

ORIGINAL

Decision 82 02 030 FEB 17 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SAN DIEGO GAS & )	
ELECTRIC COMPANY for an order )	
authorizing amendments to the )	
terms and conditions of a )	Application 61075
Nuclear Fuel Lease. )	(filed November 25, 1981)
_____ )	

O P I N I O N

By Decision (D.) 90379 dated June 5, 1979 in Application (A.) 58778 as amended, San Diego Gas & Electric Company (SDG&E) was authorized, under Public Utilities (PU) Code Section 701, to lease nuclear fuel up to a credit limit of \$66,000,000 in accordance with the terms and conditions in Exhibits B and C attached to A.58778. Parties to the present leasing and financial arrangements are as follows:

Nuclear Fuel Lease and Credit Agreement

<u>Entity</u>	<u>Role</u>
SDG&E -----	Lessee
San Onofre Nuclear Generating Station Fuel Company (SONGS) -----	Lessor
Continental Illinois National Bank and Trust Company of Chicago (Bank) -----	Bank

In the current application, SDG&E requests authority, under PU Code Section 701, to amend the terms of its existing leasing arrangements, pertaining to nuclear fuel, authorized in D.90379 of A.58778, for the following:

1. To continue to lease nuclear fuel and
2. To consent to changes in an amended Credit Agreement between the Lessor and the Bank to
  - a. Increase the credit limit up to \$100,000,000 (amended to \$150,000,000 by letter dated December 18, 1981 as an open ended authorization)<sup>1/</sup> and to
  - b. Allow the Bank to sell participation in its obligation under the credit amendment, as amended, to other banks. (Exhibit B to the application).

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<sup>1/</sup> SDG&E requests in its letter dated December 18, 1981 as follows:

"In recognition of the CPUC's concerns regarding an open ended authorization, SDG&E hereby requests that the Commission approve, upon filing of a letter with the Commission, future increase in the credit limit of up to \$50,000,000. Thus, the total authority for a credit line shall not exceed \$150,000,000."

In this application, SDG&E anticipates no change in its leasing arrangements reviewed and authorized by the Commission in D.90379. The basic change is in the higher credit limit requested as reflected in footnote 1/ and in 2.b. above. All parties to the Nuclear Fuel Lease (Lease) and Credit Agreement reviewed in D.90379 remain the same with the possible exception of other banks becoming participants in the credit line.

Summary of Decision

This decision grants SDG&E the authority to continue to lease nuclear fuel under the Lease shown as Exhibit B attached to A.58778, to modify D.90379 to increase the credit limit up to \$150,000,000 aggregate principal amount, and to consent to the Bank, under the amended Credit Agreement to participate with other banks in the credit line. However, the Commission accepts its Revenue Requirements Division's recommendation to reject SDG&E's request for an open ended authorization for step credit increases based on a letter of request. Anything as important as nuclear fuel should be periodically reviewed and analyzed to determine whether they have continued to be beneficial to the ratepayers in the light of changing economic conditions.

Notice of the filing of the application appeared on the Commission's Daily Calendar of November 30, 1981. No protests have been received.

SDG&E, a California corporation, operates as a public utility under the jurisdiction of this Commission. SDG&E provides electric service in portions of Orange and Imperial Counties and electric, gas, and steam service in portions of San Diego County.

SDG&E has a 20% undivided interest in the ownership of San Onofre Nuclear Generating Station Units 1, 2, and 3 with Southern California Edison Company (Edison) who owns the remaining 80% interest. SDG&E and Edison have need to provide nuclear fuel for these units.

SDG&E executed and delivered a nuclear fuel Lease dated May 20, 1976, amended and restated as of December 9, 1977. The Lease and Credit Agreement appeared as Exhibits B and C, respectively, in A.58778, as amended, and was fully considered by the Commission in D.90379. SDG&E presently has in excess of \$61,026,896 of nuclear fuel subject to the 1977 Lease.

The nuclear fuel to be subjected to the Lease includes nuclear fuel in the mining, milling, conversion, enrichment, and heat production stages. SDG&E leases the nuclear fuel from SONGS, a Delaware corporation, which is a wholly-owned subsidiary of Broad

Street Contract Services, Inc. (BSC), a Delaware corporation, engaged with its other subsidiaries in a general leasing business. BSC is owned by a partnership composed of partners who are also partners of Goldman, Sachs & Co., an investment banking firm. SDG&E alleges that neither BSC, its subsidiaries, including SONGS, Goldman, Sachs & Co., nor any persons affiliated with any of these companies, are affiliated with SDG&E or any of its subsidiaries.

