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Decision 97-09-049 September 3, 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)

I N T E R I M O P I N I O N

Summary

Southern California Edison Company (Edison) requests authority, pursuant to Public Utilities (PU) Code Section 851, to auction and sell 12 fossil-fuel electric generation plants by the end of 1997.

The first interim decision that Edison requests is that the Commission (a) find that Edison's gas-fired generating units are not necessary or useful in the performance of its duties to the public; (b) find that Edison's proposed divestiture will not impair the reliability of electric supply;[1] (c) find that Edison's proposed auction procedures are reasonable and will determine the market price of the plants to be divested; (d) find that Edison need not entertain post-auction overbids; (e) find that Edison's divestiture as proposed is reasonable and the proposed operations and maintenance contract is reasonable under PU Code Section 363; (f) approve Edison's proposed ratemaking treatment of the sale; and (g) find that the sale will not require an environmental impact report under the California Environmental Quality Act (CEQA).

For the next phase, in a second interim decision, Edison requests that we decide whether the proposed form of agreement for certain of the plants between the buyers

[1] Edison moved on February 21, 1997 to exclude any issues associated with the terms and conditions of the form of Master Must Run Reliability Agreement (MMRA, formerly referred to as the Local Reliability Dispatch Agreement) from the first interim decision. That motion was granted by the assigned administrative law judge (ALJ) on February 27, 1997.

and the Independent System Operator (ISO) should be required, consistent with PU Code Section 362, as a condition of sale.

For the third and final phase, in a final decision, Edison requests that we approve the sale if we determine that the auction was conducted in accordance with the approved auction procedure.

We will permit Edison to commence an auction of the plants, which will be subject to our final review and approval upon review of definitive agreements following the auction. However, Edison may not accept final bids until we have completed our environmental review by approving a mitigated negative declaration[2] and the Federal Energy Regulatory Commission (FERC) has approved the form of agreement to be used by ISO (without respect to unit-specific terms).

Procedural Background

Edison filed its application on November 27, 1996. Notice appeared in the Daily Calendar on December 4, 1996. A prehearing conference was held on January 8, 1997. President Conlon, as the assigned Commissioner,[3] issued a ruling (ACR) to establish a procedural schedule on February 11, 1997. An evidentiary hearing was convened on March 17, 1997, at which it was determined that no triable issues of fact existed with respect to the issues that Edison requested be determined in the first interim decision.

On March 28, 1997, Edison, the Coalition of California Utility Employees (CUE) and Southern California Gas Company filed a stipulation, generally as follows: (1) there are no disputed issues of material fact regarding the need for the Alamitos, Huntington Beach, El Segundo, Etiwanda, Mandalay, and Redondo plants to be designated as must-run stations, subject to the MMRA, in 1998 (the parties agree that such stations are needed); (2) the Independent System Operator (ISO) will designate must-run requirements for any period thereafter; (3) the Commission may find pursuant to PU Code Section 362 with respect to local reliability issues that facilities needed to maintain the reliability of the electric supply will remain available and operational (but the

[2] This is expected to occur after September 25, 1997.

parties reserve their rights in the event that the ISO designates any different set of stations as must-run for 1998); (4) there are no disputed issues of material fact that the six must-run (subject to the MMRA) and six non-must run stations can be divested without impairing achievement of planning and operating reserve criteria in 1998 (thereafter the ISO will have sole responsibility); (5) MMRAs will be required for the must-run plants in the Asset Sale Agreement (which will also require that the Power Exchange, as a condition of closing the sale of the plants, have taken certain steps); and (6) with respect to whether the transmission upgrades proposed in Application (A.) 96-11-047 will reduce the number of needed must-run stations, the ISO will make that determination.

On April 14, 1997, the Office of Ratepayer Advocates (ORA) and the Independent Energy Producers Association (IEP) each filed a response to the stipulation, commenting that the stipulation should not be treated as in any way establishing the boundaries of the authority of the ISO.[4] On April 17, 1997, the assigned ALJ ruled that because no party identified a factual issue that it contested, the issues for a first interim decision should be submitted on the briefs of the parties, which were filed concurrently on May 1, 1997, and reply briefs, which were filed on May 9, 1997. On May 1, 1997, Edison moved to make the first interim decision effective immediately. On June 9, 1997, Edison moved to set aside submission of the record for the first interim decision, due to a change in the manner in which Edison proposes to auction plants. Edison now proposes to auction the power plants not classified as must-run singly or in any combination, rather than in pre-determined groups. The assigned ALJ issued a ruling on June 11, 1997, and permitted parties to submit a single round of supplemental briefs on this issue. ORA and IEP filed supplemental briefs on June 20, 1997.

