

Mailed

Decision 96-02-076 February 23, 1996

FEB 28 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 Southern California Edison Company )  
 (U 338-E) for a finding that Public )  
 Utilities Code Section 851 does not )  
 apply to the proposed transfer of )  
 certain ENVEST personnel and assets, )  
 or, in the alternative, for )  
 authority to transfer the assets )  
 to an SCEcorp unregulated )  
subsidiary. )

ORIGINAL

Application 95-05-060  
(Filed May 22, 1995)

OPINION

Summary

Southern California Edison Company (Edison) notified the Executive Director by letter dated November 17, 1995 that it was withdrawing its application to transfer personnel and assets from an energy efficiency program (ENVEST) to an unregulated affiliate to be formed for the purpose by Edison's parent, SCEcorp. This decision (D.) denies a motion for an order instituting investigation (OII) that was pending at the time of Edison's letter and closes this proceeding.

Procedural Background

In our interim opinion (D.95-11-026), we discussed the procedural background of this application. We noted that the Division of Ratepayer Advocates (DRA) filed a protest, at the prehearing conference (PHC) held on July 31, 1995, the California Energy Commission (CEC), the California Department of General Services (CDGS), and Toward Utility Rate Normalization (TURN) appeared, generally in opposition to the application, and an additional party, the National Association of Energy Service Companies (NAESCO) was allowed to appear after the PHC. Appearances are set forth in Appendix A. In that interim

opinion; we concluded that the proposed transfer was not exempt from Public Utilities (PU) Code Section 851 as a matter of law, and we remanded the application to the assigned administrative law judge (ALJ) for further proceedings.

Our interim opinion did not address a motion of CEC, CDGS, DRA, NAESCO, and TURN (Moving Parties) for an OII regarding future disposition of Edison's ENVEST program, which was filed after the jurisdictional issue concerning the applicability of PU Code Section 851 was submitted.

#### Relief Sought

The Moving Parties request an OII into the disposition of Edison's ENVEST pilot program and that such OII be consolidated with the present application. The Moving Parties note that the proposal that was contained in Edison's application was only one among several possible means of liquidating the ENVEST program. Furthermore, they argue, alternatives should be evaluated in the light of the impending restructuring of the electric utility industry and the question of how providers of energy services will compete.

#### Opposition by Edison

Edison's opposition to the motion by the Moving Parties notes that the proposal contained in its application did not contemplate a transfer of the ENVEST program as a whole, only some specifically identified assets, consisting of contract and operations manuals, and the right to offer employment to certain Edison employees working in the program. Edison argues that an OII is improper if the Commission determined that PU Code Section 851 ought not apply to the proposed transfer, but fails to argue what should happen as a result of our conclusion that it should.

Effect of Withdrawal of Application

Edison has determined not to proceed with the proposed transfer that it contemplated at the time it filed the application in May 1995. In its letter to the Executive Director, Edison disclosed that it was considering alternatives, including an expansion by Edison's parent of its unregulated, shareholder-funded operations to pursue integrated energy solutions nationwide. Edison represents that it will keep the existing ENVEST business unit in operation while contracts with utility customers remain outstanding. Edison says nothing about the operations manuals, but contemplates that a "few" ENVEST employees will become surplus and may be offered employment by an affiliate.

Edison does not have the unilateral right to withdraw its application under all circumstances. (See In re Southern California Gas Company (1992) 43 CPUC2d 639, 640.) Considering the nature of the relief that it sought, however, no good cause appears to keep this application open.

As we said in our interim opinion:

Edison believes that the transfer of the ENVEST program personnel and assets is not subject to PU Code Section 851. That statute provides that no utility such as Edison "shall lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its ... line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, without first having secured from the commission an order authorizing it to do so." (PU Code § 851.) As Edison notes in its application, the statute also provides that any purported transfer subject to PU Code Section 851 without prior Commission approval is void. Accordingly, Edison seeks comfort that it is correct in its conclusion

that PU Code Section 851 does not apply. Alternatively, Edison asks for approval pursuant to PU Code Section 851.

(D.95-11-026.) We decided that the contemplated transfer was potentially subject to PU Code Section 851.<sup>1</sup> (Id.) Now, Edison no longer seeks approval pursuant to PU Code Section 851, presumably because it is confident that the property it now contemplates transferring is neither useful nor necessary to its duties as a utility.

Edison's change of plans has mooted the application. Granting or denying the application will apparently have no effect on Edison's actions. Accordingly, we will deny the motion for the OII, which was to have allowed for alternatives to Edison's proposal, and order this proceeding closed.

#### Findings of Fact

1. Edison filed an application on May 22, 1995 seeking a determination that PU Code Section 851 did not apply to the proposed transfer of personnel employed in the ENVEST DSM program or, alternatively, for approval of such transfer pursuant to PU Code Section 851.

2. Edison withdrew its application by letter to the Executive Director dated November 17, 1995.

#### Conclusions of Law

1. No useful purpose would be served by keeping this proceeding open.

2. No useful purpose would be served by an OII to consider alternatives to Edison's abandoned plan for ENVEST.

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<sup>1</sup> In the posture in which the question came to us, we denied Edison's motion for a ruling that PU Code Section 851 did not apply in these circumstances as a matter of law. (Id.)

O R D E R

THEREFORE IT IS ORDERED that the motion of the California Energy Commission, the California Department of General Services, the Division of Ratepayer Advocates, and Toward Utility Rate Normalization for an order instituting investigation regarding future disposition of the ENVEST program of Southern California Edison Company is denied, and this proceeding is closed.

This order is effective immediately.

Dated February 23, 1996, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, Jr.  
HENRY M. DUQUE  
JOSIAH L. NEPPER  
Commissioners

I will file a written concurring opinion.

/s/ DANIEL Wm. FESSLER  
Commissioner

**Appendix A**

**Appearances**

California Department of General Services	Grueneich Resource Advocates, by Dian Grueneich, attorney-at- law
California Energy Commission	John D. Chandley, attorney-at- law
Division of Ratepayer Advocates	Irene K. Moosen, attorney-at- law
National Association of Energy Service Companies	Terry E. Singer
Southern California Edison Company	Frank J. Cooley, attorney-at- law, and O'Melvany & Myers, by Thomas K. Braun, attorney-at- law
Toward Utility Rate Normalization	Theresa Mueller, attorney-at- law

(END OF APPENDIX A)

A.95-05-060  
D.96-02-076

**FESSLER, PRESIDENT OF THE COMMISSION, CONCURRING:**

I concur in the result. I continue to disagree with the finding in the interim opinion (D.95-11-026) that as a matter of law, the request for transfer of personnel and assets of the ENVEST program was not exempt from Public Utilities Code Section 851.

San Francisco, California  
February 23, 1996

/s/ Daniel Wm. Fessler  
President of the Commission

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President of the Commission