

8/28/68

33. RESCISSION OF COMMISSION ACTION (MINUTE ITEM 12, PAGE 149, FEB. 29, 1968) AND AMENDMENT OF LEASE P.R.C. 3193.1; SAN ONOFRE, SAN DIEGO COUNTY; SOUTHERN CALIFORNIA EDISON COMPANY, AND SAN DIEGO GAS AND ELECTRIC COMPANY - W.O. 6801.

After consideration of Calendar Item 40 attached, and upon motion duly made and carried, the following resolution was adopted:

THE COMMISSION RESCINDS ITS ACTION OF FEBRUARY 29, 1968 (MINUTE ITEM 12, PAGE 149), AND LEASE P.R.C. 3193.1 IS AMENDED, RETROACTIVE TO SEPTEMBER 24, 1964, BY THE ADDITION OF THE FOLLOWING TERMS AND CONDITIONS:

1. IT IS UNDERSTOOD THAT THE PROPORTIONS IN WHICH THE EASEMENT HOLDERS HOLD UNDIVIDED INTERESTS IN RIGHTS GRANTED HEREUNDER AS TENANTS IN COMMON ARE, AND HAVE BEEN SINCE THE AFORESAID AGREEMENT WAS EXECUTED AND DELIVERED 80% TO SOUTHERN CALIFORNIA EDISON COMPANY AND 20% TO SAN DIEGO GAS & ELECTRIC COMPANY.
2. THAT THE FOLLOWING PARAGRAPH BE ADDED TO THE ORIGINAL AGREEMENT AND BY REFERENCE MADE A PART THEREOF:

"THE CONSENT OF THE STATE IS HEREIN GIVEN TO THE ENCUMBRANCE (A) BY SOUTHERN CALIFORNIA EDISON COMPANY OF ITS INTEREST HEREUNDER BY THE LIEN OR CHARGE OF THE TRUST INDENTURE DATED AS OF OCTOBER 1, 1923, GIVEN BY SOUTHERN CALIFORNIA EDISON COMPANY TO HARRIS TRUST AND SAVINGS BANK AND SECURITY FIRST NATIONAL BANK (SUCCESSOR, BY CONSOLIDATION AND MERGER, TO PACIFIC SOUTHWEST TRUST AND SAVINGS BANK), AS TRUSTEES, AS SAID INDENTURE IS FROM TIME TO TIME SUPPLEMENTED AND AMENDED, IMPOSING SAID LIEN OR CHARGE UPON SUBSTANTIALLY ALL OF SOUTHERN CALIFORNIA EDISON COMPANY'S PROPERTY FOR THE BENEFIT OF ITS BONDS FROM TIME TO TIME OUTSTANDING THEREUNDER, AND (B) BY SAN DIEGO GAS & ELECTRIC COMPANY OF ITS INTEREST HEREUNDER BY THE LIEN OR CHARGE OF THE MORTGAGE AND DEED OF TRUST DATED AS OF JULY 1, 1940, GIVEN BY SAN DIEGO GAS & ELECTRIC COMPANY TO THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION, AS TRUSTEE, AS SAID INDENTURE IS FROM TIME TO TIME SUPPLEMENTED AND AMENDED, IMPOSING SAID LIEN OR CHARGE UPON SUBSTANTIALLY ALL OF SAN DIEGO GAS & ELECTRIC COMPANY'S PROPERTY FOR THE BENEFIT OF ITS BONDS FROM TIME TO TIME OUTSTANDING THEREUNDER. THIS CONSENT SHALL NOT PREVENT THE STATE FROM EXERCISING ANY OF ITS RIGHTS UNDER SAID EASEMENT LEASE.

"UNDER THE CIRCUMSTANCES THAT UNDER PUBLIC RESOURCES CODE SECTION 6501, THE TERM 'LEASE' INCLUDES, AMONG OTHER THINGS, AN 'EASEMENT', AND CHAPTER 1, PART 2 OF DIVISION 6 OF SAID PUBLIC RESOURCES CODE (BEGINNING AT SECTION 6501 THEREOF) AUTHORIZES THE STATE LANDS COMMISSION TO GRANT SUCH EASEMENTS, IT IS UNDERSTOOD THAT, NOTWITHSTANDING THE FORMAL TERMINOLOGY PERTAINING TO LEASES AND LEASEHOLDS CONTAINED IN SAID AGREEMENT DATED DECEMBER 21, 1964, SAID AGREEMENT, AS AMENDED, IS A CONVEYANCE OF AN EASEMENT FOR THE PURPOSES THEREIN SPECIFIED; THE TERMS 'DEMISE AND LEASE', 'LESSEE' AND 'RENTAL' SHALL NOT BE CONSTRUED TO CONFER ANY DIFFERENT OR OTHER RIGHTS UPON ANY OF THE PARTIES THAN THOSE OF A RIGHT-OF-WAY EASEMENT."

