

Decision 08-10-014 October 2, 2008

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (U388E), 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.

Application 08-06-012  
(Filed June 10, 2008)

**DECISION GRANTING SOUTHERN CALIFORNIA EDISON COMPANY  
AUTHORITY TO ISSUE UP TO \$2,000,000,000 TO FINANCE ITS ONGOING  
REGULATORY BALANCING ACCOUNTS  
AND PROCUREMENT-RELATED COLLATERAL COSTS**

**1. Summary**

This decision grants Southern California Edison Company (Edison) the authority requested in Application (A.) 08-06-012 to modify Decision (D.) 06-11-012 and all previous decisions for authority to finance its regulatory balancing accounts and procurement-related collateral costs. Specifically, this decision grants Edison's request to increase its authority by \$450,000,000, from \$1,550,000,000 to \$2,000,000,000, exempts this authority from the Commission's competitive bidding rules, imposes certain reporting requirements, imposes a fee of \$231,000, and supersedes all prior decisions for authority to finance Edison's regulatory balancing accounts and procurement-related collateral costs. This proceeding is closed.

**2. Background**

Edison is currently authorized to issue many types of debt securities, including commercial paper, unsecured and secured debt securities,

medium-term notes and direct loans, for up to \$1.55 billion. The purposes of the debt, pursuant to Pub. Util. Code § 816<sup>1</sup> include financing its ongoing authorized regulatory balancing accounts and procurement-related collateral costs. 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.

### **3. Clarification of Authority**

Edison's application seeks to correct an inconsistency between its current authority to borrow up to \$1.55 billion and its authorized uses for borrowing which now total \$2 billion. In D.07-12-052, the Commission approved an increased collateral capacity limit of \$2 billion in the form of cash or letters of credit:

... approving [Edison's] request to increase its collateral exposure limit from \$1.4 billion to \$2.0 billion resulting from increased physical and financial transactions.  
(D.07-12-052, p. 160.)

And,

... [Edison] seeks Commission approval to increase its collateral capacity limit up \$2.0 billion. [Edison's] request is granted ... (*Id.*, p. 195.)

And,

We find that [Edison's] request to increase its collateral exposure limit to \$2.0 billion is reasonable. (*Id.*, Finding of Fact 71.)

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<sup>1</sup> Unless otherwise noted, all citations are to the California Public Utilities Code.

And finally,

[Edison's] request to increase its collateral exposure limit to \$2.0 billion is approved. (*Id.*, Conclusion of Law 29.)

The Commission did not, however, explicitly grant authority pursuant to § 816 to borrow up to \$2 billion. We, therefore, need to clarify here that Edison has the requisite Commission authority pursuant to § 816 to borrow sufficient funds to satisfy its needs for balancing accounts and procurement-related collateral costs.

#### **4. Superseding the Prior Decisions**

There is a benefit to consolidating in this one decision the authority to issue debt for balancing accounts and procurement-related collateral where that authority has evolved and expanded over time in several decisions. We, therefore, review the elements of any authority granted to Edison in the prior series of related decisions: D.00-10-040, D.01-01-021, D.02-01-061, D.05-11-013, and D.06-11-012. We either specifically affirm that authority herein, or terminate that authority and thereby supersede those decisions.

All of these five prior orders are superseded by this decision, which sets a new limit of \$2 billion, allows use of the proceeds for ongoing regulatory balancing accounts and procurement-related collateral costs, allows for securitization, and grants an exemption from the competitive bidding rule. This authority is subject to reporting requirements established by General Order 24-B, except as these requirements are modified herein.

##### **4.1. D.00-10-040**

In D.00-10-040, the Commission authorized Edison an emergency increase of \$1.3 billion, from \$700 million to \$2 billion, in borrowing authority. The

increase in the authorized level of balancing account financing could only be used by Edison to finance the purchase of wholesale electric power for delivery to its retail customers. This was the first decision in the midst of the 2000 – 2001 wholesale energy market collapse following the restructure of the electric industry. We find, based on the authority we grant today, that D.00-10-040 no longer applies and need not be cited as authority to finance Edison’s regulatory balancing accounts.

