

Decision 84 11 022

NOV 7 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SOUTHERN CALIFORNIA)
 EDISON COMPANY, for Authorization to)
 Refund for a period of not exceeding)
 two years from the date of Refunding)
 Maricopa County Pollution Control)
 equivalent indebtedness in the)
 amounts of \$51,000,000 (1983 Series)
 A) and \$41,300,000 (1984 Series B))
 or, in the alternative, Guarantee)
 Obligations of Another in respect of)
 the Issuance of Refunding Debt,)
 pursuant to an Agreement to be)
 Executed and Delivered in connection)
 therewith; Execute and Deliver one)
 or more Supplemental Indentures;)
 Sell Utility Plant; and for an)
 Exemption from the Competitive)
 Bidding Requirements of the)
 California Public Utilities)
 Commission.)

Application 84-09-068
(filed September 26, 1984)

O P I N I O N

Southern California Edison Company (Edison) requests authority, under Public Utilities (PU) Code Sections 816-818, 830 and 851, for the following:

1. To issue, sell, and deliver to the Maricopa County, Arizona Pollution Control Corporation (APCC) one or more series of Edison's First and Refunding Mortgage Bonds, debentures, notes, and/or other evidences of indebtedness (collectively referred to as the Arizona Pollution Control (PC) Debt Securities) in the aggregate principal

amounts of not to exceed \$51,000,000 and \$41,300,000 or, in the alternative, to unconditionally guarantee or otherwise secure the APCC's obligations in respect of its issuances of debt under the terms of agreements to be executed by Edison and the APCC;

2. To sell to the APCC certain pollution control facilities (Facilities) located at the Palo Verde Nuclear Generating Station located in Maricopa County, Arizona;
3. To execute and deliver one or more supplemental indentures; and
4. To exempt the issuance and sale of the Arizona PC Debt Securities from the Commission's competitive bidding requirements.

Summary of Decision

This decision grants Edison the authority requested in the application.

Notice of the filing of the application appeared on the Commission's Daily Calendar of September 28, 1984. No protests have been received.

Edison, a California Corporation, operates as a public utility subject to the jurisdiction of this Commission. Edison generates, purchases, transmits, distributes, and sells electric energy for light, heat, and power in portions of Central and Southern California.

For the 12 months ended June 30, 1984, Edison reports it generated total operating revenues of \$4,597,474,000 and net income of \$717,427,000 shown as part of Exhibit A attached to the application.

Also shown as part of Exhibit A is Edison's Balance Sheet as of June 30, 1984 summarized as follows:

<u>Assets</u>	<u>Amount</u>
Net Utility Plant	\$ 9,434,186,000
Other Property and Investments	136,187,000
Current Assets	1,673,158,000
Deferred Charges	<u>212,255,000</u>
Total	11,455,786,000
 <u>Liabilities and Common Equity</u>	
Common Equity	\$ 3,991,604,000
Preferred/Preference Stock	895,058,000
Long-Term Debt	4,193,142,000
Current Liabilities	1,647,933,000
Deferred Credits and Reserves	<u>728,049,000</u>
Total	\$11,455,786,000

In this application, in order to obtain the benefits of tax-exempt financing for the Facilities described in detail in Exhibit B attached to the application, Edison previously entered into three transactions with the APCC to borrow short-term funds pursuant to PU Code Section 823(c). On December 28, 1983, Edison

borrowed from the APCC an aggregate principal amount of \$50,000,000, due December 15, 1984. The funds borrowed by Edison from the APCC were provided by the sale of the APCC's Pollution Control Revenue Bonds, 1983 Series A. On March 7, 1984, Edison borrowed an additional \$40,500,000 from the APCC. The additional funds borrowed were provided by the sale of the APCC's Pollution Control Revenue Bonds, 1984 Series A, due March 1, 1985. On May 15, 1984, the APCC issued Pollution Control Revenue Refunding Bonds, 1984 Series B, in the aggregate principal amount of \$40,500,000 due February 1, 1985, the proceeds of which were used to refund the APCC's 1984 Series A Bonds. In each of these instances, the APCC issued its bonds privately on the basis of a qualified tax opinion and Edison filed or participated in the filing of revenue ruling requests with the Internal Revenue Service (IRS) regarding the tax-exempt status of the interest paid by the APCC.

