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Decision No. 90791 SEP 12 1979**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SOUTHERN CALIFORNIA )  
 EDISON COMPANY, to execute and de- )  
 liver a Bank Loan Agreement and to )  
 engage in secured borrowings there- )  
 under in an aggregate amount of not )  
 to exceed \$50,000,000; to execute )  
 and deliver a Forty-Third Supple- )  
 mental Indenture; and for exemption )  
 from the Competitive Bidding Rule )  
 of the California Public Utilities )  
 Commission. )

Application No. 59009  
 (Filed July 23, 1979)

O P I N I O N

Southern California Edison Company (Edison) requests authority (a) to issue, sell and deliver not exceeding \$50,000,000 aggregate principal amount of its First and Refunding Mortgage Bonds, Series LL, Due 1987; (b) to execute and deliver a Secured Bank Loan Agreement; (c) to execute and deliver a Forty-Third Supplemental Indenture; (d) to exempt the proposed Bonds and Loan Agreement from the Commission's Competitive Bidding Rule; and (e) to issue short-term debt in the amount outstanding not to exceed \$50,000,000 at any one time in lieu of exercising Edison's rights to borrow under the Secured Bank Loan Agreement.

Edison requests this authority pursuant to Sections 816, 817, 818, 823(c) and 851 of the California Public Utilities Code. Notice of the filing of the application was published on the Commission's Daily Calendar of July 25, 1979.

Edison is a California corporation primarily engaged in the business of generating, transmitting, distributing and selling electric energy in portions of Central and Southern California as a public utility subject to the jurisdiction of the Commission.

A summary of the terms of the Loan Agreement has been furnished by Edison and is attached as Exhibit "E" to the application.

The application indicates that the proposed Loan Agreement will involve borrowings by Edison from certain foreign commercial banks conducting business in the United States not to exceed \$50,000,000 at any time at Edison's option during the twelve-month period after the date of execution of the Loan Agreement. Borrowings during the twelve months will bear interest at a rate equivalent to the London Interbank Offering Rate (LIBOR) plus 5/8th of 1% per annum from the date of such borrowings to the expiration of the twelfth month following the execution of the Loan Agreement. LIBOR will be calculated on a three, six or nine months' maturity basis, at Edison's option. After the expiration of twelve months from the date of execution of the Loan Agreement, Edison will borrow that portion of \$50,000,000 not theretofore borrowed by it under the terms of the Loan Agreement and all borrowings thereafter outstanding under the Loan Agreement will bear interest at a fixed interest rate of 9-5/8% per annum. The fixed interest rate borrowings will mature 6-1/2 years from the date of consummation (7-1/2 years from the date of execution of the Loan Agreement).

The application further indicates that the Loan Agreement will provide for the issuance and delivery under contemporaneously executed pledge agreement, of Bonds in principal amounts equal to the amounts of such borrowings as security for such borrowings. The Bonds so issued will bear terms consistent with the borrowings to be made by Edison under the Loan Agreement and will be issued in accordance with the provisions of Edison's Trust Indenture dated as of October 1, 1923, and amendatory and supplemental indentures and a proposed Forty-Third Supplemental Indenture, Edison's proposed Forty-Third Indenture will set forth, among other things, the aggregate principal amount, interest rate, redemption provisions and maturity dates of the Bonds. The transactions provided for in the Loan Agreement will be governed by and in accordance with the laws of the State of New York.

The application also indicates that, based upon historical information (as set forth in Exhibit "F" to the application) and present market analysis, Edison may be able to issue ancillary short-term debt at interest rates which are more favorable to Edison and its ratepayers than the interest rates which would be available during the first twelve months through Edison's contemplated borrowings under the proposed Loan Agreement. The nature of the commitment of the banks participating in the Loan Agreement would provide ancillary debt lenders a reasonably assured source of repayment and thus to make available favorable ancillary debt interest rates under then existing market circumstances. Edison's issuance of ancillary debt during the first twelve months from the date of execution of the Loan Agreement would be in lieu of Edison's exercising its ability to borrow directly from the credit made available under the Loan Agreement. The aggregate principal amount of additional Edison indebtedness which may be outstanding at any time pursuant to this transactions, including the issuance of ancillary short-term debt, will not exceed \$50,000,000. Therefore, Edison requests authorization to issue and have outstanding at any one time ancillary debt, in addition to that previously authorized, of not to exceed \$50,000,000 during the first twelve months after the date of execution of the Loan Agreement.