All of the important provisions of SDG&E's Lease considered by the Commission in rendering D.90379 are purported by SDG&E to remain the same and are restated as follows;

1. Payment for the acquisition of nuclear fuel will be made by SONGS.
2. Title to the nuclear fuel will pass directly to SONGS from the suppliers of uranium ore and will remain with it.
3. The Lease is a completely net lease which means that SDG&E will be responsible for operating, maintaining, repairing, replacing, and insuring the nuclear fuel and for paying all taxes and costs arising out of the ownership, possession, or use of the fuel.
4. The term of the Lease is 47 years, and, unless terminated earlier, will terminate in the year 2026.

This Commission in D.87961 dated October 12, 1977 in A.57379 (Edison), disclaimed jurisdiction over a nuclear fuel lease, that is substantially in the same form as SDG&E's Lease, on

the grounds that there was no commitment by the Lessee as a guarantor or issuer of indebtedness under PU Code Sections 816 through 818, 830, or 851. In Edison's proceeding, the Commission's Revenue Requirements Division (Division) took no exception to the transaction and recognized that the reasonableness of the lease would be subject to review in any future rate proceeding and had no objection to the execution and delivery of Edison's Lease. The Division analyzed the transaction and concluded that the Lease was a true lease <sup>2/</sup> and not a commitment as a guarantor of indebtedness.

In A.58791, Edison reported that a special problem had arisen which caused the company to request the Commission to

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<sup>2/</sup> The Financial Accounting Standards Board, in accordance with Statement of Financial and Accounting Standards 13, defines a lease as "an agreement for conveying the right to use property, plant, or equipment (land and/or appreciable assets) usually for a stated period of time. It includes agreements that, although not nominally defined as leases, meet the above definitions, such as a 'heat supply contract' for nuclear fuel".

A true lease is a transaction which qualifies as a lease under the Internal Revenue Code so the lessee can claim rental payments as tax deductions and the lessor can claim tax benefits of ownership such as depreciation and investment tax credit.

approve its amended lease rather than disclaim jurisdiction as it did in D.87961. The Federal Energy Regulatory Commission (FERC) allegedly had begun exercising jurisdiction over nuclear fuel leases under the Federal Power Act (Power Act) where state commissions had declined to do so. The FERC jurisdiction was premised on its authority over issuance of securities under Power Act Section 204(a). By labeling a lease as a form of security, FERC eliminated a major supposed benefit of lease financing, that of keeping the transaction off the utility's balance sheet. To preserve the usefulness of the transaction, Edison requested that the Commission assert its jurisdiction under the general provisions of PU Code Section 701 thereby removing the transaction from FERC's jurisdiction under Power Act Section 204(f) that exempts the company from the requirement under Section 204(a) where states exercise jurisdiction.

In both D.90379 dated June 5, 1979 in A.58778, as amended (SDG&E's original filing) and in D.90380 dated June 5, 1979 in A.58791 (Edison) the Commission assumed jurisdiction over the Leases under PU Code Section 701. The Commission also determined in these decisions that the Leases did not involve a commitment by either SDG&E or Edison as guarantors or issuers of indebtedness within the meaning of PU Code Sections 816 through 818, 830, or 851.

Historically, the Commission has issued the following orders in regard to the application of SDG&E and Edison for authority to enter into nuclear fuel leases to purchase fuel for the San Onofre Nuclear Generating Station:

<u>Decision No.</u>	<u>Date of Decision</u>	<u>Application No.</u>	<u>Company</u>	<u>Commission Order</u>
D.87961	Oct. 12, 1977	A.57379	Edison	Dismissed. Jurisdiction disclaimed under PU Code Sections 816 through 818, 830 & 851.
D.90379	June 5, 1979	A.58778	SDG&E	Granted. Commission assumed jurisdiction under PU Code Section 701.
D.90380	June 5, 1979	A.58791	Edison	Granted under PU Code Section 701.
D.93857	Dec. 15, 1981	A.60995	Edison	Granted under PU Code Section 701.

NOTE: D.92555 dated December 1980 in A.60046, as amended, granted authority to Pacific Gas and Electric Company to enter into a nuclear fuel lease and to establish its credit for the purchase of nuclear fuel for its nuclear power plant.



