

**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 Approval of a Power Purchase Agreement )  
Between the Utility and an Affiliate and for )  
Authority to Recover the Costs of Such Power )  
Purchase Agreement in Rates. )  
\_\_\_\_\_ )

Application No. 05-12-\_\_\_\_\_

**APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) FOR  
APPROVAL OF A POWER PURCHASE AGREEMENT**

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Pursuant to sections 701 and 451 of the California Public Utilities Code (Code), Southern California Edison Company (SCE) submits this Application for approval of a power purchase agreement (KRCC Contract) between SCE and Kern River Cogeneration Company (KRCC), a qualifying cogeneration facility under the Public Utility Regulatory Policies Act of 1978<sup>1</sup> (PURPA) which is 50% owned by an SCE affiliate. SCE requests an expedited proceeding.<sup>2</sup>

**I.**

**INTRODUCTION**

The KRCC Contract will provide SCE's customers with a unique opportunity to receive up to 303 MW of reliable generation over the next five years. Significantly, and in contrast to SCE's current standard offer contract with KRCC and other comparable standard offer contracts,

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<sup>1</sup> Pub.L. No. 95-617 (Nov. 9, 1978), *codified in part at*, 16 U.S.C. § 824a-3 *et seq.*

<sup>2</sup> The testimony submitted concurrently in support of this Application contains confidential market sensitive trade secret information which is submitted to the Commission under Code section 583 and General Order 66-C. SCE is filing both non-public and public versions of the testimony (the latter redacting confidential information contained in the testimony) as well as a motion for a protective order permitting the filing of confidential information under seal and limiting public disclosure of such confidential material.

approximately half of this power will be dispatchable by SCE or the California Independent System Operator (ISO), reducing SCE's net long exposure and thereby providing substantial benefits to SCE's customers that are unavailable under standard offer contracts, which do not provide for dispatchability.

The terms of the KRCC Contract provide substantially more value to SCE customers than those of standard offer contracts that have traditionally been made available to qualifying facilities (QFs). As discussed below, the KRCC Contract offers advantages to ratepayers as compared to the standard offers with respect to performance requirements, energy forecast requirements, responsibility for imbalance costs, credit and collateral requirements, dispute resolution and other terms. Likewise, the pricing terms of the KRCC Contract are consistent with SCE's forecast avoided cost of generation over the next five years. For example, separate and apart from the benefits of dispatchability, the energy price for the baseload product is calculated using a heat rate that is substantially lower than the 9,140 Btu/kWh heat rate currently used in SCE's short-run avoided cost (SRAC) transition formula and incorporated into KRCC's current reformed Standard Offer No. 1 (RSO1) contract. In addition, the pricing contained in the KRCC Contract will result in lower costs to SCE's customers than if KRCC continued with its current RSO1 contract and were paid based on pricing proposed by various QF parties in the on-going avoided cost proceeding.

SCE's negotiations with KRCC were at arms length. The parties had separate negotiating teams, and SCE rejected KRCC's counteroffers for prices which SCE considered excessive. Furthermore, the terms of the KRCC Contract are consistent with those contained in contracts entered into by SCE in its competitive renewable and all-source solicitations. SCE is prepared to offer comparable terms to other similarly situated non-affiliated QFs. Accordingly, approval of the KRCC Contract will confer ratepayer benefit and will not harm unaffiliated QFs.

In summary, because the terms of the KRCC Contract compare favorably to those of existing standard offer contracts (including the RSO1 contract), are reasonable and advantageous for SCE's customers, and will result in no harm to non-affiliated QFs, the KRCC Contract should be approved by the Commission in all respects. As explained below, and in the testimony

submitted concurrently in support of this Application, SCE requests that the Commission issue a decision approving the KRCC Contract at the earliest possible time, but no later than April 30, 2006, so that the decision may become final and no longer subject to appeal by the commencement of the 2006 summer on-peak season.<sup>3</sup> Because the term of the KRCC Contract will not commence until the Commission has issued a final and nonappealable decision approving the contract, adherence to this schedule is critical to ensure that SCE and its ratepayers fully realize the benefits of the KRCC Contract.

