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Decision 97-12-106 December 16, 1997

**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 authority to sell gas-fired  
electrical generation facilities.

Application 96-11-046  
(Filed November 27, 1996)

**ORIGINAL**

**INTERIM OPINION**

**Summary**

We approve the application of Southern California Edison Company (Edison) for authority, pursuant to Public Utilities (PU) Code Section 851, to sell the Alamitos, Huntington Beach, and Redondo Beach fossil-fuel electric generation plants to the AES Corporation (AES), the Cool Water, Mandalay, Ellwood, and Etiwanda plants to Houston Industries Power Generation, Inc. (Houston), the El Segundo plant to NRG Energy, Inc. and Destec Energy, Inc. (NRG/Destec), and the Highgrove and San Bernardino plants to Thermo Ecotek Corporation (Thermo), and the terms and conditions of the related sales.

**Procedural Background**

Edison filed its application on November 27, 1996. Notice appeared in the Daily Calendar on December 4, 1996. We issued our first interim opinion in Decision (D.) 97-09-049 on September 3, 1997, in which we permitted Edison to commence an auction of the 12 plants described in its application, subject to certain conditions, approved the form of the proposed operations and maintenance agreement for subsequent operation of the plants by Edison for the purchasers, and approved the accounting and ratemaking treatment described in the application, subject to certain conditions. On October 22, 1997, we adopted D.97-10-059 which approved a mitigated negative declaration for the project represented by the application, and approved a related mitigation, monitoring, and reporting program. On November 5, 1997, we adopted D. 97-11-075, which required Edison to require as a condition of sale that the

successful bidder enter into an operations and maintenance agreement with Edison as described in the application, and, for the Alamos, El Segundo, Etiwanda, Huntington Beach, Mandalay, and Redondo Beach plants, an agreement with the Independent System Operator (ISO).

On October 3, 1997, Edison moved for the adoption of a procedural schedule following its filing of transaction documents reflecting the results of the auction. No party filed any response. The assigned administrative law judge (ALJ) issued a ruling on October 27, 1997, permitting any party to make a responsive pleading to Edison's filing not later than the fifth business day following. On December 1, 1997, Edison made a Divestiture Compliance Filing to describe the results of the auction, provide the definitive sales agreements, and to ask the Commission to make specific findings and to grant final approval of the sales. In that filing, Edison disclosed that it has entered into agreements for 10 of the 12 plants and was continuing discussions to complete the sale of two of the plants (the Ormond Beach and Long Beach stations). On December 8, 1997, ORA filed its response. On December 8, 1997, Houston and four affiliates (each a Delaware limited liability company that would own an Edison plant purchase by Houston: Alta Power Generation L.L.C.; Ocean Vista Power Generation L.L.C.; Mountain Vista Power Generation L.L.C.; and Oeste Power Generation L.L.C.) filed a response in support of Edison. No other party<sup>1</sup> commented on the record. On December 11, 1997, Edison filed its reply to ORA's response.

### **Description of the Application**

#### ***Auction of the Plants***

Edison conducted an auction of the 12 electric generation plants or stations described in its application. The plants represent substantially all of Edison's gas-fired generation capacity. The real and personal property included in the proposed

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<sup>1</sup> One of the buyers, Destec Energy, Inc., filed a response urging the Commission to approve the sale of the El Segundo station, but has not moved to be recognized as a party pursuant to Rule 54 of the Rules of Practice and Procedure.

sale are described, in general, in D. 97-09-047, and in detail in Edison's December 1, 1997 filing.

The auction process consisted of five phases: pre-auction publicity, initial indication rounds of bidding, detailed due diligence, final rounds of bidding, and negotiation and execution of final documents. Separate bidding rounds were held for plants classified as must-run from plants that are not required to be offered to the ISO. To provide additional time for due diligence, final bids for the four South Coast must-run plants (Alamitos, Huntington Beach, Redondo Beach, and El Segundo) were scheduled a week after final bids were accepted on the other plants.

In the pre-auction publicity phase, Edison prepared an informational brochure describing electric utility industry restructuring in California, the 12 plants to be sold, and the auction process. Edison's financial advisors developed a list of potential bidders from North America, Europe, and Asia in the electric/gas utility, oil and gas, and independent power industries. Each potential bidder was contacted individually by mail, informed of the auction process and expected schedule, and invited to participate in the auction. Edison or its financial advisor distributed informational brochures to parties who responded to these contacts or who made inquiry. Edison also issued press releases concerning the projected sales and placed print advertisements in *The Wall Street Journal*, the *Los Angeles Times*, and the *Houston Chronicle*. In addition, Edison conducted large, open-invitation public conferences for all interested parties in Los Angeles, Houston, and New York City and met with potential bidders from the United States, Europe, and Asia.