SDG&E's lease payments under the Lease are payable quarterly in arrears. These payments include (a) a quarterly lease charge, which represents an administrative charge and other allocated costs of SONGS and (b) a burn-up charge equal to the cost of the nuclear fuel consumed while the nuclear fuel is in the reactor producing heat. When the nuclear fuel is not in the reactor and producing heat, the utility could elect to have SONGS capitalize quarterly lease charges or daily portions of it so long as the election does not result in SONGS exceeding its funding capability under the Credit Agreement. The utility may consequently defer rental payments until those times during commercial operation when the nuclear fuel is in the reactor and producing heat for the production of electric energy.

SDG&E may, upon five days' notice, terminate its Lease under certain circumstances, including the following:

1. If it becomes subject to certain adverse interpretations, rules, regulations, or declarations with respect to its status or the conduct of its business;
2. If a nuclear incident (as defined in the Atomic Energy Act) occurs and SONGS gives notice of its belief that the incident may give rise to liability exceeding \$10,000,000; and

3. If SONGS gives three years' notice of a desire not to continue the Lease for the remaining term.

Upon the occurrence of any event of termination, title to the nuclear fuel will be transferred to the utility unless SONGS and its assignees have previously approved the transfer of title to the nuclear fuel to a third party designated by the utility.

Within 270 days, but not less than 90 days after notice of termination, SDG&E will be obligated to purchase the nuclear fuel from SONGS at a purchase price equal to the sum of the net stipulated loss value <sup>3/</sup> of the nuclear fuel plus the expenses of the transaction and of SONGS, including the unamortized cost of financing the acquisition of the nuclear fuel, both computed as of the day of purchase. Upon consummation of the purchase, all obligations of SDG&E under the Lease will terminate.

SONGS will receive alternative termination rights upon certain events of default, such as the failure to perform, insolvency, or liquidation of the Lessee (SDG&E). Upon the occurrence of an event of default, SONGS may do the following:

1. Treat the event of default as an event of termination with the results specified

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<sup>3/</sup> The stipulated loss value is defined as the excess of the fuel cost over the burn-up charges received by the lessor.

in the preceding paragraph and permitted at law or in equity for enforcement of the application provisions of the Lease or for damages and/or

2. Terminate the Lease.

If it terminates the Lease, SDG&E's interest in the nuclear fuel will terminate and SONGS may take possession of the nuclear fuel, to the extent not prohibited by law, and sell it. In the event of a termination, SONGS may recover from the utility damages and expenses resulting from the branch of the Lease, all accrued and unpaid amounts owed to it by the utility and liquidating damages.

Under the terms of the Lease, the amount of the quarterly lease payments payable by SDG&E will be measured by, among other things, the amount of costs incurred by SONGS in connection with its acquisition of the nuclear fuel. SONGS is presently financing its obligations under the Lease in accordance with a \$66,000,000 credit agreement with the Continental Illinois National Bank and Trust Company of Chicago and proposes, contingent upon continued execution of the Lease, to finance its obligations in accordance with the provisions of the new \$150,000,000 amended Credit Agreement with the Bank in substantially the form attached to the application as Exhibit B. Although SDG&E's approval to SONGS' entry into the amended Credit Agreement will be required, the utility is not a party to it.

SDG&E has been advised by SONGS that the Bank will receive assignments of the rents and certain other obligations under the Lease as security for letters of credit and loans outstanding under the amended Credit Agreement in addition to receiving a security interest in the nuclear fuel owned by SONGS.

SDG&E will not issue any stock or other evidence of interest or ownership in connection with this transaction, nor will the Lease be regarded as a bond, note, or other evidence of indebtedness. The utility will not, through its lease payments, acquire any ownership, equity, or reversionary interest in the nuclear fuel.

SDG&E, by letter dated January 19, 1982, states that the Commission has recognized the benefits of leasing nuclear fuel in prior decisions for California utilities, including SDG&E's D.90379 dated June 5, 1979 in A.58778 and most recently in Edison's D.93857 dated December 15, 1981 in A.60995. These benefits include:

1. Leasing nuclear fuel should reduce revenue requirements to the extent that an equity return component normally associated with the purchase of capital assets is not required from the ratepayers.
2. The ratepayers will be charged only for the fuel they are actually using (burn-up plus financing charges) and will be charged only when they are using the fuel.