In order to refund the 1983 Series A and the 1984 Series B Bonds, Edison proposes to engage in the Arizona pollution control facility refunding financings with the APCC. Edison anticipates that the IRS will rule on the previously mentioned requests prior to the maturity of its contemplated refunding financings. Until there rulings are received from the IRS, Edison proposes to refund

its obligations on an intermediate-term basis (for a period of two years or less). When the rulings are received and if interest rates are favorable to Edison and its ratepayers, Edison anticipates refunding the intermediate-term indebtedness on a long-term basis (for a period of up to 30 years).

It is currently contemplated that the proposed refunding financings would be structured as follows:

1. The APCC would issue and sell one or more series of its bonds, notes, debentures, or other evidence of indebtedness (APCC Bonds) in the aggregate principal amounts of not to exceed \$51,000,000 and \$41,300,000 to one or more banks or institutional investors. The requested authorizations are for principal amounts greater than those of the 1983 Series A and 1984 Series B Bonds because it may be possible to use a refunding method of financing which would include within the principal amount of its refunding indebtedness certain costs for which the Edison treasury is to be reimbursed. These costs are discussed under the heading, "Expenses Related to the Arizona PU Facilities."
2. Concurrently with the sale and delivery of the APCC Bonds, Edison would enter into an installment sale agreement, loan agreement, or other similar agreement with the APCC. If an installment sale agreement is entered into, Edison would sell to the APCC a portion of the Facilities at a price equal to Edison's estimated cost of acquisition, or construction, for the

Facilities. The APCC would reconvey title to the Facilities to Edison in consideration of Edison's obligation to pay the amounts as may be required to pay the principal, premium (if any), and interest on the APCC Bonds and all expenses attendant thereto. The APCC would obtain the money to buy the completed Facilities and to construct, or acquire, the remaining Facilities from the proceeds of the sale of the APCC Bonds.

3. Concurrently with the sale and delivery of the APCC Bonds, Edison would obligate itself to the APCC, in consideration of the APCC's obligations set forth in paragraph 2 above, through delivery to the APCC of the Arizona PC Debt Securities in the aggregate principal amounts of not to exceed \$51,000,000 and \$41,300,000, (the terms and conditions of the Arizona PC Debt Securities to be consistent with the terms and conditions of the APCC Bonds) and/or would unconditionally guarantee, or otherwise secure, the APCC's obligations in respect of each series of the APCC Bonds. All rights, title, and interest of the APCC in Edison's Arizona PC Debt Securities would be assigned to a trustee under an indenture pursuant to which the APCC Bonds would have been issued, as security for the purchasers of the APCC Bonds.

In addition, Edison contemplates that it will execute and deliver to the banks which purchase each series of the APCC Bonds an agreement setting forth Edison's obligations in the event that it is unsuccessful in obtaining favorable IRS rulings. This agreement will provide for (among other things) the agreement of Edison to pay additional interest reflecting a taxable interest rate.

Sale of Utility Plant

If an installment sale agreement is entered into, Edison would convey to the APCC, title to the Facilities, subject to the lien of its Trust Indenture. Title to the Facilities would then be reconveyed to Edison as partial consideration for Edison's issuance and sale of the Arizona PU Debt Securities to the APCC. The operation and control of the Facilities so conveyed to the APCC would remain with Edison, or its agent, at all times.

Request for Exemption from the Commission's Competitive Bidding Requirements

Edison seeks an order of this Commission granting an exemption of the proposed issues and sales of the Arizona PC Debt Securities from the Commission's competitive bidding rule established by its Decision (D.) 38614, as amended by D.49941 and D.75556 in Case 4761. These decisions contemplate that under appropriate circumstances, the Commission will not require competitive bidding. Edison believes that the reasons set forth below are compelling and justify the issuance, by the Commission, of an order granting the exemption.

Edison is informed, believes, and therefore alleges that substantially all of the proceeds from the issuance of the APCC Bonds will be used to acquire, or construct, the pollution control

Facilities within the meaning of the Internal Revenue Code, and it is expected that the interest payable on the APCC Bonds will be exempt from all present federal income taxes and Arizona state taxes under existing statutes, regulations, court decisions, and rulings.