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[3] Commissioner Bilas was subsequently co-assigned.

[4] CUE filed a reply on April 29, 1997, expressing its agreement that the stipulation should not be applied expansively or in a manner that would predetermine the Commission's decision on the adequacy of the MMRA form.

Description of the Application

Edison wishes to offer for sale 12 electric generation plants:

- Alamitos Generation Station
- Cool Water Generating Station
- Ellwood Energy Support Facility
- El Segundo Generating Station
- Etiwanda Generating Station
- Highgrove Generating Station
- Huntington Beach Generating Station
- Long Beach Generating Station
- Mandalay Generating Station
- Ormond Beach Generating Station
- Redondo Generating Station
- San Bernardino Generating Station

That wish is consistent with our Decision (D.) 95-12-063, as modified by D.96-01-009, in which we required Edison to submit a plan to voluntarily divest itself of at least 50% of its fossil generating assets. (*Order Instituting Rulemaking/Investigation on the Commission's Own Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation*, mimeo. at 223.) The 12 plants have a combined summer generating capacity of 9,562 megawatts, which is all of Edison's gas-fired generation capacity. Edison proposes to transfer:

(a) real property owned by Edison on which the plants are located,

(b) related real property leases,

(c) easements appurtenant to owned or leased property,

(d) equipment used to conduct plant operations,

(e) spare parts, office supplies and other inventories on hand at closing (except for backup fuel oil supplies),

(f) Edison's interest in written contracts relating to each plant,

(g) Edison's interest in any transferable and separable licenses or permits used in connection with the operation of a plant,

(h) books, records, instruction manuals and other documents relating to the operation of each plant,

(i) third-party warranties specifically relating to assets being transferred,
(j) Edison's interest in any prepayments made by Edison prior to closing
(k) Edison's interest in certain specified air pollution control credits related to the plants being sold
(l) specified additional real property which may not be currently used in plant operations but which is adjacent to or related to a plant
(m) Edison's interest in and right to receive mail relating exclusively to plant ownership or operations, and
(n) other miscellaneous assets as described in the bid documents

Edison will specifically exclude the following property in the bid documents:
(a) fuel oil storage tanks and related property used for backup fuel operations or for the business of Edison Pipeline & Terminal Co. (EPTC),
(b) transmission equipment, switchyards, and radial transmission lines,
(c) communications equipment and facilities used in Edison's transmission and distribution systems,
(d) claims for refunds including refunds of real estate taxes, arising out of pre-closing periods,
(e) proprietary materials (*e.g.*, trademarks, proprietary computer software, marketing materials, trade names), subject to Edison's granting the buyer a fully paid-up, royalty-free license to use certain software exclusively for plant operations,
(f) personnel and employment records related to plant operations,
(g) rights under Edison's insurance policies,
(h) rights to receive mail relating to excluded assets or excluded liabilities,
(i) rights respecting computer hardware that is proprietary to Edison,
(j) specified additional real property not currently used in plant operations but adjacent to or related to a plant,
(k) inventories of natural gas and other fuel and related agreements,

(l) assets constituting working capital, including cash, securities, rights to refund and similar assets,

(m) rights under transactions between Edison and its affiliates, under employment contracts, under collective bargaining agreements, and under contracts related to the purchase or sale of electric power,

(n) customer data, and

(o) other miscellaneous assets ancillary to plant ownership and operation.

Edison plans to sell the 12 plants by a competitive open-auction bid process in three stages. Edison plans to identify and contact potential bidders in the first stage, prior to our decision, to determine whether potential auction participants meet minimum qualifications. Qualified participants would be asked to enter into a confidentiality agreement preventing unauthorized disclosure of certain information.