## II.

### **COMMISSION DECISIONS PERMIT UTILITIES TO ENTER INTO NON-STANDARD CONTRACTS WITH AFFILIATED QFS WITH EXPIRING CONTRACTS IF SUCH CONTRACTS COMPARE FAVORABLY TO STANDARD OFFER CONTRACTS, ARE IN THE CUSTOMERS' INTEREST AND WILL NOT HARM NON-AFFILIATED QFS**

In D.90-09-088, the Commission analyzed the propriety of transactions between utilities and affiliated QFs. The Commission concluded that, when a utility seeks to enter into a non-standard contract with an affiliated QF, the utility must demonstrate, through an application for preapproval, that the non-standard contract will not result in harm to either the utility's ratepayers or non-affiliated QFs. The same decision indicated that the standard offer is the benchmark by which such contracts should be judged. More recent Commission decisions have found that utilities may comply with PURPA with respect to existing QFs with expiring contracts by, among other things, conducting bilateral negotiations for new contracts or contract extensions.<sup>4</sup> Taken together, these Commission decisions authorize a utility to negotiate a non-standard contract with an affiliated QF whose contract is expiring provided that the non-standard contract is demonstrably preferable to the standard offer, advantageous to utility customers and not harmful to non-affiliated QFs. When, as here, these conditions have been met, Commission approval is appropriate.

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<sup>3</sup> In Section IV of this Application, SCE proposes a schedule for the expedited treatment of this Application.

<sup>4</sup> See, e.g., D.04-01-050, *mimeo.*, at 158.

**A. Non-Standard Contracts With Affiliated QFs Must Maintain Ratepayer Indifference And Must Be Fair To Non-Affiliated QFs**

On January 16, 1984, SCE entered into a 20-year Parallel Generation Agreement with KRCC (Original Contract). The project is described in the Original Contract as a combustion turbine generator heat recovery steam cogeneration facility located at the Kern River oil field near Bakersfield, California. The project was to provide steam to the field for enhanced oil recovery and electricity to SCE. At the time the Original Contract was executed, Southern Sierra Energy Company (SSEC), a wholly owned subsidiary of SCE, owned a 50% partnership share of KRCC.<sup>5</sup>

In D.90-09-088, in response to an application filed by SCE seeking approval of, among other things, the reasonableness of its non-standard contracts with QFs, the Commission analyzed SCE's actions in negotiating and executing the terms of the Original Contract.<sup>6</sup> In so doing, the Commission paid particular attention to the potential for self dealing and abuse in affiliate transactions. Ultimately, the Commission found that SCE had acted imprudently in negotiating and executing the Original Contract and had not engaged in arms length negotiations.<sup>7</sup> The Commission, therefore, disallowed recovery of a portion of SCE's costs. However, the Commission also "recognize[d] the value of the Kern River project to Edison's ratepayers" and sought "to preserve Edison's power purchases from KRCC by encouraging contract reformation."<sup>8</sup> The Commission's decision also set forth the standard by which future contracts between utilities and affiliated QFs should be reviewed.

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<sup>5</sup> On January 28, 1988, the Commission approved a proposed plan of reorganization for SCE pursuant to which SCE Holding Company (SCECorp) was created. SCE became a wholly owned subsidiary of SCECorp. Mission Group, an unregulated non-utility subsidiary of SCECorp, owned Mission Energy Company of which SSEC was a subsidiary. Accordingly, at the time D.90-09-088 was issued, an SCE affiliate owned a 50% share in KRCC. Today, SSEC continues to hold a 50% partnership interest in KRCC. SSEC is owned by Edison Mission Energy which is owned by Mission Energy Holding Company. Mission Energy Holding Company is owned by Edison Mission Group, which is 100% owned by Edison International (EIX), SCE's parent company.

<sup>6</sup> See D.90-09-088, 12 Cal.P.U.C.2d 488, 583 (1990).

<sup>7</sup> See, e.g., *id.* at 579.

<sup>8</sup> *Id.* at 494.

Notwithstanding its decision to disallow recovery of a portion of SCE's costs under the Original Contract, the Commission stated that it would not "limit Edison to standard offers alone in future agreements with affiliated non-utility power producers."<sup>9</sup> The Commission recognized that "[l]imiting Edison to Standard Offers might frustrate the ability of the utility to take advantage of unique alternative energy opportunities which require non-standard contracts."<sup>10</sup> The Commission held, however, that in "the event that Edison wishes to sign a non-standard contract for a power purchase from projects in which Edison has an interest, either directly or through affiliates, the contract must be approved by the Commission prior to taking effect."<sup>11</sup>