Since the interest payable on the APCC Bonds is anticipated to be exempt from present federal income taxes, the Bonds will be sold at an annual interest rate substantially less than would be realized if Edison were to issue and sell taxable debt obligations. In order for Edison to take advantage of the favorable interest rates applicable to the APCC Bonds, Edison must issue its Arizona PU Debt Securities to the APCC. The interest rates payable by Edison will be the same as that required by the APCC's tax-exempt Bonds. The full amount of the interest rate savings will be passed on to Edison and its ratepayers.

Because of the statutory structure of the pollution control financing mechanisms of the APCC, competitive bidding for Edison's Arizona PC Debt Securities is not possible. The Commission has previously recognized this unique method of

financing by issuing decisions exempting pollution control related debt issues from the competitive bidding requirements of the Commission. Edison believes that the application of the Commission's competitive bidding requirements would preclude it from taking advantage of the benefits provided by this type of financing and would not be in the best interest of Edison or its ratepayers. It is anticipated that the Arizona PC Debt Securities could be sold for at least 200 basis points below that of the taxable market.

The California usury law (Article XV of the California Constitution and the Usury Law Initiative Act) prohibits (with certain exceptions) the charging of interest on any loan or forbearance at an annual rate in excess of the higher of (a) 10% per year or (b) 5% per year in excess of the rate prevailing on advances by the Federal Reserve Bank of San Francisco to its member banks.

Current estimates of market conditions indicate that in the event Edison is unsuccessful in obtaining favorable IRS rulings, Edison's issuance, sale, and delivery of its Arizona PC Debt Securities could entail the payment of interest at an annual rate in excess of that permitted by the California Usury Law.

Edison requests the Commission, in the exercise of its powers conferred by the California Legislature, to exercise its authority as follows:

1. To permit Edison to issue, sell, and deliver the Arizona PC Debt Securities at an annual cost of money exceeding that permitted by the California Usury Law and to determine that the issuance, sale, and delivery will not violate the California Usury Law;
2. To determine that if Edison elects to situate and structure the issuance, sale, and delivery of the Arizona PC Debt Securities under the laws of the State of New York without restricting the incurrence of indebtedness in a manner adverse to Edison, this choice would not be inconsistent with the public policy of the State of California nor violate any fundamental policy of the State of California and to authorize this financing activity as structured; and,
3. To place restrictions upon Edison's ability to avail itself of claims, or otherwise available defenses, under the California Usury Law as the Commission may deem appropriate.

In D.83411 dated September 4, 1974 in A.55080 (Southern California Gas Company) and D.90381 dated June 5, 1979 in A.58798, (Pacific Gas and Electric Company) among others, the Commission held that in exercising its authority to regulate public utility debt securities, the Commission is not restricted by the California Usury Law and its ramifications. We reaffirm this holding and conclude that even if the limitation of the California Usury Law is exceeded in connection with the proposed issuance of the Arizona PC

Debt Securities and/or the guarantee of the APCC's Bonds, the public interest requires the Commission to authorize the issuance and sale of the Arizona PC Debt Securities and/or the guarantee of APCC's Bonds.

Use of Net Proceeds

The application indicates that Edison proposes to use the proceeds from the sale of its Arizona PC Debt Securities (1) for the discharge or lawful refunding of the 1983 Series A and 1984 Series B Bonds and for the reimbursement of monies previously expended (discussed below) from income or other monies in its treasury not secured by, or obtained from, the issue of stocks, stock certificates, other evidences of interest or ownership, bonds, notes, or other evidences of indebtedness; (2) for the acquisition of property; (3) or for the construction, completion, extension, or improvement of its Facilities, exclusive of maintenance of service and replacements. A sum equal to the amount so reimbursed will be used for costs associated with refunding the 1983 Series A and 1984 Series B Bonds.

Expenses Related to the Arizona PC Facilities

The following listing indicates the financial source and a summary of the expenditures for the Palo Verde Nuclear Generating Stations, Units 1, 2, and 3, pollution control, solid waste disposal, and sewage disposal Facilities as follows:

<u>Source and Item</u>	<u>Amount</u>
<u>1983 Series A</u>	
Existing Radwaste Facilities	\$31,115,000
Non-Radwaste Facilities	14,699,000
Non-Construction Related Expenditures	<u>5,186,000</u>
Total	\$51,000,000
<u>1984 Series B</u>	
Existing Radwaste Facilities	\$ 4,664,000
Non-Radwaste Facilities	30,645,000
Non-Construction Related Expenditures	<u>5,991,000</u>
Total	\$41,300,000

These items are detailed in Exhibit B attached to the application.

