

Decision No. 83600

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SOUTHERN CALIFORNIA EDISON COMPANY,)
a corporation, for authority to issue)
and sell not exceeding \$100,000,000)
aggregate principal amount of its)
First and Refunding Mortgage Bonds,)
Series EE, to execute and deliver a)
Thirty-Seventh Supplemental Indenture;)
and for the exemption of such proposed)
sale of Bonds from the requirements)
of the Competitive Bidding Rule.)

Application No. 55175
(Filed September 16, 1974)

D. Laurence Minning, Attorney at Law, for applicant.
William M. Pfeiffer, Attorney at Law, for Southern
California Gas Company, interested party.
Patrick J. Power, Attorney at Law, and Sidney J. Webb,
for the Commission staff.

O P I N I O N

Southern California Edison Company, a California corporation, seeks authority to execute and deliver a Thirty-Seventh Supplemental Indenture, and to issue and sell not exceeding \$100,000,000 aggregate principal amount of its First and Refunding Mortgage Bonds, Series EE, through transactions to be consummated in the State of New York.

After due notice, a public hearing in the above-entitled matter was held before Examiner Donovan in San Francisco, on September 26, 1974, at the conclusion of which the matter was taken under submission. The Commission has received no protests in the proceeding.

After payment and discharge of obligations incurred for expenses incident to the issuance and sale of said bonds, applicant proposes to use the bond proceeds, other than accrued interest, to reimburse its treasury for capital expenditures. The accrued interest would be used for general corporate purposes. The utility reports uncapitalized construction expenditures of approximately \$541,384,000 as of July 31, 1974.

The company is engaged in an extensive construction program and estimates that the gross expenditures for such program during the years 1974 and 1975 will approximate \$880,000,000. Its reported capital ratios as of July 31, 1974, as adjusted to give effect to the proposed bonds and to the common stock involved in Application No. 55174, are as follows:

Long-term debt	49.8%
Preferred and preference stock	14.4
Common stock equity	<u>35.8</u>
Total	<u>100.0%</u>

Applicant contemplates that the new bonds will be underwritten by a nationwide group of investment banking firms which, under the terms and conditions of a proposed Bond Purchase Agreement, will agree to purchase all of the new bonds. The definitive details to be negotiated include (a) the maturity and delivery dates, (b) the purchase price, (c) the interest rate, (d) restrictions on redemption, and (e) the final form of the Bond Purchase Agreement. Such matters will be determined by applicant's Board of Directors immediately prior to the public offering of the new bonds in the light of market conditions which may exist at that time. The new bonds would be issued in accordance with an Indenture of Mortgage or Deed of Trust and indentures amendatory and supplemental thereto including a proposed Thirty-Seventh Supplemental Indenture.

The two material issues for the Commission to consider in this proceeding are (1) whether or not the sale of the proposed bonds should be required to be through competitive bidding, and (2) whether or not the maximum interest rate provisions of Section 22 of Article XX of the Constitution of the State of California should apply to the new bonds.

The utility's reasons for requesting exemption from the competitive bidding requirements as set forth in the application are as follows:

- "(1) Recently, there was an instance in which no bids were submitted in response to invitations by a utility for competitive public bids for the purchase of its bonds.
- "(2) A negotiated transaction permits the underwriters to develop advance interest in the issue prior to the offering and, as a result, to provide a better price to the Applicant and minimize the financial impact of the New Bonds on its rate payers.
- "(3) The present uncertainties in the financial market which are causing bond interest rates to rise make it desirable for the Applicant to have maximum flexibility in timing, which is better obtained in a negotiated underwriting as opposed to the fixed time schedule characteristic of a competitive bidding procedure. It is also desirable, under the present market conditions, to have maximum flexibility to adjust the terms of the New Bonds (such as maturity date, call protection and possibly to provide a sinking fund if required in response to the requirements of the market at the time of offering).