Parties who expressed interest in the auction were required to sign a Confidentiality and Auction Protocols Agreement, following which they were provided with copies of a three-volume Selling Memorandum and package of information in electronic form containing a significant amount of information regarding the plants offered. Among the information received were drafts of the Asset Sale Agreement and related transaction documents. Participants included North American and European companies in the electric/gas utility, pipeline, power equipment manufacturing, independent power, and equipment salvage and relocation industries.

Following these initial investigations, bidders were invited to submit non-binding initial indications of interest for specified plants, setting forth proposed prices and other information required by the auction protocols. All plants were offered on an unbundled basis, and bidders were free to bid on plants individually or in combination and to provide price indications on each such plant individually or in combination. On the basis of such initial indications, Edison qualified bidders to participate in the second, final round of the auction for those plants in which they had indicated an interest.

Second-round bidders received a significant amount of additional information, subject to the Confidentiality and Auction Protocols Agreement, including independent engineer reports and Phase I and Phase II environment reports on each plant. For all but a few documents, bidders received electronic or printed copies. Some documents were reviewed in Edison data rooms, separated and monitored to maintain confidentiality of bidder identity. In addition, bidders were invited to plant tours and due-diligence interviews with company personnel. Tours and interviews were also conducted with a view toward preserving the confidentiality of bidder identity.

Prior to accepting final bids, Edison asked participants to submit detailed written comments on a proposals to modify any of the transaction documents. Based on bidder input, Edison revised the transaction documents based on whether Edison believed the comments to be acceptable and consistent with the intent of the overall transaction. Edison then provided the revised documents to all bidders.

Edison certifies that it conducted the auction in compliance with the auction protocols approved by the Commission in D.97-09-049. No party has raised any claim that the auction was conducted contrary to the approved procedures.

#### ***Outcome of the Auction***

Edison executed agreements with four bidders for ten plants. Edison is continuing discussions with respect to the Long Beach and Ormond plants and is not currently seeking authority to transfer those plants. Each of the bidders has the right to assign its rights and obligations to a subsidiary that may take title to the assets. Each of

the bidders is a substantial enterprise with many other electrical generating assets in other locations that it owns directly or which are owned by affiliates. For each plant or combination of plants, Edison received no higher bid for the plant or combination of plants either individually or in the aggregate in any bundled bid. The total of winning bids was \$1.115 billion, which is approximately 2.65 times greater than the net book value of the ten plants.

AES bid \$781 million for the Alamitos, Huntington Beach, and Redondo Beach plants. Houston bid \$186 million for the Cool Water plant, and an aggregate of \$51 million for the Ellwood, Etiwanda, and Mandalay plants. NRG/Destec (which may form a limited liability company for the plant) bid \$87.75 million for the El Segundo plant, and Thermo bid \$9.5 million for the Highgrove and San Bernardino plants. By terms of the grant deed for the real property on which the El Segundo plant is located, Chevron U.S.A. Inc. (Chevron) may have a right of first refusal on the same terms and conditions as NRG/Destec's bid, and Edison requests that we approve the transfer of the El Segundo plant to either NRG/Destec or Chevron.

No party except ORA commented on the outcome of the auction. ORA was concerned that Edison did not disclose the number of bidders for each plant. ORA noted that Edison's Compliance Filing "is consistent with the utility receiving only one bid for one or more of the power plants." We note that the December 1, 1997 filing is also consistent with Edison having approved only one bidder for each plant to participate in the final round. In its reply to ORA's response, Edison stated that disclosing information concerning the bidders that did not prevail in the auction is unnecessary and could be harmful with respect to the interests of auction participants and the conduct of future auctions. However, Edison submitted a declaration, under seal, that provided additional information with respect to the number of qualified bidders. Based upon a review of that declaration, we are satisfied that this is not a situation in which the outcome of the auction was determined by Edison's selection of final-round bidders, and that there was an adequate opportunity for interested bidders to submit final bids on each plant.

We have considered the mitigated negative declaration that we approved in D.97-10-059 and the adequacy of the measures described there to avoid the possibility of indirect physical changes to the environment or to reduce the effect of such changes to non-significant levels. We will conclude that the sale and transfer of the plants is in the public interest, subject to the adoption of those measures<sup>2</sup> and our analysis of the factors in PU Code Section 362.

***Market Power***

In proceedings pursuant to Section 851, we must ensure that "facilities needed to maintain the reliability of the electric supply remain available and operational, consistent with maintaining open competition and avoiding an overconcentration of market power." (PU Code § 362.) In D.97-11-030, we determined that making several of the plants that were required for the reliable operation of the system subject to an agreement with the ISO was consistent with maintaining open competition, but we reserved determining whether it would be consistent with "avoiding an overconcentration of market power." Now that we know the results of the auction, we are in a position to determine whether the outcome raises any overconcentration issue or other market power issue.

