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Decision No. 90380 JUN 5 1979

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SOUTHERN CALIFORNIA)
 EDISON COMPANY for an Order Approving)
 the Terms and Conditions of a Nuclear)
 Fuel Lease.)

Application No. 58791
 (Filed April 9, 1979)

O P I N I O N

Southern California Edison Company (Edison) seeks an order from the Commission approving the terms and conditions of a nuclear fuel lease dated as of December 19, 1975, as amended and restated as of June 1, 1977 (Lease), and of a proposed amendment to the Lease.

This request for authorization is made pursuant to Section 701 of the Public Utilities Code. Notice of the application appeared on the Commission's Daily Calendar of April 10, 1979.

Edison is a California corporation, and is primarily engaged in the business of providing electric service in portions of central and southern California.

A copy of the Lease is attached to the application as Exhibit B. The company presently has in excess of \$90,000,000 of nuclear fuel subject to the Lease. Prior to its execution of the original lease in 1975, the company informed the staff of the Commission, through conferences and written communications, of the financial and other advantages of the lease arrangement contemplated at that time. Edison was advised by a letter dated December 22, 1975 that the staff took no exception to the proposal but reserved the right to review the matter further in any future rate proceeding.

Prior to the execution of the amended and restated lease, Edison, by Decision No. 87961, dated October 12, 1977 in Application No. 57379, received a disclaimer of jurisdiction from the Commission on the grounds that there was no commitment by the company as a guarantor or issuer of indebtedness under Section 816, 817, 818, 830 or 851 of the Public Utilities Code. In that proceeding the Commission staff took no exception to the transaction and recognized that the reasonableness of the Lease would be subject to review in any future proceeding. The Operations Division of the Commission had no objection to the execution and delivery of the Lease. The Finance Division analyzed the transaction and concluded that the Lease was a true lease 1/ and not a commitment as a guarantor of indebtedness.

Edison is currently involved in negotiating changes to certain documents connected with the Lease. The utility believes that the negotiations should not result in significant changes in the terms and conditions of the Lease other than those incidental to providing for a reduction of costs to Edison, an increase in the funding limit available to San Onofre Fuel Company (Fuel Company) from \$187,000,000 to \$300,000,000 and adding Chemical Bank and Crocker National Bank as parties to

1/ The Financial Accounting Standards Board, in accordance with Statement of Financial and Accounting Standards No. 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 definition, 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.

the Credit Agreement (Credit Agreement) under which the Fuel Company finances the purchase of nuclear fuel. The Fuel Company is the lessor under the Lease and will be the lessor under the lease currently being negotiated (Amended Lease). The Fuel Company will enter into the Credit Agreement simultaneously with execution of the Amended Lease. Although Edison's approval of the Credit Agreement is required, Edison will not be a party to the Credit Agreement.

The Amended Lease will be similar in all material aspects to the Lease. The Lease and the Amended Lease are hereinafter referred to collectively as the Nuclear Fuel Lease. Pursuant to the terms of the Nuclear Fuel Lease, Edison is leasing and proposes to continue to lease all or a portion of its undivided interest in nuclear fuel requirements for Units 1, 2 and 3 at its jointly-owned San Onofre Generating Station (San Diego Gas & Electric Company has an undivided 20% interest in this facility).

The nuclear fuel to be subjected to the Nuclear Fuel Lease includes nuclear fuel in the mining, milling, conversion, enrichment, heat production, reprocessing (if and when available) and storage stages. Edison leases the nuclear fuel from the Fuel Company, 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. Edison alleges that neither BSC, its subsidiaries, including Fuel Company, Goldman, Sachs & Co., nor any persons affiliated with any of these companies, are affiliated with Edison or any of its subsidiaries.

The more important provisions of the Nuclear Fuel Lease are as follows: (1) Payment for the acquisition of nuclear fuel

will be made by Fuel Company or by Edison to be reimbursed by Fuel Company. (2) Title to the nuclear fuel will pass directly to Fuel Company from the suppliers of uranium ore and will remain with Fuel Company throughout the term of the Nuclear Fuel Lease unless earlier terminated. (3) The Nuclear Fuel Lease provides that it is to be a completely net lease which means that Edison 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 Nuclear Fuel Lease is fifty years and, unless terminated earlier, will terminate on December 19, 2025.