In its Findings of Fact and Conclusions of Law, the Commission set forth the criteria by which non-standard contracts with affiliates would be reviewed. First, it found that the contract must not harm ratepayers or non-affiliated QFs. It stated that, for transactions between a utility and an affiliated QF, the Commission "is obligated to review the negotiations, all contracts terms, and the ownership relation between the parties to determine whether the agreement was reasonable and fair to the utility's ratepayer and all QFs."<sup>12</sup> Second, the Commission concluded that the non-standard contract must compare favorably to the standard offer.<sup>13</sup> Third, the Commission found that the non-standard contract terms, taking into account the associated risks, should not be more than the expected avoided costs under the standard offer.<sup>14</sup> Thus, a utility seeking Commission preapproval of a non-standard contract with a QF must demonstrate that the non-standard contract compares favorably to a standard contract. The Commission stated:

A request for Commission preapproval of a nonstandard contract requires a clear statement of all differences between the nonstandard contract and the standard offers, an identification of all gains and costs for the utility's ratepayers, and a demonstration

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<sup>9</sup> *Id.* at 568.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* The Commission also noted that, in order to avoid undue delay, it would review such contracts via an expedited application docket.

<sup>12</sup> *Id.* at 569.

<sup>13</sup> *Id.* at 578 ("The standard offer is the standard against which the reasonableness of all utility actions related to QF transactions is to be measured.").

<sup>14</sup> *Id.* at 570.

why ratepayers should either be indifferent to or prefer the nonstandard contract over the standard contract.<sup>15</sup>

In summary, the Commission held that, before a bilateral contract between a utility and an affiliated QF will be approved, the utility must demonstrate that the contract is reasonable compared to the standard offer and will result in no harm to utility customers or non-affiliated QFs.

**B. The Commission Has Authorized The Utilities To Enter Into Bilateral Negotiations With QFs With Contracts Expiring Before December 31, 2005**

The Commission's authority to regulate wholesale prices for QF power is wholly derived from PURPA. PURPA and the Federal Energy Regulatory Commission (FERC) regulations implementing PURPA impose an obligation on electric utilities to offer to purchase energy and capacity from QFs at a price that does not exceed the purchasing utility's avoided cost of energy and capacity.<sup>16</sup> Avoided cost is defined as "the incremental costs to an electric utility of electric energy . . . which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source."<sup>17</sup> PURPA delegates jurisdiction to state regulatory authorities to establish wholesale prices for QF power.<sup>18</sup> In California, the Commission is the state agency charged with the task of implementing PURPA and establishing such avoided cost prices.

In the early 1980s, the Commission chose, for a variety of policy reasons, to implement PURPA through a series of standard offer contracts. A number of those contracts have expired or will expire before December 31, 2005, including the Original Contract. The Commission issued two recent decisions, D.03-12-062 and D.04-01-050, which effectively provide three ways for the utilities to comply with PURPA with respect to existing QFs with expiring contracts: (1) by allowing such QFs to compete in competitive solicitations; (2) by conducting bilateral negotiations for contracts or contract extensions with such QFs; or (3) by offering a five-year RSO1 contract with energy priced at the monthly posted SRAC for QFs with contracts expiring

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<sup>15</sup> *Id.*

<sup>16</sup> See 16 U.S.C. § 824a-3, 18 C.F.R. §§ 292.303(a), 292.304.

<sup>17</sup> 18 C.F.R. § 292.101(b)(6); see also 16 U.S.C. § 824a-3(d).

<sup>18</sup> See 16 U.S.C. § 824a-3(f)(1).

prior to December 31, 2005.<sup>19</sup> In D.05-12-009, the Commission extended the availability of the five-year RSO1 contract option initially provided for in D.04-01-050 to QFs with contracts expiring between January 1, 2006 and the Commission's issuance of a final decision on policy and pricing of QF contracts in R.04-04-003 and R.04-04-025.<sup>20</sup> SCE engaged in bilateral negotiations with KRCC pursuant to the second method to comply with PURPA described in D.03-12-062 and D.04-01-050.

The Original Contract expired earlier this year, at which time KRCC elected to execute an RSO1 contract pursuant to D.04-01-050. KRCC is currently delivering energy and as-available capacity to SCE pursuant to an RSO1 contract. The KRCC Contract will replace and supersede the RSO1 contract when it is approved in a final and nonappealable Commission decision.

