

CACD/CHR

Decision 92-01-027 January 10, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
SOUTHERN CALIFORNIA EDISON COMPANY  
(U 338-E) Requesting Approval of the  
Appointment of The Northern Trust  
Company as Trustee for Edison's  
Nuclear Decommissioning Trusts.

**ORIGINAL**  
Application 91-11-033  
(Filed November 14, 1991)

### OPINION

#### Summary of Decision

This decision grants Southern California Edison Company (Edison) the approval requested in its Application 91-11-033 (Application).

Edison requests approval under Public Utilities (PU) Code § 701 to appoint The Northern Trust Company (Northern) as a substitute trustee of Edison's nuclear decommissioning trusts, and to execute restated trust agreements with such substitute trustee.

Notice of the filing of the Application appeared on the Commission's Daily Calendar of December 2, 1991. No protests have been received.

#### Background

Edison is a public utility organized and existing under the laws of the State of California. Edison is engaged in the business of generating, transmitting, and distributing electric energy in portions of Central and Southern California.

In Order Instituting Investigation No. 86, the Commission conducted an extensive investigation into alternative methods of financing the ultimate cost of decommissioning the nuclear power plants owned by California utilities. In Decision (D.)87-05-062, the Commission adopted an externally managed trust fund as the vehicle for accruing funds for the decommissioning of the nuclear

power plants. In that decision, the Commission also established guidelines for these trust agreements.

In response to D.87-05-062, Edison met with the Commission staff and developed trust agreements for its nuclear decommissioning costs in accordance with the guidelines set forth in that decision. One trust agreement was established as the vehicle to hold the decommissioning funds which qualify for an income tax deduction under Section 468A of the Internal Revenue Code (Qualified Trust) and the other was designed to hold the remaining funds (Nonqualified Trust). On November 25, 1987, Edison's trust agreements were approved by the Commission and executed shortly thereafter. Since the inception of Edison's Qualified and Nonqualified Trusts, Harris Trust and Savings Bank (Harris) has been the trustee.

Both trusts provide for the establishment of the Nuclear Facilities Decommissioning Master Trust Committee (the Committee) consisting of five members, at least three of which cannot be employees, officers, directors, or agents of Edison.

Article 4.01 of the qualified and nonqualified trust agreements provide that the Committee shall have the right to remove the acting trustee and appoint another entity as a successor trustee. Article 2.10 of the qualified trust agreement and Article 2.12 of the nonqualified trust agreement provide that the Committee may amend the trust agreements by filing a copy of the amendment with the Commission. D.87-05-062 and Resolution (Res.) E-3057 expressly require Commission approval of all subsequent proposed trust agreements.

Request for Order Approving Substitute Trustee and Associated Restated Trust Agreements

As set forth above, the qualified and nonqualified trust agreements allow the Committee to replace the trustee and appoint a substitute trustee. In turn, the Commission has effectively

required its approval of this action, which requires revision of the trust documents.

By resolution of August 21, 1991, (Exhibit A to the Application), the Committee on a 5-0 vote approved replacing Harris, and in its place, appointing Northern as trustee.

The Committee's process in deciding to replace Harris and appoint Northern as trustee was complete and comprehensive. The Committee staff's rationale for appointing Northern, as presented to the Committee, was submitted to the Commission (Exhibit B to the Application). Among other factors, the Committee staff's recommendation was supported by considerations of timeliness, quality of service and performance measurement and tax reporting capabilities. In addition the Committee's staff presented information demonstrating that Northern's fees, although higher than Harris', are competitive with those of the other substitute trustee candidate evaluated.

Based on the Committee's resolution adopting its staff's recommendation, Edison proposes to execute, upon approval of the Commission, restated trust agreements with Northern (Exhibits C and D to the Application) with essentially identical terms as the existing agreements, except for a revised fee schedule (p.38, Qualified Trust; p.35, Nonqualified Trust). The remaining changes from the present trust agreements are technical and conforming in nature.