Edison's lease payments under the Nuclear Fuel Lease will be payable quarterly in arrears. These payments will include (a) a quarterly lease charge, which will represent an administrative charge and other allocated costs of Fuel Company 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, Edison may elect to have Fuel Company capitalize quarterly lease charges or daily portions thereof so long as such election will not result in Fuel Company exceeding its funding capability under the Credit Agreement. Edison may, consequently, subject to the foregoing limitation, 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.

Edison may, upon five days' notice, terminate the Nuclear Fuel Lease at any time. Fuel Company may terminate the Nuclear Fuel 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

Fuel Company gives notice of its belief that such incident may give rise to liability exceeding \$10,000,000; and (3) if Fuel Company gives three years' notice of its desire not to continue the Nuclear Fuel Lease for the remaining term. Upon the occurrence of any such event of termination, title to the nuclear fuel will be transferred to Edison unless Fuel Company and its assignees shall have theretofore 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, Edison will be obligated to purchase the nuclear fuel from Fuel Company at a purchase price equal to the sum of the net stipulated loss value ^{2/} of the nuclear fuel plus the expenses of the transaction and of Fuel Company, including the unamortized cost of financing the acquisition of the nuclear fuel, both computed as of the day of purchase. Upon consummation of such purchase, all obligations of Edison under the Lease will terminate.

Fuel Company will receive alternative termination rights upon certain events of default, such as the failure to perform, insolvency, or liquidation of the lessee (Edison). Upon the occurrence of an event of default, the Fuel Company may (a) treat the event of default as an event of termination with the results specified in the preceding paragraph and proceed at law or in equity for enforcement of the applicable provisions of the Lease or for damages, and/or (b) may terminate the Nuclear Fuel Lease. If it terminates the Lease, Edison's interest in the nuclear fuel will terminate and the Fuel Company may take possession of the nuclear fuel, to the extent not prohibited by law, and sell it. In the event of such a termination, the Fuel

^{2/} The stipulated loss value is defined as the excess of the fuel cost over the burn-up charges received by the lessor.

Company may recover from the utility damages and expenses resulting from the breach of the Nuclear Fuel Lease, all accrued and unpaid amounts owed to it by the utility, and liquidated damages.

Under the terms of the Nuclear Fuel Lease, the amount of the quarterly lease payments by Edison will be measured by, among other things, the amount of costs incurred by Fuel Company in connection with its acquisition of the nuclear fuel. The Fuel Company is presently financing its obligations under the Nuclear Fuel Lease in accordance with a \$187,000,000 credit agreement with Manufacturers Hanover Trust Company and Security Pacific National Bank and proposes, contingent upon execution of the Amended Lease, to finance such obligations in accordance with the provisions of a \$300,000,000 amended credit agreement with Manufacturers Hanover Trust Company, Security Pacific National Bank, Chemical Bank and Crocker National Bank in substantially the same form as the Credit Agreement attached to the application as Exhibit C. Although Edison's approval of the Fuel Company's entry into the amended credit agreement will be required, the utility is not a party to, nor does it have any obligation under, the Credit Agreement.

Edison will not issue any stock or other evidence of interest or ownership in connection with this transaction, nor will the Amended 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.

Among the major reasons cited for leasing nuclear fuel are the following:

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. In addition 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.

2. Nuclear fuel leasing provides Edison an alternative method of procuring nuclear fuel without placing additional pressure on its traditional capital market and may indirectly result in a reduction of traditional financing costs.

Edison has added further calculations to the record which indicate that under the terms of the Nuclear Fuel Lease, Edison expects to save as much as 15 percent of the expense which would result from its outright purchase of the same nuclear fuel.

The Operations Division and the Finance Division of the Commission's staff have reviewed the application and find this transaction to be essentially similar to the prior lease transactions. They have no objection to the execution and delivery of the Nuclear Fuel Lease by Edison.

A special problem has arisen which has led Edison to request the Commission to approve the Amended Lease, rather than disclaiming jurisdiction as the Commission did in Decision No. 87961. The Federal Energy Regulatory Commission (FERC) allegedly has begun exercising jurisdiction over nuclear fuel leases under the Federal Power Act (Power Act) where state commissions have declined to do so. The FERC jurisdiction is premised on its authority over issuance of securities under Section 204(a) of the Power Act. By labeling a lease as a form of security, however, the FERC eliminates 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 requests that the Commission assert its jurisdiction pursuant to the general provisions of Section 701 of the Public Utilities Code, thereby removing the transaction

from FERC jurisdiction pursuant to Section 204(f) of the Power Act.

