

CACD/RHG

Decision 95-08-047 August 11, 1995

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 proposed
Nuclear Decommissioning Trust Investment
Manager Agreements with PanAgora Asset
Management and Trust Agreement Amend-
ments to Accommodate International
Equity Investments.

Application 95-05-040
(Filed May 15, 1995)

ORIGINAL

OPINION

Summary of Decision

This decision grants the authority requested by Southern California Edison Company (Edison) in Application (A.) 95-05-040 (Application).

Edison requests authority, pursuant to § 701 of the Public Utilities (PU) Code, the Commission's Rules of Practice and Procedure, and prior decisions, orders and resolutions of the Commission and specifically Decision (D.) 87-05-062 and Resolution (Res.) E-3069, for the following:

1. The proposed Qualified and Nonqualified Nuclear Decommissioning Investment Management Agreements (investment manager agreements) with PanAgora Asset Management (PanAgora).
2. The amendment of Edison's Qualified and Nonqualified Nuclear Facilities Master Trust Agreements (trust agreements) to accommodate international equity investments;
3. The Executive Director or some other designee to sign the investment manager agreements and amendments to the trust agreements on behalf of the Commission.

Edison states that PanAgora is one of the largest international equity fund managers in the world, managing approximately \$16 billion in total assets, with \$5.6 billion in global and international assets, including \$770 million in tax strategies designed to meet after-tax benchmarks.

Notice of the filing appeared on the Commission's Daily Calendar of May 19, 1995. No protests have been received.

Background

In Order Instituting Investigation 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 ultimate decommissioning of the nuclear power plants. In that decision, the Commission also established guidelines for the trust agreements.

In response to D.87-05-062, Edison 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, the contributions to which qualify for an income tax deduction under § 468A of the Internal Revenue Code (Qualified Trust Agreement), and the other was designed to hold the remaining funds (Nonqualified Trust Agreement). On November 25, 1987, Edison's trust agreements were approved by the Commission¹, and executed shortly thereafter.

The tax-qualified trust fund investments are limited by Internal Revenue Service tax regulations to (1) public debt securities of the United States; (b) obligations of a state or local government that are not in default as to principal or interest; and (c) time or demand deposits in a bank or an insured federal credit union. The non-tax-qualified trust funds may be

¹ Res. E-3057, November 25, 1987.

invested in any permitted investment for tax-qualified trust funds plus guaranteed investment contracts, high-quality corporate bonds and equity securities, and other securities guaranteed or secured by the U.S. government; provided that investments in high-quality equity securities do not exceed 60% of the trust fund's fair market value.²

In relevant part, § 3.01 of both trust agreements provides for the establishment of the Nuclear Facilities Decommissioning Master Trust Committee (Committee) consisting of five members, at least three of whom cannot be employees, officers, directors, or agents of the company. Pursuant to §§ 1.01 and 5.01 of the trust agreements, and subject to Commission approval of the investment manager agreement, the Committee is authorized to appoint one or more investment managers to direct the investment of all or part of the trust assets. In addition § 2.12 of the Qualified Trust Agreement and § 2.10 of the Nonqualified Trust Agreement contain provisions which authorize the Commission to direct amendment of the trust agreements. To date, the Commission has approved the appointment of STW Fixed Income Management, RCM Capital Management and Bankers Trust Company to direct the investment of the trusts.³

In an Interim Opinion related to requests by Edison and other utilities to modify D.87-05-062 to permit, among other things, additional investment options for decommissioning trust funds, the Commission permitted up to 50% of the fair market value of the Qualified Trust funds to be invested in publicly traded equity securities, 40% of which may be invested in non-U.S. equity securities.

Request for Order Approving Investment Manager Agreements

By this Application, Edison is requesting Commission approval of the investment manager agreements with PanAgora, shown

² D.87-05-062, 24 CPUC 2d 302, 319, Conclusions of Law 5 & 6.
³ Res. E-3069, January 13, 1988 and D.94-06-016, June 8, 1994.

as Exhibits A and B to the Application, so the trusts may commence international equity investments within the levels authorized by the Commission. Edison is also requesting corresponding amendments to its trust agreements, as shown in Exhibit C to the Application, to accommodate such international investments.

The trust agreements provide, "The Committee may appoint one or more investment managers to direct the investment of all or a part of the Master Trust."⁴ "Investment managers" are defined as the fiduciaries who have been retained by the Committee to manage, acquire or dispose of trust assets.⁵

The trust agreements contemplate the execution of an agreement with each investment manager selected to direct the investment of trust assets. For purposes of the trusts, investment manager agreements are defined as the "agreement(s) between the Committee and an investment manager selected by the Committee which agreement governs the management of the assets of the Master Trust and is confirmed by the CPUC."⁶ In D.87-05-062 and Res. E-3069, the Commission explicitly required its approval of all investment manager agreements.