3. Nuclear fuel leasing provides SDG&E an alternative method of procuring nuclear fuel without placing additional pressure on its capital markets and may indirectly result in a reduction of traditional financing costs.

SDG&E expects to save \$853,000 or approximately 11.3% of the \$11,459,000 estimated ownership costs shown below as compared to the \$10,238,000 estimated leasing costs of nuclear fuel. The calculations of the anticipated savings of one hypothetical batch are summarized as follows:

	<u>Estimated Costs</u>	
	<u>Lease</u>	<u>Ownership</u>
Accumulated Fuel Cost - Pre-Reactor	\$ 8,153,000	\$ 8,114,000
In Reactor Financing Cost		
Rate of Return Effect		
Lease a/ - 12.81%	\$2,085,000	
Ownership b/ - 20.61%		\$ 3,345,000
Total Revenue Requirement	\$10,238,000	\$11,459,000
Present Worth c/	\$6,685,000	\$ 7,538,000

(a) Includes:

	<u>4-Year Average Rate</u>
Commercial paper -	12.060%
Letters of Credit -	.625%
Administrative Fee -	<u>.125%</u>
Total	12.810%

- (b) Pre-tax rate of return based on 20.61% return granted to SDG&E. SONGS would pass to SDG&E any available investment tax credits relating to the leased nuclear fuel (D.93892 dated December 30, 1981 in A.59788).
- (c) Discounted at SDG&E's authorized rate of return of 12.92% assuming a 51-month burn-up for the cost of one hypothetical batch.

The Commission's Revenue Requirements Division has reviewed the application and finds this transaction to be essentially similar to the prior nuclear fuel lease transactions. The Division has no objection to SDG&E giving its consent, in this proceeding, to the terms and conditions of its amended Credit Agreement; however, the Division recommends that SDG&E's request for an open ended credit authorizations based on step increases to be approved by a letter to the Commission be denied. The Division believes this request is not in the interest of the ratepayers, and that current reviews of financing of this type is essential in order for the Commission to fulfill its function as required by the PU Code. We ~~agreed to~~ accept the Division's recommendation.

Findings of Fact

1. SDG&E, a California corporation, operates as a public utility under the jurisdiction of this Commission.
2. The nuclear fuel lease may permit SDG&E to acquire nuclear fuel for its San Onofre facility at significantly less cost than would be required for outright purchase of the nuclear fuel.
3. There is no known opposition and no reason to delay granting the authority requested.

Conclusions of Law

1. A public hearing is not necessary.
2. The application should be granted to the extent set forth in the order which follows.

O R D E R

IT IS ORDERED that:

1. San Diego Gas & Electric Company (SDG&E), on or after the effective date of this order, is authorized a modification of the terms and conditions set forth in D.90379 dated June 5, 1979 in A.58778 (1) to continue to lease nuclear fuel in accordance with terms and conditions attached to the application as Exhibit B and (2) to amend Exhibit B to increase the credit limit from \$66,000,000 to \$150,000,000, in a one time authorization, as requested in the letter dated December 18, 1981 to the Commission.
2. SDG&E's request to base future increases on \$50,000,000 steps upon the filing of a letter to the Commission is denied.

A.61075 RR/KLH/AFM/WPSC

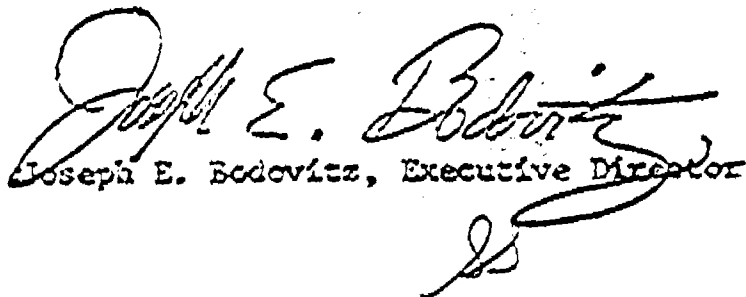
3. In all other respects, D.90379 dated June 5, 1979 in A.58778 shall remain in full force and effect.

This order is effective today.

Dated FEB 17 1982, at San Francisco, California.

JOHN E. BRYSON  
President  
RICHARD D. GRAVELLE  
LEONARD M. CRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. GREW  
Commissioners

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

  
Joseph E. Bodovitz, Executive Director