

Decision 08-10-015 October 2, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338-E), for Modification of Decision No. 05-06-020.

Application 08-06-013
(Filed June 10, 2008)

**DECISION GRANTING SOUTHERN CALIFORNIA EDISON COMPANY
AUTHORITY TO ISSUE UP TO \$2,000,000,000
TO FINANCE ITS SHORT-TERM BORROWING NEEDS**

1. Summary

This decision grants Southern California Edison Company (Edison) the relief requested in Application (A.) 08-06-013 to modify Decision (D.) 05-06-020 and does not impose any expiration date on the authority. This decision exempts Edison from the complicated formula limit imposed by Pub. Util. Code § 823(c), exempts this authority from the Commission's competitive bidding rules, imposes certain reporting requirements, imposes a fee of \$561,500, and supersedes the prior decision for short-term borrowing authority.

Pursuant to § 823(b) and the Commission's broad authority under Pub. Util. Code § 701¹ this decision grants Edison's request to have a flat sum limit to

¹ The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

its authority to borrow up to \$2 billion in short-term debt to finance its various short-term borrowing needs, i.e., no portion of this sum is fixed and no portion relies on and varies pursuant to § 823(c).

This proceeding is closed.

2. Background

Edison is currently authorized to issue approximately \$899,376,900 in short-term debt to finance its short-term borrowing needs.

This authority has been modified over time to increase and decrease the borrowing limits, and to impose various allowances or limitations on that authority. No one disputes the current need for this authority.¹

3. Authority to Borrow Short-Term

Edison's current authority to borrow money for periods of less than 12 months, at any one time, is a complicated calculation of the amount allowable under § 823(c)² plus a specific lump-sum allowed by the Commission in a prior decision.

The regulated utilities are otherwise limited in authority to issue short-term so that the total amount outstanding cannot exceed 5% of the other outstanding securities. The Commission can and does grant authority to allow Edison (and other utilities) to exceed that limitation. See § 823(c), below:

823. (a) No public utility shall, without the consent of the commission, apply any part of the issue of any stock or stock certificate or other evidence of interest or ownership, or bond,

¹ The application was filed on June 10, 2008 and it appeared on the Commission's June 13, 2008 daily calendar. There were no protests.

² Unless otherwise noted, all code citations are to the California Public Utilities Code.

note, or other evidence of indebtedness, or any proceeds thereof, to any purpose not specified in the commission's order, or to any purpose specified in the order in excess of the amount authorized for such purpose, or issue or dispose thereof on any terms less favorable than those specified in the order, or a modification thereof.

(b) A public utility may issue notes, for proper purposes and not in violation of any provision of law, payable at periods of not more than 12 months after the date of issuance of the notes without the consent of the commission.

(c) Notwithstanding the provisions of subdivision (b), no public utility as defined in Section 201(e) of the Federal Power Act (49 Stat. 847, 16 U.S.C. 824) shall, without the consent of the commission, issue notes payable at periods of not more than 12 months after the date of issuance of the notes if such notes and all other notes payable at periods of not more than 12 months after the date of issuance of such notes on which such public utility is primarily or secondarily liable would exceed in aggregate amount 5 percent of the par value of the other securities then outstanding. In the case of securities having no par value, the par value for the purposes of this subsection shall be the fair market value as of the date of issue.

(d) No note payable at a period of not more than 12 months after the date of issuance of such note shall, in whole or in part, be refunded by any issue of stocks or stock certificates or other evidence of interest or ownership, or of bonds, notes of any term or character, or any other evidence of indebtedness, without the consent of the commission. (Emphasis added.)

Edison was most recently authorized by D.05-06-020 to issue short-term notes, through June 30, 2010, in an aggregate principal amount, not to exceed at that time, of \$ 776,301,000, of which \$441,288,502 was a lump-sum in excess of the limit otherwise allowed by § 823(c), *i.e.*, \$335,012,398. Based on the outstanding securities as of March 31, 2008, Edison is presently allowed to issue up to \$458,088,398 (as authorized by applying § 823(c) to Edison's outstanding

long-term securities) and the additional lump-sum of \$441,288,502 authorized by D.05-06-020, for a total of \$899,376,900. This exact amount continues to vary monthly as Edison's total securities varies.