In the second stage, following our decision, bidding on the plants would occur, consisting of receipt of nonbinding expressions of interest for the purpose of identifying a short list of bidders to be given approximately six weeks to conduct due diligence and prepare formal bids. During that time, bidders would have the opportunity to request changes to the transaction documents which might include, for example, adjustments to the property boundaries of the plant sites. On receipt of binding bids, Edison would review the bids, and either accept one or more bids or solicit further bids from one or more bidders.

In the third and final stage, Edison would enter into definitive agreements with the winning bidders, subject to our final review and approval to determine whether the auction had been conducted in accordance with the approved procedure.

Applicable Legal Standards

Section 851

No public utility may transfer its property that is necessary or useful in the performance of its duties to the public without first having secured the Commission's authorization. (PU Code § 851.) The plants are presently used to generate electricity for delivery to Edison’s system. Therefore, the plants are presently useful in the performance of Edison’s duty as a public utility, and PU Code Section 851 applies.

Because we are asked to approve the sale this year, Edison's request that we find the plants to be not useful or necessary is premature, since Edison will continue to have the duty as a public utility to generate electricity, at least through the end of this year. (*See In the Matter of the Application of Southern California Edison Co.,* D.95-11-026.) With respect to all property associated with the plants that Edison proposes to exclude from the auction, we will require in our final decision that Edison either file an application to sell all such property pursuant to PU Code Section 851 or file an application to retain the property, pursuant to PU Code Section 377 (including appropriate evidence of market valuation). Edison may amend its application in this proceeding to identify the portions of such property that it proposes to be excluded from this requirement as non-generation related. We encourage Edison to sell as much of its property related to the plants as possible.

Section 362

In proceedings pursuant to PU Code 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 order to determine whether a facility needs to remain available and operational, the [C]ommission shall utilize standards that are no less stringent that [sic] the Western Systems Coordinating Council and North American Electric Reliability Counsel standards for planning reserve criteria." (*Id.*) The parties refer to such facilities as "must-run."

One of our main concerns in reviewing the sale of the plants is market power. In addition to the dimension of locational market power, which is encompassed by "maintaining open competition," we are also greatly concerned that the sale promote increased competition in the entire wholesale and retail energy market, which is partially encompassed by "avoiding an overconcentration of market power." In the second interim opinion, we will focus on the role of the agreements with the ISO in maintaining open competition. When we know the results of the auction, we will be in a position to determine whether the outcome raises any overconcentration issue or other market power concern.

We caution all bidders that in making our final determination, we will not approve any sale that merely changes the identity of the possessor of market power from Edison to another entity.

Section 363

PU Code Section 363 requires our approval of an operations and maintenance agreement (O&M Agreement) that provides for the selling utility or an affiliate or successor to operate and maintain plants that are sold for at least two years. We are to require such contracts to be reasonable for both the buyer and the seller.

Section 377

PU Code Section 377 provides that we "shall continue to regulate the nonnuclear generation assets owned by any public utility prior to January 1, 1997, that are subject to [C]ommission regulation until those assets have been subject to market valuation in accordance with procedures established by the [C]ommission."

CEQA

CEQA applies to discretionary approvals of activities that may cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and that are undertaken by a person who receives contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies or the issuance of a lease, permit, or other entitlement for use. (Public Resources Code § 21065.) Such activities are termed "projects."

Because a purported transfer of utility property that is useful or necessary to the performance of the utility's duties requires our prior approval pursuant to PU Code Section 851, our approval is an "entitlement for use."

On August 25, 1997, the Commission's Energy Division issued a notice of the Commission's intent to issue a mitigated negative declaration. Comments will be received by September 25, 1997, at which time it will be possible to know if all of the potential adverse environmental effects of the transfer of the plants can be avoided or reduced to a non-significant level by imposing appropriate conditions on the transfer. It would be inappropriate for Edison to accept final bids until the specific environmental mitigation measures that may be required are known and approved by a decision by this Commission, because the resulting uncertainty would have a natural tendency to depress bid prices.

Reliability of the Electric Supply

Because of the PU Code Section 362 duty of the Commission to "ensure" the availability and operation of must-run facilities, we assign the burden of proof to parties who assert that a particular facility should not be classified as must-run. Edison presented evidence, that no party disputes, to show that six of the facilities[5] will be needed neither for local voltage support nor to meet applicable planning reserve criteria, and Edison has met its burden.

