

CACD/DML

ORIGINAL

Decision 89 01 053 JAN 27 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
SOUTHERN CALIFORNIA EDISON COMPANY)	
(U 338-E) For An Order Approving)	Application No. 88-11-032
Amendment To Nonqualified Nuclear)	(Filed November 14, 1988)
Decommissioning Trust Agreement.)	

O P I N I O N

Southern California Edison Company (Edison) requests that the California Public Utilities Commission issue an Order approving an amendment to Article 6.01 of its Nonqualified Nuclear Decommissioning Trust Agreement (Nonqualified Trust). Such an amendment is allowed by Article 2.10 of the Nonqualified Trust.

Pursuant to Decision (D) 87-05-062, dated May 29, 1987, Edison established externally managed trusts to administer funds accrued in rates from ratepayers and contributed to the trusts to provide for the ultimate decommissioning costs of Edison's share of its nuclear generating stations.¹ Edison has two Master Trust Agreements, one for the decommissioning funds which qualify for an income tax deduction under Section 468A of the Internal Revenue Code (IRC), a Qualified Trust; and one for the remaining funds, Nonqualified Trust.

This Order grants the authority to execute the amendment requested by Edison to its Nonqualified Trust only. This amendment authorizes the Trustee of the Nonqualified Trust to reimburse

¹ Edison owns 80.0% interest in San Onofre Nuclear Generating Station (SONGS) Unit 1, a 75.05% interest in both SONGS Unit Nos. 2 and 3, and a 15.8% interest in Palo Verde Nuclear Generating Station (Palo Verde) Units Nos. 1, 2 and 3.

Edison for taxes charged to Edison for the earnings of the Nonqualified Trust.

Background

This Application appeared on the Commission Calendar of November 21, 1988. No protests or comments have been filed. Edison requested ex parte processing in its application.

Under Section 468A of the IRC the Qualified Trust is a separate taxpaying entity and the Trustee is empowered to pay taxes directly out of the Qualified Trust to the Internal Revenue Service and to the State of California for any imposed taxes. The Nonqualified Trust² does not receive the same treatment as a separate tax paying entity; its earnings, losses and expenses are accrued on the company's tax returns for Federal and state purposes so that Edison must pay the incremental tax caused by the Nonqualified Trust's operation. As the Nonqualified Trust agreement currently reads, the Trustee and Edison believe that the Trustee cannot reimburse Edison for the incremental taxes incurred by Edison because of the Nonqualified Trust's earnings. The Commission Advisory & Compliance Division (CACD) has reviewed the issue and concurs with Edison that an amendment is needed to Section 6.01. The amended language has been reviewed by Harris Trust & Savings Bank.³

Section 6.01: Payment of Expenses and Administration.
To pay all ordinary and necessary
expenses and other incidental costs

2 There are in fact separate trust funds for each generating unit for both qualified and nonqualified decommissioning contributions. A Master Trust Agreement for both qualified and nonqualified portions of the plants apply to each qualified or nonqualified trust fund.

3 Trustee to the Qualified and Nonqualified Master Trust Agreements, as authorized by the Commission in Resolution E-3057, dated November 25, 1987. The Trustee is located in Chicago, Illinois.

including, but not limited to, Investment Manager(s) fees and committee member(s) fees, *reimbursement to the Company for taxes paid on trust earnings*, the fees and/or compensation of any professional advisors, legal counsel or administrative support hired by the Committee as provided in Section 3.04, expenses and insurance premiums as provided in Section 3.06, incurred in connection with this Master Trust or the Master trust in the discharge of the Trustee's fiduciary obligations under this Agreement. (Emphasis added).

Committee and Trustee Approval

By a resolution of the Southern California Edison Company Nuclear Facilities Decommissioning Trust Committee (Committee) dated August 24, 1988 and by a letter from the Harris Trust and Savings Bank dated August 23, 1988, both parties have indicated their approval to the above amendment to Section 6.01. As a signatory of the Trust, the Executive Director of the Commission must sign an amended agreement pursuant to an Order of the Commission concurring in such an amendment. This signature is necessary before any amendment is effective and enforceable.

Commission Staff Review

The CACD has reviewed the proposed amendment and concurs with Edison that such a change is necessary. The alternatives are not acceptable for several reasons. Edison could pay the taxes and not be reimbursed. This would unfairly confiscate Edison's property. The taxes could be included in either base rates or a balancing account for separate recovery. This too is not acceptable because of the complexity it would add

and because the rate recovery and tax liability would be difficult to match.

