy of the tariff. Complainant also contends that the Rule 15 Contracts do not mention any other document that might go beyond the four corners of the executed agreement.

Complainant believes that the language of the tariff, which states that, "Refunds will be made on the basis of a new customer's Permanent Load, which produces additional revenue to SCE." is different from the relevant language in the contract that states, "Refunds will be made on the basis of any new customer permanent load connected to the distribution line extension which produces additional revenues to SCE." Complainant maintains, however, that only the contract language is applicable and, if applied here, would result in a refund of the advanced refundable amounts he paid.

Complainant contends he relied to his detriment on the representations of defendant's representative, Bobby Gray, and on the Rule 15 Contract itself in selecting the Refundable Option for the majority of contracts. Complainant asserts that defendant's representative, Bobby Gray, provided an explanation of

the difference between the Refundable Option and the Discount Option, as well as a "rule of thumb" that developers use to guide them in making that choice.

Complainant specifically identifies defendant's failure to pay a refund within 90 days of when the Cochella Valley Water District (CVWD) well pump (located within the Victoria Falls development) went on-line as an example of defendant's failure to meet its contractual obligations.[9] The Complainant asserts that defendant admitted it was aware of a well site with a pump as part of the Victoria Falls project.[10] Complainant contends that evidence provided by defendant shows that defendant was aware of a commercial pump (for the CVWD well) coming on line at least as early as August 11, 2003,[11] but that defendant failed to pay the refund due until April 6, 2010. Complainant argues that defendant bore the burden to find out if new non-residential load comes on line within three years from the ready-to-serve date for a line-extension and to issue a refund within 90 days. Complainant asserts defendant's failure to issue a refund within 90 days of August 11, 2003 was in violation of its tariff.

Complainant contends defendant must pay interest on refunds not paid within 90 days set by the tariff pursuant to California Civil Code Section 1915, which states "Interest is compensation allowed by law . . . for the use, or forbearance, or detention of money." Complainant argues that defendant had the use of the money for years and must pay interest not only on this amount,

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[9] The pump is located in the portion of Victoria Falls development covered by Rule 15 Contract/Work Order 6879-1810-01814. This contract was executed on August 28, 2000. SCE was first ready to serve on October 26, 2000.

[10] Hearing Testimony 42:27-43:11.

[11] Southern California Edison Company's (U338E) Response to Request for More Information During Evidentiary Hearing dated June 30, 2010, at 1.

but on all remaining refundable amounts SCE continues to retain under the "guise" that it is waiting for other additional loads.

4.3. SCE's Defenses

Defendant contends complainant has failed to meet its burden of proof. Defendant believes it owes complainant no money unless and until new permanent load is added to the Distribution Line Extension, which produces additional revenues to SCE, above and beyond those revenues anticipated from the contract.

Defendant testified that when the Refundable Option is chosen the applicant advances defendant's total estimated cost to install the Distribution Line Extension, including ITCC, minus any applicable up-front allowances.[12] Defendant states that an applicant must then satisfy its contractual obligation for all allowances granted in advance, and, once enough load has come online to satisfy the up-front allowances granted, the applicant may receive additional refunds over the term of the contract for additional loads that are added from either the applicant's line extension or additional line extensions that may be connected to the applicant's line extension.[13] Defendant explains that if an applicant fails to meet its contractual obligations, defendant will deficit bill the applicant for an additional contribution based on the allowances for the loads actually installed.[14]

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[12] Exhibit 200 at 5. As noted above, an allowance is an amount credited to the developer for anticipated load from the project, generally on a per meter basis for a residential development.

[13] Exhibit 200 at 5.

[14] Exhibit 200 at 5.

Defendant states that when an applicant chooses the Discount Option, the applicant is responsible for paying defendant's estimated cost to install the Distribution Line Extension, including the ITCC, minus any applicable up-front allowances. In lieu of contributing the total refundable amount, applicant contributes 50% of such refundable amount on a non-refundable basis. In addition to this amount, applicant is responsible for any non-refundable amounts that are defendant's estimated value of Excavation, Substructures and Conduits, and Protective Structures required by defendant for the Distribution Line Extension under Rule 15, and the applicable ITCC.[15]

In this instance, defendant states that complainant paid an advance on each project which constituted defendant's estimated installed cost to complete the Distribution Line Extensions, less any allowances granted in advance of the project, plus any applicable ITCC on any contributions and advances paid by complainant. The fees were either refundable or non-refundable, depending on the option chosen. Defendant states it would not complete these projects without the customer advance monies because the total estimated cost exceeded the allowances from permanent bona-fide loads.

Defendant believes that complainant's demand for payment of all refundable amounts stems from complainant's misunderstanding of both Rule 15 and the Rule 15 Contract. Defendant maintains that it has correctly computed the amounts subject to refund and paid defendant in accordance with Rule 15 and the Rule 15 Contracts at issue. If additional revenues are generated above and beyond those for which allowances were granted, defendant agrees refunds

[15] Exhibit 200 at 6.

would then apply. Defendant explains that any remaining monies that complainant has advanced will remain in a refundable account until such time as complainant or additional applicants add additional load to the applicable line extensions within the 10-year contract period.