### III.

**THE KRCC CONTRACT SHOULD BE APPROVED BECAUSE IT IS THE RESULT OF ARMS-LENGTH NEGOTIATIONS, COMPARES FAVORABLY TO STANDARD OFFER CONTRACTS, IS IN THE CUSTOMERS' INTEREST AND WILL NOT HARM NON-AFFILIATED QFS**

**A. The KRCC Contract Is The Result Of Arms-Length Negotiations**

Discussions leading up to the KRCC Contract began in May 2003, when the parties met to discuss the potential for renewal of the Original Contract. Over the summer of 2003, the parties began discussing whether the contemplated renewed contract would be a baseload contract, a peaking contract, or a contract involving a mixture of baseload and peaking power. SCE asked for and received from KRCC information about the KRCC facility, including turbine performance and operating characteristics at different load levels.

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<sup>19</sup> D.04-01-050, *mimeo.*, at 155-58; D.03-12-062, *mimeo.*, at 54-56.

<sup>20</sup> See D.05-12-009, *mimeo.*, at 7-8, 11.

In September 2003, KRCC sent SCE a term sheet proposing a renewed agreement using a combination of baseload and peaking power,<sup>21</sup> and the parties negotiated based on this proposal in several meetings and calls during the fall of 2003.

In December 2003, SCE made a counterproposal to the KRCC term sheet. In March, 2004, KRCC rejected SCE's proposal. In response, SCE projected its avoided cost of generation for a five-year period both for baseload and dispatchable power commencing with the August 2005 termination date of the Original Contract and, in early July 2004, communicated those prices to KRCC. SCE also advised KRCC that any extended agreement must contain terms and conditions similar to those contained in agreements offered by SCE to bidders in its renewable and all-source competitive solicitations.

In October 2004, KRCC submitted a counteroffer contemplating higher prices than those proposed by SCE. In December 2004, SCE rejected that counteroffer, noting that the pricing it had previously offered was its best and final offer. The parties met at SCE's offices in Rosemead in January 2005 and had continued discussions throughout the month related to pricing for the proposed baseload and dispatch products. KRCC sought higher pricing for the dispatchable product than had been proposed by SCE. SCE held firm to its pricing proposal. By approximately the end of January 2005, the parties had reached an agreement on the baseload and dispatch pricing terms that SCE had proposed the previous summer.

The parties spent approximately the next 11 months working out the precise terms and conditions of the contract. The negotiation and drafting of the KRCC Contract was particularly complex. Both the baseload and dispatch features of the contract required extensive customized drafting. Additionally, combining the baseload and dispatch features of the contract into a single agreement was particularly difficult as the parties had no pre-existing form of agreement for such a combined product. Additional terms which required extensive negotiation included air emission terms, credit and collateral terms, and financial disclosures.

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<sup>21</sup> Under this KRCC proposal, two of the four gas turbines would be dedicated to operating in a baseload mode, producing steam for the oil field. The other two gas turbines would be dedicated to operating in a dispatch mode.

Throughout these lengthy and complex negotiations, SCE treated KRCC like any other QF or any other unaffiliated procurement counterparty. SCE was committed to negotiating terms that provided significantly more value to its customers than the terms of the Original Contract and the RSO1 contract currently authorized by the Commission for QFs with expiring contracts, such as KRCC. Moreover, unlike the negotiations leading to the execution of the Original Contract, SCE and KRCC had entirely separate negotiating teams. SCE negotiated primarily with KRCC personnel who are not employees of Edison Mission Energy (EME) or any other SCE affiliate.<sup>22</sup> No person negotiated on “both sides of the table.”

In addition, SCE thoroughly reviewed the proposed KRCC Contract with its Procurement Review Group (PRG). In October 2005, SCE provided its PRG with a near-final draft of the KRCC Contract and a comparison of the terms of the KRCC Contract to existing standard offer contracts. SCE discussed this comparison with its PRG in an October 27, 2005 conference call. In response to questions from SCE’s PRG participants, SCE additionally provided its PRG with a cost-benefit analysis of the KRCC Contract and a comparison of the expected costs of the KRCC Contract to various RSO1 pricing proposals advanced by QF trade organizations in the avoided cost rulemaking. SCE discussed these analyses extensively during a November 10, 2005 conference call with its PRG. Finally, in response to several additional questions from one PRG participant, SCE conducted a third PRG conference call on November 18, 2005 and thoroughly responded to all outstanding questions posed by SCE’s PRG participants.