Edison's capital ratios reported as of June 30, 1984 are shown below as recorded and as adjusted to give pro forma effect to the transactions that follow:

	<u>June 30, 1984</u>	<u>Pro Forma</u>
Long-Term Debt	45.0%	45.6%
Short-Term Debt	<u>2.5</u>	<u>2.5</u>
Total Debt	47.5%	48.1%
Preferred/Preference Stock	9.6	9.4
Common Equity	<u>42.9</u>	<u>42.5</u>
Total	100.0%	100.0%

1. The proposed issuance of Edison's Arizona PC Debt Securities to refund the Maricopa County Pollution Control Short-Term indebtedness in the amount of \$50,000,000 (1983 series A) and \$40,500,000 (1984 Series B);
2. The proposed issuance of Edison's California Debt Securities for pollution control in the aggregate principal amount of \$142,000,000 as requested in Application (A.) 84-09-033 filed September 14, 1983 presently before the Commission for decision;
3. The increase in Edison's Short-Term debt in the amount of \$1,788,000; and
4. The sale of 255,716 shares of Edison's Common Stock, \$4-1/6 par value, under Edison's Employee Stock Ownership Plan on July 2 and August 1, 1984 (Decision (D.) 83-03-006 dated March 2, 1983 in A.83-01-43); 617,034 shares

of Common Stock, \$4-1/6 par value, under Edison's Stock Savings Plus Plan on July 2, 1984 (D.82-06-058 dated June 15, 1982 in A.82-04-23); and 1,524,724 shares of Common Stock, \$4-1/6 par value, under Edison's Dividend Reinvestment and Stock Purchase Plan on August 1, 1984 (D.82-11-055 dated November 17, 1982 in A.82-09-38) which produced combined net proceeds of \$44,232,000.

The Commission's Evaluation and Compliance Division has reviewed the application and has concluded that the proposed Arizona PC Debt Securities is reasonable and should be exempted from the Commission's competitive bidding requirements.

The Evaluation and Compliance Division has reviewed Edison's Arizona pollution control construction budget and finds that the sale of Edison's Arizona PC Debt Securities is necessary to refund the securities issued to fund the present and future construction expenditures. The Division is not finding that the construction is necessary and reasonable or that the expenditures are reasonable in amount. These are issues normally tested in general rate or rate base offset proceedings.

Findings of Fact

1. Edison, a California corporation, operates as a public utility subject to the jurisdiction of this Commission.
2. The proposed agreement requiring Edison to provide security for the purchasers of the Arizona PC Debt Securities would not be adverse to the public interest.

3. The proposed indebtedness would be for proper purposes.

4. The proposed sale and delivery of the pollution control Facilities would not be adverse to the public interest.

5. The money, property, or labor to be procured, or paid for, by the indebtedness, herein authorized, is reasonably required for the purposes specified in the application.

6. The sale of the proposed indebtedness should not be required to be through competitive bidding.

7. If as a result of prevailing market conditions these securities are deemed to have an effective interest rate for the purposes of the California Usury Law exceeding the limitations provided in Article XV of the California Constitution and the Usury Law Initiative Act, then the public interest requires that this Commission authorize the issuance and sale of the APCC Bonds or the Arizona PC Debt Securities, irrespective of limitations contained in the California Usury Law.

8. There is no known opposition and there is no reason to delay granting the relief requested.

Conclusion of Law

1. A public hearing is not necessary.

2. 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 this Commission as it deems necessary and appropriate, unrestricted by any other provisions of the California Constitution.

3. The Legislature has conferred upon this Commission the authority to regulate the issuance and the guarantee of securities of public utilities, including the Arizona PC Debt Securities and/or the guarantee of the APCC Bonds covered by this application, as amended, and to prescribe restrictions and conditions as it deems reasonable and necessary (Section 816, et seq. of the PU Code).