For the remaining six plants,[6] there is no dispute that they should be treated as must-run for purposes of PU Code Section 362, although the parties also recognize that the ISO may reach a different conclusion in the future. We will take up the means by which those plants are to be ensured to remain available and operational, consistent with maintaining open competition, in our second interim opinion, and in our final opinion we will consider whether such means are consistent with avoiding an overconcentration of market power and other market power concerns. No transfer of the plants can take place until we have concluded that the proposed condition of sale that would make the six must-run plants subject to a contract with the ISO is adequate to ensure that such plants remain available and operational in a way that is consistent with our resolution of market power issues.

[5] Cool Water, Ellwood, Highgrove, Long Beach, Ormond Beach, and San Bernardino.

ORA suggests that we permit the auction of the non-must-run plants to proceed as soon as CEQA review permits, but to delay auction of the other plants until the FERC has finally approved the form of agreement with the ISO. This is a sound recommendation because it will reduce uncertainty for the buyers as to the exact obligations that will be imposed for the must-run plants. We will not permit Edison to accept final bids for the must-run plants until the FERC has approved the form of agreement with the ISO.[7]

Reasonableness of Proposed Sale Process

Bundling of Plants

ORA and the IEP each are generally supportive of Edison's application. Each criticized Edison's original proposal to offer plants only in four bundles of plants, rather than permitting bidding on single plants or any combination of plants. Following Edison's decision to modify its proposal by unbundling the sale of five of the plants that are not classified as must-run, IEP now argues that the Commission should not permit any bundling for the remaining units, either, because the marketplace is a superior means of determining which plants should be kept together. On balance, the reasons against bundling are more convincing than the reasons for, although it is a close question, and we believe that the bidders should be free to bid on plants singly or in any combination.[8]

Edison gives several reasons why it should be permitted to bundle the must-run plants: Sale of the plants singly could lead to thin bidding, because bidders would concentrate on a few plants, so that bundles would help assure that every plant

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[6] Alamitos, El Segundo, Etiwanda, Huntington Beach, Mandalay, and Redondo.

[7] We recognize that, in light of the current status of proceedings before the FERC, a substantial delay in the bidding may result from this restriction.

[8] Subject to the likelihood that we will not approve any sale to related entities that results in 40% or more of the capacity offered in this sale being transferred.

receives a bid; facilitating bidding consortia will substitute for permitting single-plant bidding; bundling will maximize sale prices because it will assure operational efficiencies by grouping together plants that can best be run by a single operator; and bundled bidding will reduce transactional costs. Finally, Edison notes that adjustments to the bundles may be necessary depending on feedback from potential bidders.

The only evidence offered on this point consisted of the prepared testimony of Edison's witness Craver and IEP's witness McClary. Since the parties did not identify conflicting factual statements in the testimony of the two witnesses, there was no examination of the witnesses concerning their qualifications, and it is not clear that either witness is an expert in auctions of electric utility generating plants or similar fields. In any event, however, neither witness purports to deliver an expert opinion that one method of auction will yield superior results to another. Rather, each witness marshals the arguments of his party in support of or opposition to the proposal. As stated above, we find the arguments in favor of unbundling more persuasive.

Bid Evaluation

ORA suggests that Edison should be required to disclose its bid evaluation methodology in advance so that bidders would know how the various bid scenarios (overlapping bids, etc.) would play out before making their bids. This, however, is an area in which uncertainty tends to increase, rather than depress, the proceeds to be expected. It is not customary for sellers and their investment bankers to disclose such methodologies in advance, because doing so eliminates any possibility of receiving a premium.

Minimum Bids

ORA suggests that Edison be required to prepare a minimum bid amount that could be used under some circumstances if it were suspected that the winning bid were too low because of a flawed auction. Edison opposes use of a sealed minimum bid.