The application states that the flexibility and favorable financial terms to be evidenced by the Loan Agreement are only obtainable through a private placement wherein the parties to the transaction may negotiate the definitive terms of the transaction. Edison will pay a front-end fee of one percent which will include payment of services rendered by the investment banking firm arranging the placement of the transaction, and by the agent bank managing and underwriting the transaction. In its Exhibit "G" to the application, Edison states that such fee compares favorably with those paid by other U.S. companies in recent issues of long-term debt placed with foreign lenders.

The Commission notes that it has previously urged Edison to explore alternatives in regard to methods of financing. Innovative structuring of financing terms and the private placement of debt to overseas institutional lenders who are capable of utilizing funding options available in the U.S. capital market are such alternatives. The financial flexibility afforded to Edison by virtue of such financing is in the ratepayers' interest.

Edison requests an order of the Commission exempting this proposed financing from the Commission's Competitive Bidding Rule as set forth in Decision No. 38614, dated January 15, 1946, as amended from time-to-time in Case No. 4761. In Exhibit "G" to its application, Edison has demonstrated that the proposed financing when compared with public bond offerings with similar maturity and call provisions is favored by 27 basis points per annum on a cost-to-maturity under the current market conditions and by 70 basis points under the then existing market conditions where the terms of the financing were being negotiated. In addition, Edison sets forth other expected benefits of the proposed financing in Exhibit "G" to its application which are summarized as follows:

1. The option to prepay under favorable terms, with little or no prepayment penalty after a two-year period following the execution of the Loan Agreement, enhances Edison's financial flexibility in the event that the current level of high interest rates is reduced.
2. Setting interest at a fixed rate, beginning the second year from the execution of the Loan Agreement, protects Edison against interest rate increases.
3. The banks' commitment to lend Edison at any time at Edison's request during the first year of the Loan Agreement (a) provides Edison support for the issuance of ancillary debt, (b) allows Edison to choose the lowest cost of financing, and (c) increases Edison's flexibility in timing other financings.
4. The utilization of overseas capital markets expands the source of financing available to Edison and indirectly reduces the cost of its other financings.

Edison's current estimates of market conditions indicate that, during the first twelve months of the proposed Loan Agreement, Edison's borrowings thereunder may entail the payment of interest at rates which may exceed 10% per annum. Under certain circumstances, the "California Usury Law" contained in Article XV, Section 1, of the Constitution of the State of California and in Section 1916-1, et seq, of West's California Civil Code (1970) prohibits, in this State, the charging of interest on any loan at an annual rate of interest in excess of 10%. Therefore, Edison requests the Commission, in the exercise of its powers conferred by the California Legislature, to exercise its authority:

1. To permit Edison to borrow pursuant to the terms of the Loan Agreement at an annual cost of money exceeding 10% and to determine that such borrowings, including the Bonds delivered as security for such borrowings, will not violate the California Usury Law; and
2. To determine that the situation and structuring of the Loan Agreement in and pursuant to the laws of the State of New York is not inconsistent with the public policy of the State of California nor violative of any fundamental policy of the State of California, and to authorize such borrowings as so structured; and
3. To place such 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.

As of March 31, 1979, Edison's uncapitalized construction expenditures amounted to approximately \$1,120,870,000. Edison would use the proceeds from its borrowings under the Loan Agreement to reimburse its treasury, in part, for these uncapitalized construction expenditures. Edison proposes to repay, from such general treasury funds, a portion of its short-term debt outstanding at the time the proceeds are received.