With respect to the CVWD well pump, defendant contends that it properly issued a refund on April 6, 2010. Defendant maintains it was unaware of the well until a field verification was conducted shortly before the check was issued.[16] Defendant explains that in April 2010, a commercial meter (a pump) generated sufficient revenue to result in a refund of $43,212.56.[17] Defendant asserts it was not obligated to issue the refund earlier even if the well had come on line in 2003 because the well was not on the original sequence list, complainant did not notify defendant of the well, and defendant did not have knowledge of the well until a filed verification completed at a later date. Defendant contends that even if it was obligated to pay the refund at an earlier date, interest does not apply to refunds.[18]

5. Discussion

Although complainant believes that the contract language alone is controlling and that SCE's failure to provide complainant with a copy of its Rule 15 tariff should result in the tariff not being applicable here, we disagree. We also disagree with complainant's contentions that the Rule 15 Contract fails to mention the applicable tariff and that application of only the contract language

[16] Hearing Transcript at 160:18-161:5.

[17] Opening Brief of SCE (U338E) at 6.

[18] Reply Brief of SCE (U338E) at 4-5.

would change the result here. The applicable contract language contained in the Rule 15 Contracts is consistent with the tariff.

It is a long-standing requirement of public utility regulation that the lawful tariff provisions must be administered regardless of any statements by the utility at variance with the tariffs, whether oral or written. Pinney & Boyle Mfg. Co. v. Atchison, T. & S.F. Ry. (1914) 4 Cal RRC 404. A utility is under the duty to strictly adhere to its lawfully published tariffs. Temescal Water Co. v. West Riverside Canal Co. (1935) 39 Cal RRC 398. Tariffed provisions and rates must be inflexibly enforced to maintain equity and equality for all customers with no preferential treatment afforded to some. Empire W. v. Southern Cal. Gas. Co. (1974) 38 Cal App 3d 38, 112 Cal Rptr 925. Furthermore, the published tariff becomes established by law and can only be varied by law, not by an act of the parties. Johnson v. Pacific Tel. & Tel. Co. (1969) 69 Cal PUC 290. A misquotation or misunderstanding does not relieve the parties from the terms, conditions and rates in the tariff. Sunny Sally, Inc. v. Lom Thompson (1958) 56 Cal PUC 552. Whether or not defendant's service representative misspoke, complainant misunderstood, or the contract contains mistakes, the lawful tariff provisions must be administered and applied.

Although tariff provisions must be inflexibly enforced regardless of whether SCE's representative misspoke or complainant misunderstood the tariff, complaints such as this one might be avoided through more effective customer service. SCE should endeavor to provide sufficient information for line extension applicants to be aware of the applicable tariff and know where to find the tariff. Effective customer service and education in this case would have saved both SCE and Solomon from having to expend resources litigating this matter.

For complainant to prevail in this case, complainant must establish by a preponderance of the evidence that defendant erred in its administration and application of its tariffs. With the sole exception of the refund due on the CVWD pump, complainant fails to meet this burden of proof.

Pursuant to the Rule 15 Contracts executed by the parties, Solomon paid SCE an advance on each project. The advance constituted SCE's total estimated cost to complete the Distribution Line Extension less any allowances granted in advance of the project plus any applicable ITCC on any contributions and advances paid by Solomon. SCE could not complete the Distribution Line Extension without the advance because the total estimated installed cost exceeded the allowances from bona-fide permanent loads. As a result, even when Solomon put on-line every home and meter for which SCE had granted an allowance, he is not be entitled to a refund of monies advanced because the cost of the Distribution Line Extension exceeded the amount of revenue to be generated by Victoria Falls.

Both Rule 15 and the Rule 15 Contracts clearly state that refunds will be made on the basis of a new customer's Permanent Load which produces additional revenues to SCE. Complainant has, with one exception discussed below, failed to show that new permanent load was added to the Distribution Line Extension, which has generated additional revenues (above the allowances granted) to SCE. As a result, complainant has failed to show that SCE is obligated to pay all refundable amounts sought.

5.1. CVWD Pump Refund

Rule 15 and the Rule 15 Contract place the burden on the defendant to affirmatively identify new non-residential permanent load coming on line which might generate additional revenue to support a refund. This requirement is in

place for three years from the ready-to-serve date for the line extension. In this case, the applicable contract/work order review provides the defendant was ready to serve on October 26, 2000.[19] Defendant submitted evidence that it was aware construction was completed on the CVWD well pump on August 7, 2003 and that the pump came on line on August 11, 2003.[20] Irrespective of the fact that the pump was not on the construction sequence list, defendant had actual knowledge of the pump and when service began to that pump.

Rule 15.E.7 provides that "Refunds will be made without interest within ninety (90) days after the date of first service to new permanent loads, except that refunds may be accumulated to a $50 minimum or the total refundable balance, if less than fifty dollars ($50)." Defendant violated the tariff by failing to pay the refundable amount due to complainant within the 90-day period.