Edison requests an increase in its short-term borrowing authorization primarily because of its large capital spending program that is anticipated over the next several years. Edison states that it intends to invest approximately \$19 billion over the next five years in replacing and improving aging infrastructure and other capital investments. Edison also states in its application that it will need to issue debt and equity securities to partially fund the capital expenditures. Edison indicates that while it expects to issue long-term securities to fund the borrowings, it needs to have flexibility to borrow significant amounts in the short-term market when market conditions make long-term financing unattractive or unavailable. When market conditions for long-term securities improve, the short-term borrowing would be reduced through the issuance of long-term securities. Similarly, debt maturities, opportunities to redeem or repurchase securities at low cost, changes in cash flows, or other unexpected events may make it necessary or desirable for Edison to increase its short-term borrowing temporarily to meet cash needs. Again, short-term borrowing would be reduced when practicable.

Edison also requests a simple lump-sum limitation to its authority and thus exempting it from the continually changing allowance of § 823(c).

Edison's authority is based upon its likely and authorized needs to use short-term debt and therefore the mechanical limitation of 5% of other securities is both irrelevant and unnecessarily complicated. A 5% limit would continually change whereas a fixed limit requires a specific Commission order to change the limit. The authority to borrow up to \$2 billion granted in today's decision

supersedes all prior authority pursuant to § 816 et seq., to issue short-term debt, as discussed below.

4. Competitive Bidding Rule

The Commission has a long history of exempting many forms of borrowing from its general rule (Resolution F-616) which requires competitive bidding. Generally, competitive bidding ensures that the transactions are at arms length with the bidders and are open to the widest possible market to attract as favorable a rate and terms as possible. The Commission exempts financing from this rule when the applicant persuades us that the type or size of the transaction is likely to be more cost effective when there are direct negotiations with potential lenders. As previously noted prior decisions have exempted financing when the transaction (i) exceeds a principal amount of \$ 200 million, and, or (ii) utilizes a variable-rate debt.

Edison proposes no change to the complete bidding rule exemption. We know of no need to change or rescind this authority. Therefore, we affirm that the authority granted herein is exempt from the rule when the transaction (i) exceeds a principal amount of \$ 200 million, and, or (ii) utilizes a variable-rate debt.

5. Secured Debt

Edison was authorized to secure its debt, pursuant to § 851¹, in its last decision. Edison proposes no change to the authority to secure its debt, we know of no need to change or rescind this authority, and therefore we affirm that the authority granted herein allows Edison to secure its debt pursuant to § 851 by (i) a mortgage on Edison's real property, or (ii) a pledge of Edison's accounts receivable. We will continue the requirement adopted in D.01-01-021 that if Edison issues any debt securities secured by its accounts receivable it will be structured as a true sale for bankruptcy purposes, a sale for financial reporting, and debt for tax purposes.

6. Required Fee on Debt Authority

When we authorize a utility to issue debt, the Commission is required to charge and collect a fee in accordance with § 1904(b).² The following table shows

¹ No public utility ... shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, 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, nor by any means whatsoever, directly or indirectly, merge or consolidate ... with any other public utility, without first having either secured an order from the commission authorizing it to do so ...

² For a certificate authorizing an issue of bonds, notes, or other evidences of indebtedness, two dollars (\$2) for each one thousand dollars (\$1,000) of the face value of the authorized issue or fraction thereof up to one million dollars (\$1,000,000), one dollar (\$1) for each one thousand dollars (\$1,000) over one million dollars (\$1,000,000) and up to ten million dollars (\$10,000,000), and fifty cents (\$0.50) for each one thousand dollars (\$1,000) over ten million dollars (\$10,000,000), with a minimum fee in any case of fifty dollars (\$50). No fee need be paid on such portion of any such issue as may be used to guarantee, take over, refund, discharge, or retire any stock, bond, note or other evidence of indebtedness on which a fee has theretofore been paid to the commission. If the Commission modified the amount of the issue requested in any case and the applicant thereupon elects not to avail itself of the Commission's authorization, no fee shall be

Footnote continued on next page

the calculation of the fee that Edison must pay for the additional in \$1,111,000,000 borrowing capacity authorized by this decision. We calculate this based on the difference between the current limit on authority to borrow approximately \$889,000,000 and the request to increase the authority to \$2,000,000,000.

§ 1904(b) Fee		
	Rate and Formula	Amount
Fee on First \$1 Million	\$2 per \$1,000 $(\$1,000,000 / \$1,000) \times \$2$	\$2,000
Fee on \$2 - \$10 Million	\$1 per \$1,000 $(\$9,000,000 / \$1,000) \times \$1$	\$9,000
Fee on \$1,101 million	\$0.50 per \$1000 $(\$1,101,000,000) \times \0.50	\$550,500
Total Fee on \$1.111 billion		\$561,500

7. Expiration of Authority

We find that it is unlikely that Edison will cease to have short-term borrowing needs and therefore a need for short-term financing in the foreseeable future. Therefore, we will not impose an expiration date on today's authority and this order shall remain in effect until good cause is shown to modify or eliminate this authority.

