

Decision 93857 DEC 15 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SOUTHERN CALIFORNIA)
EDISON COMPANY for an Order Modify-)
ing Decision No. 90380 dated)
June 5, 1979 Approving an Amended)
Nuclear Fuel Lease.)

Application 60995
(Filed October 19, 1981)

O P I N I O N

By Decision (D.) 90380 dated June 5, 1979 in Application (A.) 58791, Southern California Edison Company (Edison) was authorized under Public Utilities (PU) Code Section 701, to lease nuclear fuel up to a credit limit of \$300,000,000 in accordance with term and conditions in Exhibit B attached to A.58791.

In the current application for modification of D.90380, Edison requests authority, under PU Code Section 701, as follows:

1. To continue to lease nuclear fuel and
2. To increase the credit limit to finance the purchase of nuclear fuel, under a credit agreement, from \$300,000,000 to \$500,000,000 aggregate principal amount.

This decision grants Edison the authority to amend and continue its nuclear fuel lease. It allows Edison to modify the lease to sell, upon Commission approval, 4.95% of its undivided interest in San Onofre Nuclear Generating Station Units 2 and 3 to

certain of its resale customers. It also allows Edison to increase the credit limit to finance the purchase of nuclear fuel from \$300,000,000 to \$500,000,000.

Notice of filing of the application for modification of D.90380 appeared in the Commission's Daily Calendar of October 20, 1981. No protests have been received.

Edison, a California corporation, engages in the business of generating, purchasing, transmitting, distributing, and selling electric energy in portions of central and southern California.

Edison executed and delivered a Nuclear Fuel Lease dated as of December 19, 1975 (Original Lease), amended and restated as of June 1, 1977 (1977 Lease) and further amended and restated as of August 28, 1979 (1979 Lease). Edison presently has in excess of \$280,000,000 of nuclear fuel subject to the 1979 Lease.

Prior to its execution of the Original Lease, Edison informed the Commission's Revenue Requirements Division (Division), 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 Division took no exception to the proposal but reserved the right to review the matter in any future rate proceeding.

Prior to the execution of the 1977 Lease, Edison received a disclaimer of jurisdiction from the Commission on the grounds that there was no commitment by Edison as a guarantor or issuer of indebtedness under PU Code Sections 816 through 818, 830, or 851 (D.87161 dated October 12, 1977 in A.57379).

Prior to the execution of the 1979 Lease, the Commission approved Edison's lease of nuclear fuel in accordance with the terms and conditions of the 1979 Lease (D.90380 dated June 5, 1979 in A.58791). This approval was granted under PU Code Section 701. At that time, the Commission determined that the 1979 Lease did not involve a commitment by Edison as guarantor or issuer of indebtedness within the meaning of PU Code Sections 816 through 818, 830, or 851.

Edison is currently involved in negotiating changes to the 1979 Lease and certain documents connected with it. These changes are discussed below:

- A. Amendment to the 1979 Lease - In 1980, Edison's ownership share in San Onofre Nuclear Generating Station Units 2 and 3 was reduced from 80% to 76.55%. This resulted from the purchase by the cities of Anaheim and Riverside of 1.66% and 1.79%, respectively. The Commission approved these purchases.^{1/} In 1981, the city of Anaheim contracted, subject to regulatory approval, to purchase an additional 1.5% share of San Onofre

^{1/} D.88708 dated April 18, 1978 in A.57707.

Generating Station Units 2 and 3, reducing Edison's original 80% share to 75.05%. Edison is seeking the Commission's approval of the additional 1.5% sale to the city of Anaheim.^{2/} Edison is currently negotiating an amendment (Amendment) to the 1979 Lease. The Amendment is designed only to adjust the mechanics of the 1979 Lease to reflect the fact that nuclear fuel will be leased for Edison's 75.05% share of San Onofre Generating Station Units 2 and 3 rather than for the original 80% share. As described above, approval for the actual sales has been obtained or is currently being sought in independent proceedings before the Commission. The Amendment, substantially in the form which Edison believes it will be executed, is attached to the application as Exhibit B. The staff of the Commission's Revenue Requirements Division has reviewed the Amendment and does not believe that the Amendment materially alters the terms and conditions of the 1979 Lease.

The nuclear fuel related to the 1979 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 San Onofre Fuel Company (Fuel Company), which is a wholly owned subsidiary of Broad Street Contract Services, Inc. (BSC), a Delaware corporation,

^{2/} A.60916 which is currently being considered by the Commission.

engaged with its other subsidiaries in a general leasing business. BSC is owned by a partnership composed of partners who are partners of Goldman, Sachs & Co., an investment banking firm.

Payments for the acquisition of nuclear fuel are made by the Fuel Company or by Edison to be reimbursed by the Fuel Company. Title to the nuclear fuel passes directly to the Fuel Company from the suppliers of uranium ore and remains with the Fuel Company throughout the term of the 1979 Lease unless terminated earlier. The 1979 Lease provides that it is to be a net lease which means that Edison is 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. The term of the 1979 Lease is about fifty years and, unless terminated earlier, will terminate on December 19, 2025.