Edison proposes to use the net proceeds derived from the issuance of its ancillary debt as contemplated in its application for necessary and proper purposes to promote the legitimate objects of a public utility, including the payment of current expenses.

Edison's capital ratios as of March 31, 1979, and as adjusted for the effect on Edison's (i) borrowings pursuant to the Loan Agreement at an assumed principal amount of \$50,000,000; (ii) the sale of 354,061 shares of Common Stock under Edison's Employee Stock Purchase Plan;<sup>1/</sup> (iii) the sale of 525,000 shares of \$100 Cumulative Preferred Stock, 8.70% Series A on April 25, 1979;<sup>2/</sup> (iv) the sale of 285,166 shares of Common Stock under Edison's Dividend Reinvestment and Stock Purchase Plan; (v) the sale of 7,647 shares of Common Stock under Edison's Tax Reduction Act Employee Stock Ownership Plan; (vi) the issuance of \$105 million principal amount of First and Refunding Mortgage Bonds, Series KK, Due 2004 on June 29, 1979;<sup>3/</sup> and (vii) 159,998 shares of Common Stock issued due to conversions of 217,658 shares of Preference Stock, 5.20% Convertible Series are as follows:

	<u>March 31, 1979</u>	<u>Pro Forma</u>
Mortgage Bonds	45.7%	46.0%
Convertible Debentures	1.4	1.3
Other Long-Term Debt	<u>0.3</u>	<u>0.3</u>
Total Long-Term Debt	47.4%	47.6%
Preferred Stock	11.3%	13.0%
Preference Stock	1.8	1.6
Common Stock Equity	<u>39.5</u>	<u>37.8</u>
Total	<u>100.0%</u>	<u>100.0%</u>

<sup>1/</sup> Authorized by Decision No. 90059, dated March 13, 1979, in Application No. 58606.

<sup>2/</sup> Authorized by Decision No. 90103, dated March 27, 1979, in Application No. 58668.

<sup>3/</sup> Authorized by Decision No. 90438, dated June 19, 1979, in Application No. 58832.

Edison's construction expenditures for the years 1979 and 1980 will approximate \$1,281,970,000. Details of this construction program, estimated as of April 19, 1979, are as follows:

	(Thousands of Dollars)		
	<u>1979</u>	<u>1980</u>	<u>Total</u>
Electric Generating Plants	\$557,080	\$546,574	\$1,103,654
Electric Transmission Lines and Substations	52,673	77,438	130,111
Electric Distribution Lines and Substations	143,995	147,640	291,635
Other Expenditures	<u>21,920</u>	<u>17,650</u>	<u>39,570</u>
Total	\$775,668	\$789,302	\$1,564,970
Less: Allowance for Funds Used During Construction	<u>123,000</u>	<u>160,000</u>	<u>283,000</u>
Funds Used or Required for Construction Expenditures	<u>\$652,668</u>	<u>\$629,302</u>	<u>\$1,281,970</u>

The staff of the Commission's Revenue Requirements Division has reviewed Edison's 1979 and 1980 construction program, which is attached as Exhibit "C" to the application, and believes that the estimated construction expenditures are reasonable and has no objection to the proposed borrowings pursuant to the Loan Agreement and the issuance of ancillary debt as contemplated in the application. The Revenue Requirements Division reserves the right, however, to reconsider the reasonableness of any construction expenditures in future proceedings.