The auction serves a purpose apart from reducing Edison's market power through divestiture (to whatever extent it does reduce Edison's market power). That purpose is a market valuation of the plants. A properly conducted auction that results

in a completed sale will determine market valuation in the most direct manner possible. (At a minimum, properly conducted auction would be one in which the property to be sold has been actively exposed to potential buyers, the qualified buyers have been given equal access to relevant information about the property, all buyers are bidding on the basis of the same transaction documents, and the procedures for receiving bids are known in advance to all participants. In short, it is a fair process in which all potential buyers vie in competition. That competition gives assurance that the price arrived at is an objective one.) A minimum bid, by contrast, would represent merely an estimate of market value. In the absence of evidence that bidding at the auction as designed will necessarily be too thin to determine market value, we will not require a minimum bid. Edison's retention of the right to reject bids in the event of irregularities in the auction process and our own final review provide adequate assurance that plants will not be divested as a result of an auction process that failed to produce serious bids.

Air Emissions Credits

ORA proposes that we should require Edison to sell the plants separately from certain tradable emission credits that have been granted to Edison under two air quality management programs for the reduction of sulfur dioxide and nitrogen oxides. ORA believes that selling the credits separately will increase the amount realized for them and lead to the correct ratemaking treatment for such credits.[9] Edison acknowledges that some of the credits for sulfur dioxide are in excess of the foreseeable operational requirements for the plants.[10] However, Edison argues, the emissions credits are required to operate the plants and if a potential bidder had to acquire such rights separately, the likely result would be a lower bid on the plants to reflect the cost

[9] ORA argues that revenues from the sale of excess air emission credits should be refunded to ratepayers by way of the Electric Rate Adjustment Mechanism balancing account. However, because such credits are clearly a generation-related asset, it is appropriate to treat them through the transition cost recovery mechanism provided by AB 1890.

[10] For that reason, Edison is not including all of the sulfur dioxide emissions credits in the auction.

of acquiring such rights. Both parties note that the optimum auction strategy to maximize the combined value of the plants and emissions credits is conjectural because neither party has presented a thorough economic analysis of the topic.

We see no principled reason to require the separate sale of emissions credits if we are not also going to require the plants to be sold in their component pieces. Presumably, the whole is greater than the sum of its parts and a better price can be obtained by offering the plants as a going concern with the required emissions credits than can be acquired by offering the plants without such credits. However, we will require in our final decision for Edison to file an application pursuant to PU Code Section 377 or 851 for any emissions reduction credits not sold in the auction.

Whether the Proposed Sale Process will Result in Determining the Fair Market Value of the Plants

Aside from the dispute concerning bundling, which we believe should be resolved in favor of auctioning the plants in any combination, the suggestion that bid evaluation criteria should be published, which we believe is unwise, and the proposal for a sealed minimum bid, which we will not require, no party disputes that the proposed sale process, upon consummation, will result in determining the fair market value of the plants absent some significant irregularity. No party contests Edison's request that post-auction overbids[11] should be prohibited, and we agree.

We are troubled, however, by Edison's reluctance to preclude proposed changes by bidders to the precise terms of the contractual documents, and we will carefully consider any claims by losing bidders of any prejudice that may have resulted from a winning bid that was conditioned upon such changes.

Proposed Operations and Maintenance Agreement

Only one disputed issue concerning the O&M Agreement exists. ORA recommends that we require Edison to establish a subsidiary to provide services under the proposed O&M Agreement so that the resources used for such services can be

[11] Bids received following the close of the auction that offer a higher price than received from the highest bidder.

distinguished from Edison's continued regulated maintenance services. Edison argues that it will be required, in any event, to track generation-related operations and maintenance costs separately from those costs that it will continue to collect in rates, so that a separate subsidiary is not necessary for that purpose. In addition, Edison argues, a separate subsidiary would involve additional costs for setup and corporate maintenance. We agree with Edison that ORA has not shown that the benefits of placing these services in a separate operating unit would justify the costs.

Whether the Proposed Accounting and Ratemaking Treatment Should be Approved

No party disputes Edison's proposed accounting and ratemaking treatment of the sales. (However, the question related to the cost of incremental capital additions to the plants is being handled in a different proceeding.)

As described in the application, Edison proposed to deduct the costs of sale[12] from the sale proceeds to obtain net sale revenue. If net sale revenue for any plant is less than the sunk costs of that plant (as determined in A.96-08-001 *et al.*), Edison would seek recovery of the difference as an additional recoverable transition cost through a debit to its Transition Cost Balancing Account proposed in another proceeding. If greater, Edison would credit the Transition Cost Balancing Account.