- "(4) A negotiated sale permits the issuer to marshal the underwriting and distribution strength of the strong investment banking firms. The competitive bidding method, on the other hand, automatically divides the prospective purchasers into two or more segments which is undesirable at a time such as the present when the underwriting capacity of the entire investment banking community has been significantly weakened."

The evidence adduced at the hearing persuades us that the present unsettled market conditions justify negotiated offerings of the securities. Although a negotiated sale may allow more flexibility in marketing the proposed bonds and facilitate the sale with less cost to applicant, a negotiated sale is not always necessarily in the public interest. This decision is not intended to modify the competitive bidding rule as initially set out in Decision No. 38614 (46 Cal.R.C. 281 (1946)).

Applicant intends to situate and structure the proposed issuance and sale of its Series EE bonds in the State of New York without restricting the market for such bonds to areas outside of California. Since applicant's proposal does not operate to restrict the potential bond market to the detriment of applicant or its ratepayers, we are not opposed to such structuring and situating of the proposed issuance and sale. In this connection Decision No. 83411, dated September 4, 1974, in Application No. 55080, relating to Southern California Gas Company, and Decision No. 83504, dated September 24, 1974, in Application No. 55116, relating to Pacific Gas and Electric Company, hold that this Commission in exercising its authority to regulate public utility debt securities is not restricted by the California Usury Law and its ramifications. We reaffirm this holding

and conclude that if the interest limitation of the California Usury Law is exceeded but it is determined that the transaction, whether negotiated or by competitive bid, is the best the utility can obtain because of market conditions, then the public interest requires this Commission to authorize the issuance and sale of the debt instruments.

After consideration the Commission finds that:

1. Applicant is a California corporation operating under the jurisdiction of this Commission.
2. The proposed bonds would be for proper purposes.
3. Applicant has need for external funds for the purposes set forth in this proceeding.
4. The proposed Thirty-Seventh Supplemental Indenture would not be adverse to the public interest.
5. A proposed restricted redemption provision as set forth in this proceeding is reasonable under presently prevailing market conditions.
6. The sale of the proposed bonds should not be required to be through competitive bidding.
7. The money, property or labor to be procured or paid for by the issue of the bonds herein authorized is reasonably required for the purposes specified herein, which purposes, except as otherwise authorized for accrued interest, are not, in whole or in part, reasonably chargeable to operating expenses or to income.
8. Underwriters will not be restricted from offering or selling applicant's Series EE bonds in California.
9. The largest part of the security for applicant's Series EE bonds would consist of California real estate and improvements.

10. Prevailing market conditions may necessitate that applicant's proposed bonds will be issued and sold at a cost of money exceeding the limitations provided in Article XX, Section 22 of the California Constitution.
11. Pursuant to plenary powers granted to the Legislature by Article XII, Sections 22 and 23 of the California Constitution, the Legislature is authorized to confer additional consistent powers upon the Public Utilities Commission as it deems necessary and appropriate, unrestricted by any other provisions of the California Constitution.
12. The Legislature has conferred upon the Public Utilities Commission the authority to regulate the issuance of public utility securities, including evidences of indebtedness, and to prescribe restrictions and conditions as it deems reasonable and necessary (Sections 816 et seq. of the Public Utilities Code).
13. Pursuant to the plenary powers granted to the Legislature in Article XII, Sections 22 and 23 of the California Constitution, it conferred upon the Public Utilities Commission comprehensive and exclusive power over the issuance of public utility securities, including evidences of indebtedness, and the application of the California Usury Law as a restriction on the Public Utilities Commission's regulation of such issuances of public utility securities, including the establishment of a reasonable rate of interest, would not be in the public interest or be protective of applicant and its customers.
14. In addition to the plenary powers granted to the Legislature by the California Constitution pursuant to which the Legislature conferred upon the Public Utilities Commission exclusive authority to regulate the issuance of bonds by public utilities (Sections 816 et seq. of the Public Utilities Code), irrespective of the Usury Law, judicial interpretation of the California Usury Law has exempted corporate bonds of public utilities from operation of the Usury Law.