No party has raised any claim that any of the buyers will possess sufficient capacity to have market power. The information concerning the buyers that Edison has provided does not raise serious issues with respect to market power. However, we are concerned that Edison was unable to provide definitive information regarding Chevron. For that reason, we will not permit the sale of the El Segundo plant to Chevron (if it seeks to exercise its right of first refusal) without our further consideration and subsequent order.

***Request for Exempt Wholesale Generator Finding***

Under the federal Energy Policy Act of 1992 (the Act), it is possible for the buyers to qualify as "exempt wholesale generators" (EWGs) under the Act, which

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<sup>2</sup> The measures are independent of the identity of specific buyers for specific plants.

avoids federal regulation as a public utility holding company under the Public Utility Holding Company Act of 1935 ("PUHCA"). Buyers must apply to the Federal Energy Regulatory Commission for EWG status and, in the case of facilities that were formerly in a utility's ratebase, such as the ten plants Edison has agreed to sell, a finding is necessary that allowing such a facility to be an EWG "(1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law." (15 U.S.C. § 79z-5a(c).) Since that determination must be made by this Commission, as the applicable state utility commission, Edison requests that we include that determination in this decision.

As Edison correctly observes, the transition of electrical generation from a regulated monopoly to a competitive marketplace is the policy of the State of California. (See, e.g., PU Code § 330(d).) That policy is expressly intended to benefit consumers. (*Id.*) Subjecting the buyers to regulation under PUHCA would not advance that policy and is not required to prevent any violation of California law regulating utilities.

#### **Findings of Fact**

1. No party disputes that Edison has conducted an auction process without significant irregularity.
2. The measures described in the mitigated negative declaration approved in D.97-10-059 are sufficient to avoid or mitigate the reasonably foreseeable adverse environmental effects of the project.
3. Upon sale, the aggregate market value of the Alamitos, Huntington Beach, and Redondo Beach plants will be \$781 million.
4. Upon sale, the market value of the Cool Water plant will be \$186 million.
5. Upon sale, the aggregate market value of the Ellwood, Etiwanda, and Mandalay plants will be \$51 million.
6. Upon sale, the market value of the El Segundo plant will be \$87.75 million.
7. Upon sale, the aggregate market value of the Highgrove and San Bernardino plants will be \$9.5 million.
8. The record does not adequately reflect the generation assets owned by Chevron.

9. No party asserts that sale of the plants to the buyers will result in an overconcentration of market power.

**Conclusions of Law**

1. The sale of Alamitos, El Segundo, Etiwanda, Huntington Beach, Mandalay, and Redondo Beach plants to AES, Houston, NRG/Destek, or Thermo, as applicable, subject to the agreement with the ISO, is consistent with avoiding an overconcentration of market power.

2. The sale of the El Segundo plant to Chevron under its right of first refusal requires further consideration by the Commission to determine whether it would be consistent with avoiding an overconcentration of market power.

3. The sale of the ten plants to the buyers as a result of the auction is in the public interest and should be approved, subject to the measures described in the mitigated negative declaration approved in D.97-10-059 to avoid or mitigate the reasonably foreseeable adverse environmental effects of the project.

4. Allowing the ten plants to be exempt wholesale generators within the meaning of the Act would benefit consumers, be in the public interest, and would not violate California law.

5. Edison should be authorized to consummate the sales of the Alamitos, Huntington Beach, and Redondo Beach fossil-fuel electric generation plants to AES, the Cool Water, Mandalay, Ellwood, and Etiwanda plants to Houston, the El Segundo plant to NRG/Destek, and the Highgrove and San Bernardino plants to Thermo, or their respective permitted affiliates, in accordance with the forms of the transaction documents in Edison's December 1, 1997 filing, together with customary ancillary documentation necessary to effectuate the transactions.

**INTERIM ORDER**

**THEREFORE, IT IS ORDERED** that, subject to the measures described in the mitigated negative declaration approved in Decision (D.) 97-10-059 to avoid or mitigate



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the reasonably foreseeable adverse environmental effects of the project, Southern California Edison Company (Edison) may transfer and sell the Alamitos, Huntington Beach, and Redondo Beach fossil-fuel electric generation plants to The AES Corporation, the Cool Water, Mandalay, Ellwood, and Etiwanda plants to Houston Industries Power Generation, Inc., the El Segundo plant to NRG Energy, Inc. and Destec Energy, Inc., and the Highgrove and San Bernardino plants to Thermo Ecotek Corporation, or their respective permitted affiliates, in accordance with the forms of the transaction documents in Edison's December 1, 1997 filing, together with customary ancillary documentation necessary to effectuate the transactions.

This order is effective today.

Dated December 16, 1997, at San Francisco, California.

P. GREGORY CONLON  
President  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
RICHARD A. BILAS  
Commissioners