Edison will adjust net sale revenue upwards or downwards to account for all tax consequences.

Edison proposes to retain the station fuel oil tanks[13] and their associated potential environmental liabilities. It proposes to collect any costs incurred with respect to environmental liabilities consistent with the Settlement Agreement between the Division of Ratepayer Advocates[14] and Southern California Edison Company in

[12] Including, but not limited to, investment banker fees, attorney fees, consultant fees, title reports, permits, and filing fees. These would be recorded in Edison's previously approved Divestiture of Fossil Generation Memorandum Account.
[13] These provide a back-up fuel oil storage capability should natural gas delivery be disrupted.
[14] Now ORA.

Application 93-07-029 (dated March 28, 1994), Attachment B, adopted by the Commission in D.94-10-044.

Through the Hazardous Substance Clean-up and Litigation Cost Balancing Account established in D.94-05-020, Edison proposes to recover its cost of remediation for certain existing and identified environmental conditions at the sites of the plants, as well as accrued third-party tort claims and remediation obligations resulting from release of hazardous toxins into the atmosphere or water courses, in respect of electric and magnetic fields, currently unknown environmental conditions, and any other costs of environmental remediation that may be required in the event that any third party seeks to hold Edison directly liable for environmental conditions subsequent to the sale of a generation facility. However, we recently directed that no new generation-related amounts be recorded in such accounts. (D.97-08-056.) Accordingly, Edison should be permitted to amend its application to propose another treatment.[15]

Edison proposes to record all workforce management costs for reasonable worker protection benefits for workers who are impacted as a result of the proposed transfer to the Divestiture of Fossil Generation Memorandum Account until such time as its Transition Cost Balancing Account is approved, when such costs would be recorded to an appropriate subaccount in the Transition Cost Balancing Account.

Because the proposed O&M Agreement provides for Edison to be paid its fully-loaded direct labor and allocated indirect costs, Edison does not propose to establish any special ratemaking for the costs and revenues associated with the O&M Agreement.

Edison is retaining portions of the plant sites for possible future sale. It is premature to make any determination of the treatment such transactions should receive. With respect to tradable emissions credits, Edison expects that the value of the credits for nitrogen oxides will be fully reflected in bids. For sulfur dioxide credits,

[15] If such treatment differs substantially from the treatment proposed by Pacific Gas and Electric Company in A.96-11-021, Edison should explain the reason for such difference in detail.

however, most of the stations were allocated a substantial surplus compared to their operating requirements. Edison proposes either to sell the retained allowances in separate transactions or to retain them for use in connection with Edison's coal-fired generation. At such time as the surplus credits are either sold or retained, the consequences can be addressed (but such proceeds must ultimately be offset and included in the Transition Cost Balancing Account). As noted previously, for both surplus property including fuel-oil facilities and inventories (except property that Edison shows to be non-generation related) and credits, we will require an application pursuant to PU Code Section 377 or 851.

Findings of Fact

1. Edison is an electric utility subject to the jurisdiction of the Commission.

2. The Cool Water, Ellwood, Highgrove, Long Beach, Ormond Beach, San Bernardino, Alamitos, El Segundo, Etiwanda, Huntington Beach, Mandalay, and Redondo plants are presently used in the performance of Edison's duties as a public utility.

3. It is reasonable to permit Edison to commence an auction, but Edison should not be permitted to receive final bids until we have adopted a mitigated negative declaration.

4. Edison has designed an auction process that will, absent significant irregularity, establish the market value of the Cool Water, Ellwood, Highgrove, Long Beach, Ormond Beach, San Bernardino, Alamitos, El Segundo, Etiwanda, Huntington Beach, Mandalay, and Redondo plants, upon sale of those plants, if bidders are permitted to bid on any combination of plants.

5. No party disputes Edison's proposed accounting and ratemaking treatment of the sales.

6. No reason appears to require the O&M Agreement to be performed by a subsidiary of Edison.

7. The O&M Agreement is reasonable to Edison and the buyer.

8. For purposes of PU Code Section 362, the Cool Water, Ellwood, Highgrove, Long Beach, Ormond Beach, and San Bernardino plants will be needed neither for local voltage support nor to meet applicable planning reserve criteria.