15. Even if the usury limitation contained in Article XX, Section 22 of the California Constitution and the Usury Law Initiative Act is exceeded, since the transaction is authorized by this Commission, applicant utility, its assignees or successors in interest, will have no occasion to and cannot assert any claim or defense under the California Usury Law and it would be against the public policy of this State for applicant to do so; further, and necessarily, because the lawful issuance by applicant of Series EE bonds in compliance with authorization by the Public Utilities Commission is consistent with the public policy of this State, persons collecting interest on such authorized bonds are not subject to the Usury Law sanctions.
16. Applicant's proposal to situate and structure the issuance and sale of its Series EE bonds in New York and involving a choice of New York law is not inconsistent with the public policy of this State.

On the basis of the foregoing findings we conclude that the application should be granted. As set forth in said Decisions Nos. 83411 and 83504, we further conclude that the usury limitations on interest contained in Article XX, Section 22 of the California Constitution and the Usury Law Initiative Act do not apply to the issuance of public utility securities including evidences of indebtedness lawfully authorized by the Public Utilities Commission.

The authorization herein granted is for the purpose of this proceeding only, and is not to be construed as indicative of amounts to be included in proceedings for the determination of just and reasonable rates. Applicant is hereby placed on notice that, if the Commission believes that the negotiated price

or interest rate pertaining to the proposed bond issue will result in an excessive effective interest cost, it will take into consideration in rate proceedings only that which it deems reasonable.

O R D E R

IT IS ORDERED that:

1. The sale by Southern California Edison Company of not exceeding \$100,000,000 aggregate principal amount of its First Mortgage Bonds, Series EE, is hereby exempted from the Commission's competitive bidding rule set forth in Decision No. 38614, dated January 15, 1946, as amended, in Case No. 4761.
2. Southern California Edison Company may execute and deliver a Thirty-Seventh Supplemental Indenture in substantially the same form as that received in evidence as Exhibit No. 2.
3. Southern California Edison Company may issue, sell and deliver not exceeding \$100,000,000 aggregate principal amount of its First Mortgage Bonds, Series EE, in accordance with the application, testimony and exhibits.
4. Neither Southern California Edison Company, nor anyone purporting to act on its behalf, shall at any time assert in any manner, or attempt to raise as a claim or defense in any proceeding, that the cost of money applicable to its First Mortgage Bonds, Series EE, exceeds the maximum permitted to be charged under the California Usury Law or any similar law establishing the maximum rate of interest that can be charged to or received from a borrower.
5. Southern California Edison Company shall apply the proceeds from the sale of said bonds to the purposes set forth in the application.

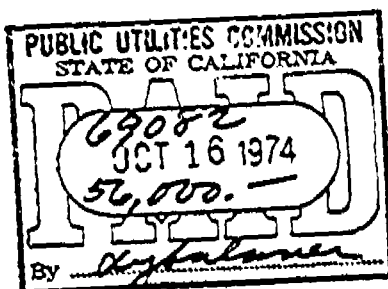
6. Upon determining the maturity date, price and interest rate pertaining to the bonds herein authorized, Southern California Edison Company shall notify the Commission thereof in writing.

7. As soon as available, Southern California Edison Company shall file with the Commission three copies of its prospectus pertaining to said bonds.

8. Within one month after issuing and selling the bonds herein authorized, Southern California Edison Company shall file with the Commission a statement, in lieu of a report under General Order No. 24-B, disclosing the purposes for which the bond proceeds were used.

9. This order shall become effective when Southern California Edison Company has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$56,000.

Dated at San Francisco, California, this 16th
day of OCTOBER, 1974.



William L. Ferguson
President
William J. ...

[Signature]
[Signature]
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

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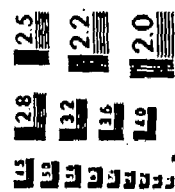
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8 pt Pontiac - a e g m 1 6 8 9 % Zenith X-Ray Voice Football Jolly Mark Quo
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3MM MICROFONT - A E G M 1 6 8

1.8 line pair/mm.

2.5 line pair/mm.

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