3. IT IS ALSO AGREED TO AMEND THE LEASE TERM TO 49 YEARS FROM SEPTEMBER 24, 1964, WITH PROVISION FOR REVIEW OF THE RENTAL AT 5-YEAR INTERVALS COMMENCING SEPTEMBER 24, 1969.

Attachment

Calendar Item 40 (3 pages)

CALENDAR ITEM

8/68  
W.O. 6801

40.

RESCISSION OF COMMISSION ACTION (MINUTE ITEM 12, PAGE 149, FEB. 29, 1968)  
AND AMENDMENT OF LEASE P.R.C. 3193.1

APPLICANT: Southern California Edison Company  
San Diego Gas and Electric Company

LOCATION: San Onofre, San Diego County

PRESENT USE: Construction, operation and maintenance of two water-circulating  
conduits and appurtenances

TERMS: Initial period: 15 years, from September 24, 1964  
Renewal options: 3 additional periods of 10 years each

CONSIDERATION: \$497.62 per annum

BASIS FOR CONSIDERATION:  
.0662% of appraised value of land

PREREQUISITE ITEMS:  
U.S.A. Corps of Engineers navigational permit issued  
Applicant is owner of upland

STATUTORY AND OTHER REFERENCES:  
a. Public Resources Code: Div. 6, Pt. 2, Ch. 1, Secs. 6501-6509  
b. Administrative Code: Title 2, Div. 3, Secs. 2000-2011  
c. Commission policy: Minute Item 18 of November 18, 1959

OTHER PERTINENT INFORMATION:

Lease P.R.C. 3193.1 was issued to Southern California Edison Company and San Diego Gas and Electric Company effective September 24, 1964. The lease covers two circulating water conduits in an area 100 feet in width by 3,310 feet in length, on tide and submerged lands, which are used in conjunction with the operation of the San Onofre Nuclear Generating Station at San Onofre.

In its action of February 29, 1968 (Minute Item 12, page 149), the Commission approved the request for the addition of supplemental language to the agreement that would enable Southern California Edison Company to refer to the instrument as an "easement" (as opposed to a lease), thus permitting its use as security for bond indebtedness under its trust indenture.

The original request failed to note that San Diego Gas and Electric Company also operated under a trust indenture having similar limitations.

CALENDAR ITEM 40. (CONTD.)

With regard to terminology, the instruments issued by the State Lands Division are commonly referred to as leases, and the Public Resources Code, Section 6501, uses the terms lease and easement interchangeably.

In order to include San Diego Gas and Electric Company within the intent of the earlier approval, it is proposed to rescind the earlier action and approve a new amendment in the manner set forth below:

EXHIBIT:           A. Location map

IT IS RECOMMENDED THAT THE COMMISSION RESCIND ITS ACTION OF FEBRUARY 29, 1968 (MINUTE ITEM 12, PAGE 149), AND THAT LEASE P.R.C. 3193.1 BE AMENDED, RETROACTIVE TO SEPTEMBER 24, 1964, BY THE ADDITION OF THE FOLLOWING TERMS AND CONDITIONS:

1. IT IS UNDERSTOOD THAT THE PROPORTIONS IN WHICH THE EASEMENT HOLDERS HOLD UNDIVIDED INTERESTS IN RIGHTS GRANTED HEREUNDER AS TENANTS IN COMMON ARE, AND HAVE BEEN SINCE THE AFORESAID AGREEMENT WAS EXECUTED AND DELIVERED, 80% TO SOUTHERN CALIFORNIA EDISON COMPANY AND 20% TO SAN DIEGO GAS & ELECTRIC COMPANY.
  
2. THAT THE FOLLOWING PARAGRAPH BE ADDED TO THE ORIGINAL AGREEMENT AND BY REFERENCE MADE A PART THEREOF:

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CALENDAR ITEM 40. (CONTD.)

SAID AGREEMENT, AS AMENDED, IS A CONVEYANCE OF AN EASEMENT FOR THE PURPOSES THEREIN SPECIFIED; THE TERMS 'DEMISE AND LEASE', 'LESSEE' AND 'RENTAL' SHALL NOT BE CONSTRUED TO CONFER ANY DIFFERENT OR OTHER RIGHTS UPON ANY OF THE PARTIES THAN THOSE OF A RIGHT-OF-WAY EASEMENT."

3. IT IS ALSO AGREED TO AMEND THE LEASE TERM TO 49 YEARS FROM SEPTEMBER 24, 1964, WITH PROVISION FOR REVIEW OF THE RENTAL AT 5-YEAR INTERVALS COMMENCING SEPTEMBER 24, 1969.