**4.2. D.01-01-021**

In D.01-01-021, the Commission authorized Edison to issue \$3.5 billion of additional debt (for a total authority of \$5.5 billion) to finance the purchase of wholesale power for delivery to retail customers. The decision also granted authority under § 851 to issue debt secured by (i) a mortgage on Edison's property, and (ii) Edison’s accounts receivable. And finally, the decision granted Edison an exemption to issue debt on a negotiated basis instead of through competitive bids: (i) debt issues in excess of \$200 million; and (ii) variable-rate debt.

This was a second decision rendered in the midst of the 2000–2001 wholesale energy market collapse in California and gave Edison authority to borrow to procure very high-cost energy. Thus, in both D.01-01-021 and D.00-10-040, the very high debt authority increase was for energy procurement costs rather than regulatory balancing accounts generally. The authority granted in D.01-01-021 was to lapse six months after Edison eliminated the undercollection in its Transition Revenue Account (TRA).

We therefore find, based on the authority we grant today, that D.01-01-021 no longer applies and need not be cited as authority to finance Edison’s regulatory balancing accounts.

**4.3. D.02-01-061**

In D.02-01-061, the Commission authorized Edison to issue \$3.5 billion of debt to finance the Procurement-Related Obligations Account (PROACT). The decision also granted authority under § 851 to issue debt secured by (i) a mortgage on Edison's property, and (ii) Edison's accounts receivable. And finally, the decision granted Edison an exemption to issue debt on a negotiated basis instead of through competitive bids: (i) debt issues in excess of \$200 million; and (ii) variable-rate debt. D.02-01-061 also reduced the borrowing limit from \$5.5 billion to \$3.5 billion and refunded some fees associated with unused borrowing authority.

The PROACT was a ratemaking device resulting from a settlement which avoided Edison's near-bankruptcy in the aftermath of electric restructuring. As the wholesale electricity market collapse continued, Edison faced bankruptcy and there were rapid changes in the cost recovery procedures which superseded the TRA and the other various provisions and mechanisms introduced to implement Assembly Bill 1890. One provision of the bill, a freeze of retail rates, led to an extreme liquidity crisis for the utilities. Thus, in D.01-01-021 and D.02-01-061, the Commission authorized huge, but limited-term, increases in borrowing authority. The high levels of borrowing authorized were necessary to finance Edison's regulatory balancing accounts in effect at that time.

All of the prior orders are superseded by today's decision, which sets a new limit of \$2 billion, allows for securitization, and allows an exemption from the competitive bidding rule. We therefore find, based on the authority we grant herein, that D.02-01-061 no longer applies and need not be cited as authority to finance Edison's regulatory balancing accounts.

**4.4. D.05-11-013**

In D.05-11-013, the Commission authorized Edison to issue up to \$700 million of debt to finance regulatory balancing accounts, which reduced Edison's authority to the level prior to the wholesale electricity market collapse. The decision also granted authority under § 851 to issue debt secured by (i) a mortgage on Edison's property, and (ii) Edison's accounts receivable. And finally, the decision granted Edison an exemption to issue debt on a negotiated basis instead of through competitive bids: (i) debt issues in excess of \$200 million; and (ii) variable-rate debt.

In D.05-11-013, the Commission determined that the PROACT balance was no longer an issue and Edison could safely revert to an authorized debt level of \$700 million:

After sufficient recovery of the PROACT balance Edison's authority to issue debt to finance its PROACT regulatory balancing account reverted to the \$ 700 million authorized in D.95-11-065 for regulatory balancing accounts generally.  
(Conclusion of Law 3.)

We discuss and adopt the latter two items, secured debt and competitive bidding, again in this decision, and we therefore find, based on the authority we grant today, that D.05-11-013 no longer applies and need not be cited as authority to finance Edison's regulatory balancing accounts.

**4.5. D.06-11-012**

In the most recent decision, D.06-11-061, the Commission increased the authority by \$850 million to \$1.55 billion (\$700 million + \$850 million), allowed for the use of the proceeds for procurement-related collateral costs, assessed the appropriate fee, and continued securitization authority and competitive bidding exemptions, but made no other specific order. We find, based on the authority

we grant today, that D.06-11-012 no longer applies and need not be cited as authority finance Edison's regulatory balancing accounts.