The CACD notes however, that reimbursement should be limited to the demonstrated increment in taxes accruing to Edison solely because of the Trust's earnings and should not be at the statutory tax rates. At this time, CACD believes that Edison will pay the full or maximum tax rate on the Trust's incremental earnings, but at some future time Edison could be in a less than maximum tax situation and so should only recover the incremental taxes, not a full "statutory" amount. Further, if the Trust yields tax benefits to Edison in terms of losses in one tax year, the tax benefit should be contributed by Edison to the Trust Funds and not held by Edison's shareholders. In the event of a tax loss by the Trusts, there could well be a funding deficiency; by contributing the tax benefit, Edison will reduce the chance of underfunding the Trusts and this will help offset the losses. If the Nonqualified Trusts were separate taxpayers like the Qualified Trusts, any losses could be carried forward and backward under the tax laws to offset future or prior tax expenses. Edison should provide to CACD copies of its calculations approved by external auditors and the request for reimbursement at the time it seeks reimbursement from the Trust or makes a contribution. Reimbursement for taxes and the tax savings due to Trust losses should be reimbursed or contributed at the time Edison makes its first quarterly tax payment after the close of the Trusts' calendar year accounting period. We concur with the CACD.

Findings of fact

1. Edison is an electric public utility organized and existing under the laws of the State of California and is subject to the jurisdiction of this Commission.
2. Edison has two Master Trust Agreements to provide for the ultimate decommissioning of its share of the costs of retiring and

decommissioning nuclear powered generating facilities which Edison owns with others.

3. Edison has a Qualified Trust under IRC Section 468A which is a separate taxpaying entity and a Nonqualified Trust which is treated as a part of Edison's operations for tax purposes.

4. Edison and the Nonqualified Trust's Trustee, Harris Trust & Savings Bank agree that the Nonqualified Trust agreement must be modified to reimburse Edison for taxes paid to the federal and state governments on the earnings of the Trust.

5. The CACD concurs that the proposed amendment to Section 6.01 of the Master Trust Agreement is reasonable subject to limiting Edison's reimbursement to those taxes actually paid.

6. It is reasonable to modify the Nonqualified Master Trust Agreement.

Conclusions of Law

1. Edison is liable for the taxes on the earnings of the Nonqualified Trust and is entitled to recover those costs from the Trust's assets.

2. The proposed modification to the Master Trust Agreement is reasonable.

ORDER

IT IS ORDERED that:

1. Southern California Edison Company (Edison) shall modify its Nonqualified Master Trust Agreement with the Harris Trust & Savings Bank (Harris) as proposed above.

2. Edison shall limit its reimbursement to only the actual incremental taxes it must pay above the taxes it would have paid before considering the Trust's earnings and must contribute to the Trust any tax savings.

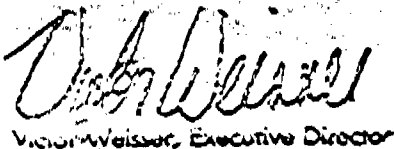
3. The Executive Director is directed to sign a conformed copy of the Nonqualified Master Trust Agreement on behalf of the Commission after such amendment is signed by Edison and Harris.

This Order is effective today.

Dated JAN 27 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DODA
STANLEY W. HULETT
JOHN B. CHANLAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.



Victor Weissert, Executive Director

and because the rate recovery and tax liability would be difficult to match.

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Findings of fact

1. Edison is an electric public utility organized and existing under the laws of the State of California and is subject to the jurisdiction of this Commission.
2. Edison has two Master Trust Agreements to provide for the ultimate decommissioning of its share of the costs of retiring and decommissioning nuclear powered generating facilities which Edison owns with others.
3. Edison has a Qualified Trust under IRC Section 468A which is a separate taxpaying entity and a Nonqualified Trust which is treated as a part of Edison's operations for tax purposes.
4. Edison and the Nonqualified Trust's Trustee, Harris Trust & Savings Bank agree that the Nonqualified Trust agreement must be modified to reimburse Edison for taxes paid to the federal and state governments on the earnings of the Trust.
5. The CACD concurs that the proposed amendment to Section 6.01 of the Master Trust Agreement is reasonable subject to limiting Edison's reimbursement to those taxes actually paid.