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Edison's cash requirements for 1979 and 1980, estimated as of June 8, 1979, are as follows:

	(Thousands of Dollars)		
	1979	1980	Total
Funds Used or Required for Construction Expenditures	\$652,668	\$629,302	\$1,281,970
Maturities:			
First and Refunding Mortgage Bonds: Series F, due 8/15/79 (3%)	30,000	-	30,000
First Mortgage Bonds (CEP): Series of 2-7/8, due 6/1/80	-	6,000	6,000
Convertible debentures due 8/15/80, (3-1/8%)	-	74,902	74,902
5-1/2% Promissory Notes	3,737	3,642	7,379
Short-Term Debt (Temporary Investments) Outstanding as of Beginning-of-Year	(61,000)	-	(61,000)
	<u>625,405</u>	<u>713,846</u>	<u>1,339,251</u>
Less: Estimated Cash Available from Internal Sources	<u>80,600</u>	<u>43,000</u>	<u>123,600</u>
Additional New Money Required from Outside Sources	<u>\$544,805</u>	<u>\$670,846</u>	<u>\$1,215,651</u>



	1979	1980	Total
(Thousands of Dollars)			
To be provided as follows:			
(1) Estimated proceeds from sale of common stock under:			
Dividend Reinvestment and Stock Purchase Plan Authorized by Decision No. 89463, dated October 3, 1978, in Application No. 58268	\$ 23,700	\$ 26,070	\$ 49,770
Employee Stock Purchase Plan Authorized by Decision No. 90059, dated March 31, 1979, in Application No. 58606	22,600	24,860	47,460
Tax Reduction Act Stock Ownership Plan Authorized by Decision No. 87785, dated August 30, 1977, in Application No. 57478	184	5,000	5,184
(2) Proceeds from sale of 525,000 shares of \$100 Cumulative Preferred Stock, 8.70% Series A Authorized by Decision No. 90103 dated March 27, 1979, in Application No. 58668	52,300	-	52,300
(3) Proceeds from sale of First and Refunding Mortgage Bonds, Series KK Authorized by Decision No. 90438 dated June 19, 1979, in Application No. 58832	105,000	-	105,000
(4) Estimated proceeds from sale of Cumulative Preferred Stock, 9.00% Series	75,000	-	75,000
(5) Estimated proceeds from sale of First and Refunding Mortgage Bonds, Series LL	50,000	-	50,000
(6) Additional Cash Requirements	216,021	614,916	830,937
	<u>\$544,805</u>	<u>\$670,846</u>	<u>\$1,215,651</u>

The Revenue Requirements Division of the Commission staff has analyzed the cash requirement forecast attached to Edison's application as Exhibit "D", and determined that internally generated funds will provide only 13% of the capital expenditures estimated for 1979 and 6% for those estimated in 1980. The Revenue Requirements Division has concluded that the proposed borrowings under the Loan Agreement and the issuance of ancillary debt as contemplated in the application will therefore be necessary to help Edison meet its cash requirements.

Findings of Fact

1. Southern California Edison Company is a California corporation operating under the jurisdiction of this Commission.
2. Southern California Edison Company has need for external funds for the purposes set forth in the application.
3. The proposed bond issue under the Loan Agreement and the issuance of ancillary debt, short-term, as contemplated in the application are for proper purposes.
4. The proposed Indenture would not be adverse to the public interest.
5. The sale of the proposed bonds should not be required to be through competitive bidding.
6. The money, property or labor to be procured or paid for by the issue of the bonds and the additional bank debt herein authorized are reasonably required for the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.
7. If prevailing market conditions necessitate that Southern California Edison Company's proposed bonds be issued and sold with a rate of interest exceeding the limitations provided in Article XV, Section 1 of the California Constitution, then the public interest requires that this Commission authorize said issuance and sale irrespective of limitations contained in the California Usury Law.

8. 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.

9. The Legislature has conferred upon this Commission the authority to regulate the issuance of public utility securities, including evidence of indebtedness, and to prescribe restrictions and conditions as it deems reasonable and necessary (Sections 816 et seq. of the Public Utilities Code).

10. Pursuant to the plenary powers granted to the Legislature in Article XII, Section 5 of the California Constitution, it conferred upon this Commission comprehensive and exclusive power over the issuance of public utility securities, including evidence of indebtedness, and the California Usury Law cannot be applied as a restriction on this Commission' regulation of such issuances of public utility securities, including the establishment of a reasonable rate of interest.