9. For purposes of PU Code Section 362, the Alamitos, El Segundo, Etiwanda, Huntington Beach, Mandalay, and Redondo plants are needed to maintain the reliability of the electric supply until the ISO determines otherwise.

Conclusions of Law

1. The sales of the Cool Water, Ellwood, Highgrove, Long Beach, Ormond Beach, San Bernardino, Alamitos, El Segundo, Etiwanda, Huntington Beach, Mandalay, and Redondo plants are subject to PU Code Section 851.

2. In proceedings pursuant to PU Code 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.

3. We should determine whether the Alamitos, El Segundo, Etiwanda, Huntington Beach, Mandalay, and Redondo plants remain available and operational in a subsequent decision, prior to the consummation of any sale of those plants.

4. The sales of the Cool Water, Ellwood, Highgrove, Long Beach, Ormond Beach, San Bernardino, Alamitos, El Segundo, Etiwanda, Huntington Beach, Mandalay, and Redondo plants are consistent with the policies underlying D.95-12-063, as modified by D.96-01-009, and expressed in Assembly Bill (AB) 1890 (1996 Stats. ch. 854).

5. The auction of the plants will upon sale, absent some significant irregularity, determine the market valuation of the plants.

6. We should permit Edison to commence an auction of the Cool Water, Ellwood, Highgrove, Long Beach, Ormond Beach, San Bernardino, Alamitos, El Segundo, Etiwanda, Huntington Beach, Mandalay, and Redondo plants, but Edison should not be permitted to receive final bids until we have adopted a mitigated negative declaration.

7. The sale of the plants should be made subject to the O&M Agreement.

8. If the plants are sold, Edison's proposed accounting and ratemaking treatment of the sale of the plants should be approved, subject to confirmation of net book value of the plants in A.96-08-001 *et al.* and to the prohibition contained in

D.97-08-056 against recording generation-related costs to the Hazardous Substance Clean-up and Litigation Cost Balancing Account.

9. Edison should be permitted to amend its application with respect to the generation-related costs that it proposed to be recorded in the Hazardous Substance Clean-up and Litigation Cost Balancing Account.

10. No post-auction overbids should be permitted.

11. Our final decision should consider whether the sale of the plants is in the public interest, with special attention to market power issues and the fairness of the auction procedure.

INTERIM ORDER

THEREFORE, IT IS ORDERED that:

1. Southern California Edison Company (Edison) may commence an auction of the Cool Water, Ellwood, Highgrove, Long Beach, Ormond Beach, San Bernardino, Alamitos, El Segundo, Etiwanda, Huntington Beach, Mandalay, and Redondo plants, but shall not receive final bids for any of the plants until further order of the Commission approving a mitigated negative declaration and, for the Alamitos, El Segundo, Etiwanda, Huntington Beach, Mandalay, and Redondo plants, an order of the Federal Energy Regulatory Commission approving the form of agreement with the Independent System Operator for the operation of those plants. Edison shall permit bids on any combination of plants.

2. The sale of the plants shall be subject to conditions that we may require (a) to avoid or reduce to non-significant levels any adverse environmental impacts that we may determine will arise from physical changes reasonably foreseeable in connection with the transfer of the plants and (b) in connection with ensuring the continued availability of must-run plants consistent with maintaining open competition and avoiding an overconcentration of market power.

3. If the plants are sold, the sale shall be subject to the Operations and Maintenance Agreement in the form proposed in the application.

4. If the plants are sold, Edison may apply the accounting and ratemaking treatment described in this application to such sales, subject to confirmation of net book value of the plants in Application (A.) 96-08-001 *et al.*, and to the extent not inconsistent with Decision (D.) 97-08-056. Edison may amend its application with respect to the generation-related costs that it proposed to be recorded in the Hazardous Substance Clean-up and Litigation Cost Balancing Account.

5. If the plants are sold, Edison shall not consider post-auction overbids.

6. Edison may amend its application in this proceeding to establish what portion, if any, of each plant site is non-generation-related. For all unsold portions of the existing plant sites and other generation-related assets (such as emissions reduction credits), Edison shall either file an application pursuant to PU Code Section 851 for the sale of such assets, or file an application to retain such assets pursuant to PU Code Section 377.

This order is effective today.

Dated September 3, 1997, at San Francisco, California.

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