## **5. Competitive Bidding Rule**

The Commission has a long history of exempting borrowing from its general rule (Resolution F-616) to require competitive bidding. Competitive bidding promotes arms length transactions that 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 for Edison's regulatory balancing accounts and procurement-related collateral costs 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.

## **6. Secured Debt**

Edison was first authorized in D.01-01-021 to secure its debt to finance balancing accounts. The decision granted authority under § 851<sup>2</sup> to issue debt

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<sup>2</sup> 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

*Footnote continued on next page*

secured by (i) debt securities secured by a mortgage on Edison's real property, and (ii) debt securities secured by a pledge of Edison's accounts receivable.

Edison stated at the time that any debt secured by its accounts receivable would be structured as a true sale for bankruptcy purposes, a sale for financial reporting, and debt for tax purposes. (Footnote 8, D.01-01-021.) The Commission found that authorizing Edison to issue secured debt securities would reduce Edison's cost of debt and provide it with needed flexibility to finance its huge energy procurement undercollection. (Finding of Fact 9.)

Edison proposes no change to the authority to secure its debt. We know of no need to change or rescind this authority. Therefore, we affirm that the authority granted herein allows Edison to secure its debt pursuant to § 851 by (1) a mortgage on Edison's real property, or (2) 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.

## **7. 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).<sup>3</sup> The following table shows

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indirectly, merge or consolidate ... with any other public utility, without first having either secured an order from the commission authorizing it to do so ...

<sup>3</sup> 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

*Footnote continued on next page*

the fee that Edison must pay for the additional \$450 million borrowing capacity authorized by this decision.

<b>§ 1904(b) Fee</b>		
	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 \$440 million	\$0.50 per \$1,000 $(\$440,000,000/\$1,000)\times\$0.50$	\$220,000
<b>Total fee on \$450 million</b>		<b>\$231,000</b>

Edison shall remit the required fee to the Commission's Fiscal Office. The authority granted herein shall not become effective until the fee is paid.

#### **8. Expiration of Authority**

We find that it is unlikely that Edison will cease to have regulatory balancing accounts and, therefore, a need to finance its undercollected balances in the foreseeable future. Similarly, the need for collateral for procurement is also likely to continue. 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.

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

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

**10. 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.

**11. 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.

**12. 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 regulatory balancing accounts and procurement-related collateral costs.
2. In D.07-07-052, the Commission found that Edison reasonably needed an increase in authority to use funds for procurement-related collateral costs but the decision did not specifically authorize an increase in Edison’s authority to borrow pursuant to § 816.

3. 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.

4. 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.

5. 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 § 816, 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 prior decisions for Edison to finance regulatory balancing accounts and procurement-related collateral costs are included in the orders of this decision.

8. The prior decisions for authority to finance regulatory balancing accounts and procurement-related collateral costs are redundant and should be superseded.

9. Edison's need to finance regulatory balancing accounts and procurement-related collateral costs is unlikely to end and, therefore, there is no need to limit the life of this authority.

10. Edison should comply with the reporting requirements of General Order 24-B on a quarterly basis.

11. There is a fee of \$231,000 due or payable with respect to this Application pursuant to § 1904(b).

12. This decision should be effective upon Edison's payment of the fee to the Commission's Fiscal Office.

## **O R D E R**

### **IT IS ORDERED** that:

1. Southern California Edison Company (Edison) is authorized, pursuant to Pub. Util. Code § 816, to issue up to \$2,000,000,000 in debt securities to finance Edison's regulatory balancing accounts and procurement-related collateral costs.

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 25<sup>th</sup> 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-B.

5. This authority is not effective until Edison pays a \$231,000 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 08-06-012 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 Application<sup>1</sup>, 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.<sup>2</sup> 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:

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<sup>1</sup> 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.

<sup>2</sup> 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.

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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."<sup>3</sup> 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.

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<sup>3</sup> 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.

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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

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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