Edison's lease payments under the 1979 Lease are payable quarterly in arrears. These payments include the following:

1. A quarterly lease charge, which represents an administrative charge and other allocated costs of the Fuel Company and
2. 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 the Fuel Company capitalize quarterly lease charges or daily portions of it so long as this election will not result in the Fuel Company's exceeding its funding capability under the 1979 Credit Agreement (as defined below). 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 5 days' notice, terminate the 1979 Lease at any time. The Fuel Company may terminate the 1979 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 occurs (as defined in the Atomic Energy Act of 1954, as amended) and the Fuel Company gives notice of its belief that this incident may give rise to liability exceeding \$10,000,000; and
3. If the Fuel Company gives three years' notice of its desire not to continue the 1979 Lease for the remaining term.

Upon the occurrence of any event of termination, title to the nuclear fuel is transferred to Edison unless the Fuel Company and its assignees have approved the transfer of title to the nuclear fuel to a third party designated by Edison. Within 270 days, but not less than 90 days after notice of termination, Edison is obligated to purchase the nuclear fuel from the Fuel Company at a purchase price equal to the sum of the net stipulated loss value^{3/} of the nuclear fuel, plus the expenses of the transaction and the expenses of the 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 the purchase, all obligations of Edison, under the 1979 Lease, terminate.

The Fuel Company has 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

1. 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 1979 Lease, or for damages, and/or
2. Terminate the 1979 Lease.

^{3/} The stipulated loss value is defined as the excess of the fuel cost over the burn-up charges received by the lessor.

If it terminates the 1979 Lease, Edison's interest in the nuclear fuel terminates, 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 termination, the Fuel Company may recover from Edison damages and expenses resulting from the breach of the 1979 Lease, all accrued and unpaid amounts owed to it by Edison, and liquidated damages.

B. Increase in Available Credit Limit -
Edison is currently participating in negotiations to amend the documents related to the 1979 Lease to increase the credit limit available to Fuel Company from \$300,000,000 to \$500,000,000. The credit limit increase will be accomplished principally by amendments to the credit agreement under which the Fuel Company finances the purchases of nuclear fuel. The Fuel Company is the lessor under the 1979 Lease. The Fuel Company will enter into an amended credit agreement (Amended Credit Agreement) to increase the available funding limit. Although Edison's approval of the Amended Credit Agreement will be required, Edison will not be a party to the Amended Credit Agreement. Except for the credit limit changes to be negotiated in the Amended Credit Agreement, the document will be similar in all material aspects to that executed in connection with the 1979 Lease. The general structure of the credit agreement executed in connection with the 1979 Lease (1979 Credit Agreement) is mentioned on pages 2, 3, and 6 of D.90380 and is discussed below. The 1979 Credit Agreement is attached to the application as Exhibit E.

The 1979 Credit Agreement provides a method for the Fuel Company to finance its obligations under the 1979 Lease. The Fuel Company finances its purchase of nuclear fuel by selling commercial paper through Goldman, Sachs & Co. To support its sale of commercial paper, the 1979 Credit Agreement provides for the issuance of irrevocable letters of credit by Manufacturers Hanover Trust Company, Chemical Bank, Crocker National Bank, and Security Pacific National Bank (collectively referred to as the Banks). These Banks, which are each parties to the 1979 Credit Agreement, will be parties to the Amended Credit Agreement. Goldman, Sachs & Co. would use its best efforts to sell the commercial paper at the best rate available consistent with prudent marketing considerations. However, in the unlikely event that the Fuel Company is unable to issue commercial paper, the 1979 Credit Agreement provides for revolving credit borrowings, which would enable the Fuel Company to borrow funds from the Banks to finance its purchases of nuclear fuel. These borrowings would be evidenced by the Fuel Company's promissory notes. The Banks, in addition to receiving a security interest in the nuclear fuel owned by the Fuel Company, receive assignments of rents and certain other obligations under the 1979 Lease as security for the irrevocable letters of credit and revolving credit borrowings under the 1979 Credit Agreement.

Edison has stated it believes that it may be advantageous in the future to make a change in the mechanics of administering the credit facility under the Amended Credit Agreement. This change would generally provide that each issuance of commercial paper by the Fuel Company be backed by the credit of a specific Bank that is a party to the Amended Credit Agreement rather than by all of the Banks. This may improve the marketability of the commercial paper and result in lower overall costs. The Revenue Requirements Division has considered this change and does not believe that it would alter the terms and conditions of the Amended Credit Agreement materially.

The magnitude and complexity of the transaction contemplated under the 1979 Lease, as amended, and the Amended Credit Agreement, as well as the uncertainty with regard to regulatory jurisdiction over the transactions, make it necessary for Edison to pursue all available avenues of regulatory action in an effort to obtain a clear indication of the Commission's position with respect to the transactions discussed in the application. This uncertainty, with regard to regulatory jurisdiction, arises because the Federal Energy Regulatory Commission has exercised jurisdiction over certain nuclear fuel leases under the Federal Power Act where state commissions have declined to do so.