Rule 15 gives defendant 90 days to send refund money to qualifying applicants without any imposition of interest to encourage defendant to make these payments in a specific period of time. Without such a provision, there would be no reason for defendant to pay refunds prior to the expiration of the 10-year contract period regardless of when new permanent load came on line. Defendant's belief that interest is simply not paid on refunds is not consistent with the tariff. Failure to make timely payment is a violation of the tariff and the Commission has the discretion under the Preliminary Statement E.2 to order payment of interest.

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[19] Exhibit 201 at Tab 6879-1810-0-1814.

[20] Southern California Edison Company's (U338E) Response to Request for More Information During Evidentiary Hearing dated June 30, 2010, Exhibit A.

Defendant failed to pay complainant the refund due within 90 days of the CVWD pump coming on line. Defendant has deprived complainant of the ability to use money due to him for over six years. Interest is simply payment for defendant's use of that money. Defendant is ordered to pay complainant interest at the rate SCE charges its own customers for late payments, which is 0.9% per month beginning 90 days after the date the pump went on line, August 11, 2003.[21] The remainder of the complaint against SCE is denied.

6. Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner and Katherine Kwan MacDonald is the assigned ALJ in this proceeding.

Findings of Fact

1. Solomon, dba Regency Homes, is a developer/builder who built the subdivided community known as Victoria Falls.

2. Victoria Falls is a development consisting of 337 homes.

3. Peter Solomon and SCE entered into 19 separate contracts for Rule 15 Contracts during the course of construction of Victoria Falls.

4. Solomon chose the Refundable Option for 16 of the Rule 15 Contracts it entered into during the course of construction of Victoria Falls. The Discount Option was chosen for the remaining three Rule 15 Contracts.

5. Each of the 19 Rule 15 Contracts at issue was the Commission approved form Rule 15 Contract.

6. Solomon paid an advance on each project which constituted SCE's estimated cost to complete the Distribution Line Extensions, less any allowances

[21] SCE's Tariff Rule 9, adopted in D.04-07-022.

granted plus any applicable ITCC on any contributions or advances paid by Solomon.

7. After filing of this complaint, SCE paid a refund of $43,212.56 on April 6, 2010 and a refund of $1,584.26 on April 19, 2010.

8. SCE submitted evidence that construction of the CVWD well was completed on August 7, 2003 and SCE began service to the pump (well) on August 11, 2003.

9. Addition of the CVWD well resulted in additional permanent load above and beyond the contracted allowances granted by SCE.

10. SCE paid a refund of $1,584.26 on April 19, 2010. No information was presented to indicate when SCE began service to this additional permanent load.

11. No other additional permanent load which produced additional revenues to SCE has come on line.

12. Under Rule 15.E.7, refunds must be made within 90 days after the date of first service to new permanent loads.

13. SCE did not pay the refund for the additional load produced by addition of the CVWD well within 90 days after it began service to the well.

14. No other tariff violations have been established.

Conclusions of Law

1. Both Rule 15 and the Rule 15 Contract govern the Distribution Line Extension to Victoria Falls.

2. SCE must strictly adhere to its lawfully published tariff.

3. The lawful tariff provisions of Rule 15 must be administered and applied regardless of any misquotation by SCE's representative or misunderstanding by either party.

4. Rule 15 requires SCE to pay refunds, without interest, within 90 days after the date of first service to new permanent loads, except that refunds may be accumulated to a $50 minimum or the total refundable balance, if less than $50.

5. SCE's failure to pay the refund due to Solomon within 90 days after the date of first service to the CVWD well is a violation of Rule 15.

6. The Commission has the discretion to impose interest on refunds when SCE fails to pay within the ninety days established by the tariff for timely payment.

7. SCE should pay interest at the rate of 0.9% per month for the use of the refundable advances beginning 90 days after the date the pump went on line to the date payment was made to Solomon.

8. Because no other additional load (with the exception of the CVWD well and the permanent load that gave rise to the $1,584.26 refund) was placed on the Victoria Falls Distribution Line Extension, the remainder of the complaint should be denied.

9. This order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company is ordered to pay interest on the refund payment of $43,212.56, beginning 90 days after August 11, 2003 the date it began service to the Coachella Valley Water District well, until the date the refund was made. Interest shall be calculated at 0.9% per month beginning 90 days after the date the pump went on line. Southern California Edison Company must pay Peter Solomon within 30 days of this decision becoming final.

2. Southern California Edison Company must also pay interest on the refund of $1,584.26 if SCE failed to pay the refund within 90 days of first service to this new permanent load.

3. Southern California Edison Company must make a compliance filing in this proceeding verifying payment of the interest to Peter Solomon.

4. The remainder of the complaint of Peter Solomon, doing business as Regency Homes, is denied.

5. Case 09-11-009 is closed.

This order is effective immediately.

Dated November 9, 2010, at San Francisco, California.