

Decision No. 84086

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 \$150,000,000 aggregate)
principal amount of its First)
and Refunding Mortgage Bonds,)
Series FF, to execute and deliver)
a Thirty-Eighth Supplemental)
Indenture, and to execute and)
deliver an Instrument of Further)
Assurance.)

Application No. 55454
(Filed January 23, 1975)

O P I N I O N

Southern California Edison Company seeks authority to execute and deliver a Thirty-Eighth Supplemental Indenture and an Instrument of Further Assurance, and to issue, sell and deliver, at competitive bidding, not exceeding \$150,000,000 aggregate principal amount of its First and Refunding Mortgage Bonds, Series FF.

After paying and discharging 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 uncapitalized construction expenditures. The accrued interest would be used for general corporate purposes. The utility reports uncapitalized construction expenditures of approximately \$540,045,000 as of December 31, 1974.

Applicant's reported capital ratios as of December 31, 1974, and as adjusted to give effect to the proposed bond issue, are summarized from the application as follows:

	<u>December 31, 1974</u>	<u>Pro forma</u>
Long-term debt	49.5%	51.3%
Preferred and preference stock	14.3	13.8
Common stock equity	<u>36.2</u>	<u>34.9</u>
Total	<u>100.0%</u>	<u>100.0%</u>

Recent Decisions Nos. 83411, 83504, 83542, 83579, 83598, 83600, 83766, 83808 and 83809, 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 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 the application.
4. The proposed Thirty-Eighth Supplemental Indenture and Instrument of Further Assurance would not be adverse to the public interest.

5. The money, property or labor to be procured or paid for by 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.
6. Underwriters will not be restricted from offering or selling applicant's Series FF bonds in California.
7. The largest part of the security for applicant's Series FF bonds would consist of California real estate and improvements.
8. 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.
9. Pursuant to plenary powers granted to the Legislature by Article XII, Section 5 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, except those directly relating to the Commission.
10. 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).

11. Pursuant to the plenary powers granted to the Legislature in Article XII, Section 5 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.
12. 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.
13. 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 FF 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.

14. To situate and structure the issuance and sale of applicant's Series FF bonds in the State of New York without restricting the market for such bonds to areas outside California would not be adverse to the public interest.

On the basis of the foregoing findings we conclude that the application should be granted. As set forth in said Decisions Nos. 83411, 83504, 83542, 83579, 83598, 83600, 83766, 83808 and 83809, 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. A public hearing is not necessary.

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.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company may execute and deliver a Thirty-Eighth Supplemental Indenture and an Instrument of Further Assurance in substantially the same forms as those attached to the application as Exhibit E and Exhibit G, respectively.

2. Southern California Edison Company may issue, sell and deliver, at competitive bidding, not exceeding \$150,000,000 aggregate principal amount of its First and Refunding Mortgage Bonds, Series FF, at the price offered in a bid which shall provide the lowest annual cost of money to applicant calculated

in the manner provided in the Statement of Terms and Conditions Relating to Bids, a copy of which is attached to the application as a part of Exhibit F.

3. An interest rate for Southern California Edison Company's First and Refunding Mortgage Bonds, Series FF, may exceed the maximum annual interest rate otherwise permitted under the California Usury Law, if market conditions so require.

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 and Refunding Mortgage Bonds, Series FF, 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 referred to in the application.

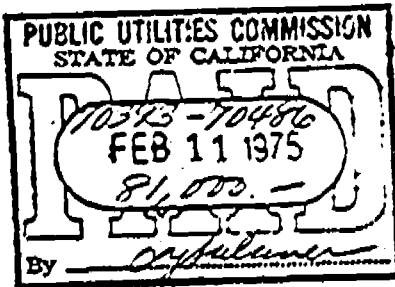
6. Promptly after awarding the contract for the sale of said bonds, Southern California Edison Company shall file a written report with the Commission showing, as to each bid received, the name of the bidder, the price, the interest rate and the cost of money to applicant based on such price and interest rate.

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 such issue and sale, 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 \$31,000.

Dated at San Francisco, California, this 11th day of February, 1975.



Vermon L. Sturgeon
President
William J. Quinn
[Signature]
Leonard [Signature]
Commissioners