Edison believes that, because of this uncertainty of regulatory jurisdiction, counsel for the Banks, to be parties to the Amended Credit Agreement, will require a Commission decision modifying D.90380 as a precondition to the execution of the Amended Credit Agreement or any future credit agreements designed to alter the procedural methods under which the credit facility is made available to the Fuel Company. Although Edison questions whether the modification is legally required, Edison has sought the modification required by the Banks' counsel in order to complete the transaction in a timely manner. The required modification would principally involve an approval of an increase in the credit limit available to the Fuel Company to \$500,000,000. This increase would be in accordance with terms and conditions consistent in all material respects with those contained in the credit agreement, attached to the application as Exhibit E including terms and conditions, which may be amended in the future to alter the procedural methods under which the credit facility is made available to the Fuel Company.

Edison, by letter dated November 6, 1981, informed the Commission's Revenue Requirements Division that the major reasons for leasing nuclear fuel^{4/} cited in D.90380 continue to be valid and are as follows:

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 Edison an alternative method of procuring nuclear fuel without placing additional pressure on its additional capital markets and may indirectly result in a reduction of traditional financing costs.
4. For financial reporting purposes, the 1979 Lease, as amended, will continue to be reported as a lease in accordance with the Statement of Financial and Accounting Standards 13 (FASB 13)^{2/}

^{4/} The Commission has previously recognized certain advantages to leasing nuclear fuel in D. 87161 dated October 12, 1977 in A.57379; D.90380 dated June 5, 1979 in A.58791; and Pacific Gas and Electric Company's D.92555 dated December 30, 1980 in A.60046.

^{5/} FASB 13 issued in November 1976 defines a lease: "A lease is defined as an agreement for conveying the right to use property, plant or equipment (land and/or appreciable assets) usually for a short period of time. It includes agreements that, although not normally defined as leases, meet the above definition, such as a 'heat supply contract' for nuclear fuel."

of the Financial Accounting Standards Board which represents the present position of the accounting profession with regard to the proper accounting treatment for leases. Edison currently discloses its lease commitments under commitments and contingencies footnote to its financial statements.

Edison expects to save \$3,444,000 or approximately 7.76% of the \$44,341,000 estimated ownership costs shown below as compared to the \$40,897,000 estimated leasing costs of nuclear fuel. The calculations of the anticipated savings are summarized as follows:

	<u>Lease</u>	<u>Ownership</u>
Accumulated Fuel Cost - Pre-Reactor	\$32,581,000	\$32,256,000
In Reactor Financing Cost - Rate of Return Effect		
Lease <u>a/</u> - 12.715%	8,316,000	
Ownership <u>b/</u> - 18.66%		12,085,000
Total Revenue Requirement	40,897,000	44,341,000
Present Worth <u>c/</u>	26,131,000	28,489,000

<u>a/</u> Includes:	<u>4-Year Average Rate</u>
Commercial paper -	12.060%
Letters of credit -	.625
Management fee -	.030
Total	<u>12.715%</u>

b/ Pre-tax rate of return based on 18.66% return granted to Edison. The Fuel Company would pass to Edison any available investment tax credits relating to the leased nuclear fuel (D.92549 dated December 30, 1980 in A.59351).

c/ Discounted at Edison's authorized rate of return of 11.20% assuming a 51-month burn-up for the cost of one hypothetical batch.

Edison's letter also indicated the proposed increase in the credit limit from \$300,000,000 to \$500,000,000 will not materially alter the terms and conditions of the lease document approved in connection with D.90380. Therefore, the estimated expense saving (discussed in D.90380) of up to 15% over an outright purchase of the same nuclear fuel remains unchanged by the proposed increase in the credit limit.

Findings of Fact

1. Edison, a California corporation, operates as a public utility under the jurisdiction of this Commission.
2. The nuclear fuel lease may permit Edison 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. The lease permits Edison to sell 4.95% of San Onofre Generating Station Units 2 and 3 upon Commission approval.
4. 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. Southern California Edison Company (Edison), on or after the effective date of this order, is authorized a modification of D.90380 dated June 5, 1979 in A.58791 (1) to continue to lease nuclear fuel in accordance with terms and conditions in all material respects with those contained in documents attached to the application as Exhibit D and Exhibit E, as may be amended, (2) to increase the credit limits available to the Fuel Company from the \$300,000,000 up to \$500,000,000, and (3) authorize Edison to modify the lease to permit, under the terms of the lease, to sell 4.95% of San Onofre Nuclear Generation Station Units 2 and 3, upon Commission approval.

A.60995 RR/KLH/ARM/WPSC*

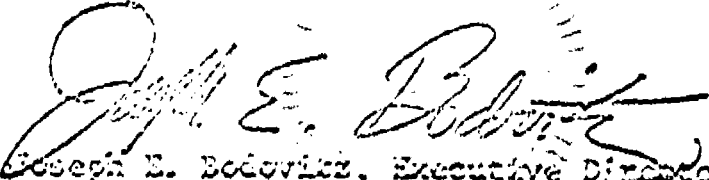
2. In all other respects, D.90380 dated June 5, 1979 in A.58791 shall remain in full force and effect.

This order is effective today.

Dated DEC 15 1981, at San Francisco, California.

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

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


Joseph E. Bodovitz, Executive Director