By resolution of March 21, 1995, shown as Exhibit C to the Application, the Committee unanimously approved retaining PanAgora as an additional investment manager for the trusts and authorized the execution of investment manager agreements between such firm and the Committee. The Committee approved the PanAgora appointment for the specific purpose of passively managing the international equity portion of the qualified and nonqualified trusts.

4 Qualified Trust Agreement, § 5.01, p.44; Nonqualified Trust Agreement, § 5.01, p.41.

5 Qualified Trust Agreement, § 1.01(18), p.7; Nonqualified Trust Agreement § 1.01(17), p.6.

6 Qualified Trust Agreement, § 1.01(19), p.8; Nonqualified Trust Agreement § 1.01(18), p.7.

In accordance with applicable Commission decisions and resolutions, Edison requests that the Commission approve the proposed investment manager agreements, the amendment of the trust agreements, and authorize the Executive Director or some other designee to sign the documents on behalf of the Commission.

The Commission Advisory and Compliance Division (CACD) has reviewed the proposed investment manager agreements and finding them in accordance with the terms of the trust agreements and applicable Commission decisions and resolutions, recommends approval. CACD further recommends approval of the proposed amendment of the trust agreements to accommodate international equity investment.

We concur and will approve PanAgora to handle the international equity portion of Edison's trusts.

Request for Ex Parte Relief

In the interests of time and administrative efficiency, and because there are no additional facts to be provided or issues to be decided, Edison requests that the Commission act on the Application on an ex parte basis and without hearings.

We will grant Edison's request. Ex parte treatment of this Application will have no adverse impact on the public interest because, as the Commission has already determined in Res. E-3069, the trust agreements and the investment manager agreements will:

...provide adequate requirements that the investment manager or advisor will be fairly evaluated on a reasonable and regular basis. This assures the (investment manager) an adequate opportunity to perform, yet still provides sufficient safeguards to preserve the assets of the trust funds and maximize the earnings on allowable investments.

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 provides that nonqualified trust funds may be invested in high-quality equity securities provided that the investments shall not exceed 60% of the trust fund's fair market value.

4. D.94-11-028 provides that up to 50% of the fair market value of the qualified trust funds may be invested in publicly traded U.S. and non-U.S. equity securities and limited in regard to non-U.S. equity securities to 40% of the 50%.

5. D.87-05-062 required Edison to obtain the Commission's approval prior to executing the trust agreements for its nuclear generating stations.

6. In Res. E-3069 and D.94-06-016, the Commission approved the appointment of STW Fixed Income Management, RCM Capital Management and Bankers Trust Company to direct the investment of the trusts.

7. In this Application, Edison requests approval of investment manager agreements between the Committee and PanAgora for international equity investments within the levels authorized by the Commission.

8. In this Application, Edison also requests approval of the corresponding amendments to its trust agreements to accommodate the international investments.

9. In support of this Application, Edison has submitted sufficient information and materials that demonstrate PanAgora's qualifications and the propriety of the proposed agreements.

10. The proposed agreements are in compliance with the requirements of D.87-05-062 and Res. E-3057.

11. In conforming to D.87-05-062, Res. E-3057 and Res. 3069, the proposed agreements provide adequate requirements that PanAgora, as Investment Manager, will be fairly evaluated on a reasonable and a regular basis, while assuring the necessary latitude and safeguards.

12. There is no known opposition to this Application and no reason to delay granting the approval requested.

Conclusions of Law

1. The Application is made pursuant to § 701 of the PU Code, the Commission's Rules of Practice and Procedure, and prior decisions, orders and resolutions of the Commission, 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 which follows.

4. This order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company (Edison) is granted authority to execute the Qualified and Nonqualified Nuclear Decommissioning Investment Management Agreements (investment manager agreements) between the Nuclear Facilities Decommissioning Master Trust Committee and PanAgora Asset Management in accordance with or as contemplated in Application 95-05-040.

2. Edison's amendments of its Qualified and Nonqualified Nuclear Facilities Master Trust Agreements (trust agreements) to accommodate international equity investments are approved.

3. The Executive Director or his designee is directed to sign the investment manager agreements and trust agreements on behalf of the Commission.

This order is effective today.

Dated August 11, 1995, at San Francisco, California.

DANIEL Wm. FESSLER

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

Commissioners

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

Wesley Franklin
Acting Executive Director