4. Under the plenary powers granted to the Legislature in Article XII, Section 5 of the California Constitution, it conferred on this Commission the comprehensive and exclusive power over the issuance and the guarantee of securities of public utilities, including the Arizona PC Debt Securities and/or the guarantee of the APCC Bonds, and the California Usury Law cannot be applied as a restriction on this Commission's regulation of the issuance and the guarantee of these public utility securities, including the establishment of a reasonable rate of interest.

5. In addition to the plenary powers granted to the Legislature by the California Constitution under which the Legislature conferred upon this Commission exclusive authority to regulate the issuance and the guarantee of debt securities by public utilities (Section 816, et seq. of the PU Code), irrespective of the Usury Law, judicial interpretation of the California Usury Law has exempted corporate bonds of public utilities from operation of the California Usury Law.

6. If the usury limitation contained in Article XV of the California Constitution and the Usury Law Initiative Act is exceeded, but the transaction is authorized by this Commission, Edison, its assignees, or successors in interest, will have no occasion to and cannot assert any claim or defense under the California Usury Law. Further, and necessarily, because of lawful issuance by Edison of the Arizona PC Debt Securities and/or guarantee of the APCC Bonds in compliance with authorization by this Commission, persons collecting interest on the authorized securities are not subject to the California Usury Law sanctions.

7. The application should be granted to the extent set forth in the order which follows.

The proposed security issue or issues are for lawful purposes and the money, property, or labor to be obtained by them is required for these purposes. Proceeds from the security issue, or issues, may not be charged to operating expenses or income.

The following order should be effective on the date of signature and payment of the fee set by PC Code Section 1904(b) to enable Edison to issue its Debt Securities expeditiously.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company (Edison) may issue, sell, and deliver in the aggregate principal amounts of not to exceed \$51,000,000 and \$41,300,000 in one or more series of its First and Refunding Mortgage Bonds, debentures, notes, and/or other evidences of indebtedness (Arizona Pollution Control (PC) Debt Securities), at the price and upon the terms and conditions as set forth in, or contemplated by, the application or, in the alternative, unconditionally guarantee or otherwise secure the Arizona Pollution Control Corporation's (APCC) obligations in respect of the issuance of debt securities under the provisions of an agreement to be executed by Edison and the APCC in connection therewith.

2. Edison may sell and deliver to the APCC the pollution control Facilities under the terms and conditions set forth in, or contemplated by, the application.

3. Edison shall issue the indebtedness for the purpose of refunding on an intermediate-term basis the 1983 Series A and the 1984 Series B Bonds.

4. Edison is authorized to pay under its Arizona PC Debt Securities and interest rate in excess of the maximum annual interest rate otherwise permitted under the California Usury Law, as contained in Article XV of the California Constitution and the Usury Law Initiative Act, if events so require.

5. If market conditions so require, an interest rate and other terms, for the Arizona PC Debt Securities and/or the guarantee of the APCC Bonds may collectively exceed the maximum annual interest rate otherwise permitted under the California Usury Law, as contained in Article XV of the California Constitution and the Usury Law Initiative Act.

6. Neither Edison, nor any person 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 interest on the Arizona PC Debt Securities, or the APCC Bonds, exceeds the maximum

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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.

7. Edison shall file the reports required by General Order Series 24.

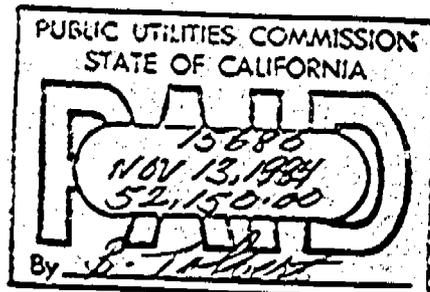
8. Edison shall use the proceeds from the sale of its Arizona PC Debt Securities for the purposes specified in the application.

9. The authority granted by this order to issue Arizona PC Debt Securities shall become effective when Edison pays \$52,150, the fee set by PC Code Section 1904(b). In all other respects, this order is effective today.

10. This application is granted as set forth above.

Dated NOV 7 1984 at San Francisco, California.

VICTOR CALVO
FRANCIS C. GREY
DONALD VIAL
WILLIAM D. BAGLEY
Commissioners



I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TOGETHER

-20-
[Signature]
Joseph E. Buehler, Executive Director