Section 701 of the Public Utilities Code grants the Commission broad power to do all things necessary and convenient in the exercise of its general power and jurisdiction to supervise and regulate public utilities and to keep rates reasonable. Edison urges that it is in the best interests of the ratepayers of California if this Commission, which has general jurisdiction over and which regulates Edison's rates and business, takes jurisdiction over this transaction. The financial importance of the Nuclear Fuel Lease along with the unique and essential nature of the leased material to the operation of the San Onofre Nuclear Generating Station allegedly make this lease arrangement a far different type of transaction than any other type of fuel acquisition or lease engaged in by a public utility. Therefore, this Commission's jurisdiction could be premised on its authority to insure adequate fuel supply, to maintain adequate electric service, and to set reasonable rates insofar as leasing is less costly than ownership.

Evidence offered by Edison in this proceeding indicates that the Nuclear Fuel Lease may result in significant savings as compared to the cost of outright purchase of nuclear fuel. By entering into the Nuclear Fuel Lease, however, Edison will lose a degree of control over the timing of its fuel investments, in that an unexpected termination of the Nuclear Fuel Lease might confront Edison with the obligation to purchase large quantities of nuclear fuel under the most disadvantageous of circumstances.

Edison acknowledges that the Nuclear Fuel Lease will be subject to review in future rate proceedings, and cites this fact as warranting ex parte processing of its application. Consequently, the Commission states unequivocally that its acceptance of jurisdiction over, and its approval of, Edison's

entry into the Nuclear Fuel Lease are intended solely to facilitate Edison's participation in that transaction, at Edison's request, and do not indicate any judgment by the Commission as to the prudence of Edison's participation in such transaction.

The authorization granted herein is for the purpose of this proceeding only and is not to be construed as indicative of the amount of expenditures, if any, under the Nuclear Fuel Lease which shall be approved as proper operating expenses in current or subsequent proceedings for the determination of just and reasonable rates. Nor should this authorization be construed as indicative of the treatment which the Commission will accord to nuclear fuel acquisition arrangements to be undertaken by Edison or other utilities with respect to other nuclear generating facilities.

The application indicates that Edison desires an order in this proceeding to become effective on the date it is issued. Edison has indicated to the staff that under the revised terms of the Amended Lease it will, at the present time, save an estimated \$50,000 per month, from the date it is authorized by this Commission.

Findings of Fact

1. The Nuclear Fuel Lease involves no commitment by Edison as guarantor or issuer of indebtedness within the meaning of Sections 816, 817, 818, and 830 or 851 of the Public Utilities Code.
2. The Nuclear Fuel Lease is a true lease.
3. The Nuclear Fuel Lease may permit Edison to acquire nuclear fuel required to operate San Onofre Units 1, 2, and 3 at significantly less cost than would be required for outright

purchase of such fuel.

4. The Nuclear Fuel Lease may significantly limit Edison's ability to control the timing of its financial obligations in connection with the acquisition of nuclear fuel.


Conclusions of Law

1. Section 701 of the Public Utilities Code grants this Commission jurisdiction over Edison's transaction, and to approve the Nuclear Fuel Lease.
2. A public hearing is not necessary.
3. The application should be granted to the extent set forth in the order which follows.
4. There is no known opposition and there is no reason to delay granting the authority requested.


O R D E R

IT IS ORDERED that Southern California Edison Company, on or after the effective date hereof, is authorized to lease nuclear fuel in accordance with terms and provisions consistent with those contained in documents attached to its application as Exhibit B. The effective date of this order shall be the date hereof.


Dated at San Francisco, California, this 5th day of JUNE, 1979.



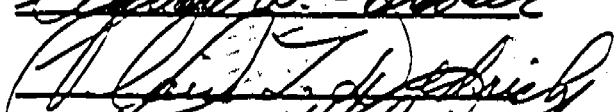
 President




 William L. Ferguson



 Robert P. Howell



 Robert J. DeLoach



 Commissioner