11. In addition to the plenary powers granted to the Legislature by the California Constitution pursuant to which the Legislature conferred upon this Commission exclusive authority to regulate the issuance of public utility securities, including evidence of indebtedness, by public utilities (Sections 816 et seq. of the Public Utilities Code), irrespective of the usury law, judicial interpretation of the California Usury Law has exempted corporate bonds of public utilities from operation of the usury law.

12. If the usury limitation contained in Article XV, Section 1 of the California Constitution and the Usury Law Initiative Act is exceeded, but transaction is authorized by this Commission and is the best Southern California Edison Company (Edison) can obtain because of market conditions, 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 bonds in compliance with authorization by this Commission, persons collecting interest on such authorized bonds are not subject to the usury law sanctions.

13. This Commission does not object to Southern California Edison Company situating and structuring the proposed issuance and sale of the bonds in the State of New York.

14. There is no known opposition and no reason to delay granting the authority requested in the application.

Conclusions of Law:

1. A public hearing is not necessary.

2. As set forth in Decisions Nos. 83411, 84392 and 85983, among others, we further conclude that the usury limitations on interest contained in former Article XX, Section 22 (now Article XV) of the California Constitution and the Usury Law Initiative Act do not apply to the issuance of public utility securities, including evidences of indebtedness, lawfully authorized by the Public Utilities Commission.

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

The action taken herein is for the purposes of this proceeding only and is not to be construed as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company may execute and deliver a Secured Bank Loan Agreement which contains terms substantially consistent with those set forth in these proceedings and engage in borrowings as contemplated therein.

2. Southern California Edison Company may issue and deliver not to exceed an aggregate of \$50,000,000 of its First and Refunding Mortgage Bonds, Series LL, Due 1987 and deliver such Bonds pursuant to the terms of a pledge agreement as security for its borrowings under the Secured Bank Loan Agreement.

3. Southern California Edison Company may issue debt with maturities not exceeding twelve months in an aggregate amount at any one time outstanding of not to exceed \$50,000,000 in lieu of exercising its rights to borrow under the Secured Bank Loan Agreement during the first twelve months from the date thereof, said authorization to be in excess of the authorization previously granted to Edison in accordance with Public Utilities Code Section 823(c) (Application No. 57846, Decision No. 88616).

4. The proposed sale of the Bonds is exempt from the Commission's Competitive Bidding Rule set forth in Decision No. 38614, dated January 15, 1946 as amended in Case No. 4761.

5. Southern California Edison Company may execute and deliver a Forty-Third Supplemental Indenture in a form which Edison believes appropriate and which is consistent with the applicable terms and conditions of the Secured Bank Loan Agreement and the Bonds.

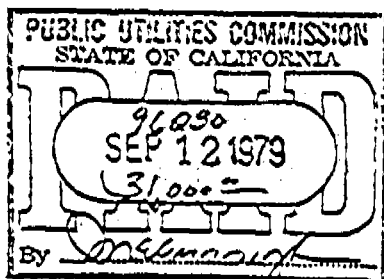
6. Southern California Edison Company shall apply the net proceeds from borrowings under the Secured Bank Loan Agreement for the purposes referred to in the application.

7. Southern California Edison Company shall use the net proceeds from its issuance of herein authorized debt with maturities not exceeding twelve months for the purposes set forth in the application.

8. Neither Southern California Edison Company, nor anyone 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 cost of money payable pursuant to the borrowings made pursuant to the Secured Bank Loan Agreement or the Bonds delivered as contemplated thereby exceeds the maximum 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.

9. This order shall become effective upon payment by Southern California Edison Company of the fee prescribed in Section 1904(b) of the Public Utilities Code, which fee is \$31,000.

Dated SEP 12 1979, at San Francisco, California.



*John E. Byron*  
President  
*William L. Stinson*  
*Richard J. ...*  
*James ...*  
Commissioners