The Committee intends that, after the Commission issues its order, the Committee will remove Harris as Trustee and appoint Northern, as soon as is reasonably practicable.

The Commission Advisory and Compliance Division (CACD) has an ongoing monitoring program and has met from time to time with the Committees of all three utilities which have nuclear decommissioning trust funds, the trustees and the trusts' investment managers. The CACD has reviewed Edison's Application and concurs in recommending approval of Northern as trustee.

Request for Ex Parte Relief

In the interests of time, administrative efficiency, and because there are no additional facts to be provided or issues to be decided, Edison requests that the Commission act on this application on an ex parte basis and without hearings. The rationale for affirming ex parte treatment here is the same as the Commission used in D.90-08-067 in approving a substitute trustee for Pacific Gas and Electric Company's nuclear decommissioning trusts on an ex parte basis: namely, there are adequate procedures in place to monitor the entity's performance (in this case, Northern) on a reasonable and regular basis (D.90-08-067, p.4, mimeo). In this regard, Article 3.05 of the trusts expressly requires the Committee to provide annual reports as to whether the trustee should be replaced as well as a triennial report evaluating on a competitive basis other firms which can provide the trustee function.

Findings of Fact

1. Edison, a California corporation, operates as a public utility under the jurisdiction of this Commission.
2. In D.87-05-062, the Commission required externally managed trust funds to finance the decommissioning of nuclear power plants.
3. D.87-05-062 required Edison to obtain the Commission's approval prior to executing the trust agreements for its Palo Verde Nuclear Generating Station (PVNGS) and San Onofre Nuclear Generating Station (SONGS).
4. In Res. E-3057, the Commission required its approval of all subsequent trust agreements.
5. In this Application, Edison requests approval of Northern as replacement trustee and approval of the proposed restated trust agreements between itself and Northern.

6. In support of this application, Edison has included considerations supporting the substitution of Northern as trustee.

7. The restated trust agreements for the PVNGS and SONGS are fair and reasonable.

8. The restated trust agreements are within the requirements of D.87-05-062 and Res. E-3057.

9. In conforming to D.87-05-062 and Res. E-3057, the trust agreements provide adequate requirements that Northern, as trustee, will be fairly evaluated on a reasonable and a regular basis, while assuring the necessary latitude and safeguards.

10. The CACD concurs with the appointment of Northern.

11. There is no known opposition to this proceeding and no reason to delay granting the approval requested.

#### Conclusions of Law

1. The Application is made pursuant to Section 701 of the Public Utilities Code of the State of California, the Commission's Rules of Practice and Procedure, and prior decisions, orders and resolutions of the Commission and specifically D.87-05-062 and Res. E-3057.

2. A public hearing is not necessary.

3. The application should be granted to the extent set forth in the order that follows.

4. The following order should be effective on the date of signature to enable Edison to proceed with its plans in an expeditious manner.

O R D E R

IT IS ORDERED that:

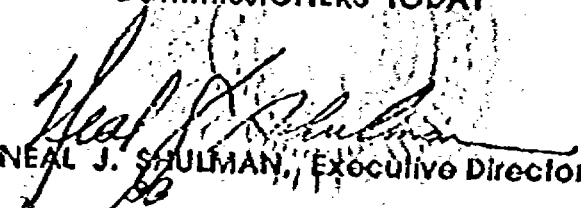
1. The replacement of the present trustee, Harris Trust and Savings Bank, with The Northern Trust Company is approved.
2. Southern California Edison Company is granted approval to execute its proposed restated trust agreements with The Northern Trust Company.
3. The Executive Director is directed to sign such trust agreements on behalf of the Commission.

This order is effective today.

Dated January 10, 1992 at San Francisco, California.

DANIEL Wm. FESSLER  
President  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
NORMAN D. SHUMWAY  
Commissioners

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

  
NEAL J. SHULMAN, Executive Director