8. General Order 24 B - Reporting

Edison must comply with General Order 24-B which requires specific detailed reporting on both outstanding debt and new transactions. The

paid, and if such fee is paid prior to the issuance of such certificate by the commission, such fee shall be returned.

Commission has routinely modified the monthly filing requirement to quarterly reports to receive adequate timely information, and we will do so here.

9. Category and Need for Hearings

In Resolution ALJ 176-3216, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that an evidentiary hearing would not be necessary. Based on the record of this proceeding, we affirm that this is a ratesetting proceeding and that a hearing is not necessary.

10. Comments on the Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 311(g) (2), the otherwise applicable 30-day period for public review and comment is being waived.

11. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Douglas M. Long is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Edison has the need for authority to borrow up to \$2,000,000,000 to finance its short-term borrowing needs.
2. Exemptions from the competitive bidding rule for a transaction that (i) exceeds a principal amount of \$200 million, and, or (ii) utilizes a variable-rate debt may reduce Edison's costs.
3. Securitizing the debt with (i) a mortgage on Edison's real property, or (ii) a pledge of Edison's accounts receivable, may reduce Edison's costs.
4. Quarterly reports pursuant to General Order 24-B will provide adequate and timely information to the Commission.

Conclusions of Law

1. This is a ratesetting proceeding.
2. A public hearing is not necessary.
3. The Application should be granted to the extent set forth in the order that follows.
4. The proposed borrowings, pursuant to § 823(c), are for lawful purposes.
5. It is reasonable to exempt Edison from the competitive bidding rule when the transaction (i) exceeds a principal amount of \$200 million, and, or (ii) utilizes a variable-rate debt.
6. It is reasonable to allow Edison to secure its debt pursuant to § 851 by (i) a mortgage on Edison's real property, or (ii) a pledge of Edison's accounts receivable.
7. The necessary and still relevant provisions of the prior decision for Edison to finance its short-term borrowing needs are included in the orders of this decision.
8. The prior decision for authority to finance short-term borrowing needs is redundant and should be superseded.
9. Edison should comply with the reporting requirements of General Order 24-B on a quarterly basis.
10. There is a fee of \$561,500 due or payable with respect to this Application pursuant to § 1904(b).
11. This decision should be effective upon payment of the fee.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company (Edison) is authorized, pursuant to Pub. Util. Code § 823(c), to issue up to \$2,000,000,000 in debt securities to finance Edison's short-term borrowing needs.

2. Edison may secure its debt, pursuant to Pub. Util. Code § 851, by (i) a mortgage on Edison's real property, or (ii) a pledge of Edison's accounts receivable as described in this order.

3. Edison is exempted from the competitive bidding rule when the transaction (i) exceeds a principal amount of \$ 200 million, and, or (ii) utilizes a variable-rate debt.

4. On or before the 25th day of the month following each quarter, Edison shall file a report for the preceding quarter showing all receipts and disbursements required by General Order 24.

5. This authority is not effective until Edison pays a \$561,500 fee, pursuant to Pub. Util. Code § 1904(b), to the Commission's Fiscal Office.

6. The authority granted to Edison in this decision remains in effect until modified or otherwise changed by a subsequent order of this Commission.

7. Application 08-06-013 is closed.

This order is effective today.

Dated October 2, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

I will file a dissent.

/s/ TIMOTHY ALAN SIMON
Commissioner

D.08-10-013/A.08-05-033

D.08-10-014/A.08-06-012

D.08-10-015/A.08-06-013

**Commissioner Timothy Alan Simon's Dissent to October 2, 2008
Public Agenda 3222, Agenda Items 25 [A08-05-033],
26 [A08-06-012], and 27 [A08-06-013]**

I am dissenting on Agenda item 25 because I have some concerns about PG&E's Application¹, and about utility requests for exemptions on competitive bidding for debt securities and preferred stock securities offerings in general. My comments are therefore also applicable to Agenda items 26 and 27, respectively, which were filed by Southern California Edison.² As a professor of law and securities regulation, I recognize that utilities clearly need access to capital to finance operating capital, facilities upgrades, and other critical infrastructure projects. In addition, I do not want to postpone judgment on these matters given the distressed and uncertain state of our financial markets. Nevertheless, my concerns with these Applications are threefold:

¹ Application of Pacific Gas and Electric Company to issue, sell, and deliver one or more series of Debt Securities and to guarantee the obligations of others in respect of the issuance of Debt Securities, the total aggregate principal amount of such long-term indebtedness and guarantees not to exceed \$4.0 billion; to execute and deliver one or more indentures; to sell, lease, assign, mortgage, or otherwise dispose of or encumber utility property; to issue, sell and deliver in one or more series, cumulative Preferred Stock -- \$25 Par Value, Preferred Stock -- \$100 Par Value, Preference Stock or any combination thereof; to utilize various debt enhancement features; enter into interest rate hedges; and for an exemption from the Commission's Competitive Bidding Rule (A.08-05-033), May 22, 2008.

² See Application of Southern California Edison Company (U338-E), a corporation, for modification of Decision No. 00-10-040, as previously modified by Decision Nos. 01-01-021, 02-01-061, 05-11-013 and 06-11-012 (A.08-06-012), June 10, 2008; Application of Southern California Edison Company for Modification of Decision No. 05-06-020 (A.08-06-013), June 10, 2008.

D.08-10-013/A.08-05-033

D.08-10-014/A.08-06-012

D.08-10-015/A.08-06-013

First, PG&E's request to issue \$4.0 billion in long-term debt and preferred stock is based on a three-year projection of capital expenditure requirements. Locking in non-competitive financing terms for such a large offering request over a lengthy period of time may not be in the best interest of ratepayers when a better deal could be obtained if this large offering was submitted in pieces to take advantage of fluctuating and potentially better market conditions prior to 2011.

This brings me to my second concern. The exemptions granted under the Competitive Bidding Rule in Resolution F-616 require a "conclusive showing by a utility that an exemption would be in the best interest of ratepayers."³

In their Application, PG&E has not provided sufficient evidence to demonstrate that their negotiated deal is superior to competitive bidding. Rather, PG&E ostensibly assumes that competitive bidding may result in higher costs due to the fragmentation of the investment banking industry into competing syndicates that would face increased risk. While negotiated bids in extraordinary circumstances can be favorable, there is a competing school of thought that competitive bidding should result in the lowest, most efficient market prices and fees for these securities. Furthermore, many of PG&E's concerns with competitive bidding appear to be based not on record evidence or a showing of comparative market data, but on banking industry status quo assumptions that may or may not hold true.

³ See Resolution No. F-616, Exhibit A: Report on the California Public Utilities Commission's Competitive Bidding Rule for Issuance of Securities, September 5, 1986, at 2.

D.08-10-013/ A.08-05-033

D.08-10-014/ A.08-06-012

D.08-10-015/ A.08-06-013

Third, while I am pleased to see PG&E and our other regulated utilities make progress toward achieving our General Order 156 goals, I would like to challenge them to proactively continue to procure financial services from emerging firms, including, but not limited to, WMDVBE or otherwise. Many emerging firms are significant participants on Wall Street and should be given the opportunity to compete for California's regulated utility financial services. I look forward to working together with our regulated utilities to ensure that we rise to this challenge of creating business opportunities for these firms. This is a relevant and timely concern as we find our financial markets highly distressed, with entrenched banks and other major institutions failing or teetering on the edge of collapse. The status quo is clearly not working.

Finally, I understand that it has been Commission practice to routinely grant exemptions to the Competitive Bidding Rule since the adoption of Resolution F-616 on October 1, 1986. This practice calls into question whether this rule is effective or necessary. We have essentially granted one continuous boilerplate exemption since the adoption of this Resolution, which should be reexamined and updated to ensure the best financing terms for ratepayers going forward. We should revisit these issues in a rulemaking with an accompanying workshop before the Commission in order to lend additional clarity and transparency to this process.

Ratepayers deserve the same respect, transparency, and accountability as shareholders. These blanket exemptions without a time constraint or ceiling does not support efficiency in the market, which is driven by competitive pricing. Therefore, I will be filing a written dissent. However, I wish to be clear that my

D.08-10-013/A.08-05-033

D.08-10-014/A.08-06-012

D.08-10-015/A.08-06-013

dissenting vote is not a prohibition to financing. Instead, it challenges the perpetual exemptions to the competitive bidding process.

/s/ TIMOTHY ALAN SIMON

Timothy Alan Simon

Commissioner

San Francisco, California

October 2, 2008