**B. The KRCC Contract Compares Favorably To Standard Offer Contracts**

Pursuant to D.90-09-088, Commission pre-approval of a non-standard contract with an affiliated QF requires a demonstration of the differences between the negotiated contract and a standard offer contract and an explanation of why ratepayers should be indifferent to or prefer

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<sup>22</sup> Pursuant to SCE’s affiliate guidelines, SCE documented the relatively few occasions when SCE negotiators interfaced directly with EME employees.

the non-standard offer contract to the standard offer contract.<sup>23</sup> In this case, the KRCC Contract will provide significantly greater economic and operational benefits to ratepayers than either the RSO1 contract to which KRCC is currently a party or Interim Standard Offer No. 4 (ISO4), a standard offer contract commonly entered into by cogeneration projects which contains firm performance standards.<sup>24</sup>

**1. The Terms of the KRCC Contract Are Preferable To The Terms of Standard Offer Contracts**

The terms of the KRCC Contract compare favorably to the terms of both RSO1 and ISO4. Specifically, the KRCC Contract offers substantial advantages over RSO1 and ISO4 in the areas of dispatchability, baseload product energy pricing and performance standards, incentives to accurately forecast deliveries and reduce ratepayer exposure to the risk of imbalance charges, credit and collateral, specification of default events and default remedies, dispute resolution and overall clarity of terms. These and other terms are discussed further in the testimony submitted concurrently in support of this Application.

**2. The Pricing Under The KRCC Contract Provides Greater Ratepayer Benefits Than RSO1 Pricing Terms Proposed By QF Trade Organizations In The Avoided Cost Rulemaking**

In the avoided cost rulemaking, R.04-04-025, several QF trade organizations<sup>25</sup> have asserted that the Commission should authorize *as-available* RSO1-type standard offer contracts with administratively-determined avoided cost pricing terms that are much higher than the pricing terms for *firm* baseload and *firm* dispatchable generation in the KRCC Contract. For

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<sup>23</sup> See D.90-09-088, 12 Cal.P.U.C.2d at 570.

<sup>24</sup> Another commonly available standard offer contract containing firm performance standards is Standard Offer No. 2 (SO2). The key difference between ISO4 and SO2 is that ISO4 contained fixed energy pricing for the first ten years of the contract in addition to the firm capacity option. The firm capacity performance standards of ISO4 and SO2 are identical. Thus, the description below of certain ISO4 terms, and the comparison of those terms to the terms of the KRCC Contract, would also substantially apply to SO2.

<sup>25</sup> See opening and rebuttal testimonies of the California Cogeneration Council (CCC), the Cogeneration Association of California and the Energy Producers and Users Coalition (collectively, CAC/EPUC), and the Independent Energy Producers Association (IEP).

example, CAC/EPUC’s as-available proposal includes an annual average heat rate in excess of 10,000 Btu/kWh, while CCC’s as-available proposal includes a fixed charge of \$110/kW-yr. **Table 1**, below, summarizes the various as-available pricing proposals advocated by CCC, CAC/EPUC and IEP in the avoided cost rulemaking and SCE’s current as-available RSO1 pricing.<sup>26</sup>

**Table 1**  
**As-Available Pricing Proposals**

	<b>CCC</b>	<b>CAC</b>	<b>IEP</b>	<b>Current RSO1</b>
<b>Annual Average Heat Rate (Btu/kWh)</b>	9,822	10,400	9,140	9,140
<b>Annual Fixed Charge (\$/kW-yr)</b>	110	83.50	90.95	4.93

As discussed further in the testimony submitted concurrently in support of this Application, pricing under the KRCC Contract results in significantly lower costs to SCE’s customers than pricing under the QF parties’ proposals in the avoided cost rulemaking, even without considering that the KRCC Contract provides SCE’s customers with firm baseload and dispatchable capacity products that are much more valuable than the as-available product proposed by the QF parties. Thus, on a comparative cost basis, the KRCC Contract is beneficial to SCE customers *vis-à-vis* these alternative proposals.

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<sup>26</sup> CAC/EPUC proposes that the Commission revert to the SRAC transition formula adopted in D.96-12-028 without the factor adjustment adopted in D.01-03-067. This formula would have yielded an implicit heat rate of approximately 10,400 Btu/kWh over the past three years. IEP proposes that the Commission continue to use the current SRAC transition formula, including the factor adjustment adopted in D.01-03-067.

### **C. The KRCC Contract Is In The Ratepayers' Interest**

SCE performed a cost-benefit analysis demonstrating that the pricing terms of the KRCC Contract are consistent with SCE's forecast avoided cost of generation over the next five years. As discussed above, in January 2005, KRCC accepted an offer made by SCE in July 2004, which was based on SCE's then-current forecast of its avoided energy and capacity costs. At that time, SCE negotiated pricing terms that reflected SCE's best judgment of its future avoided cost of generation.

During the negotiations to finalize the non-price terms and conditions, SCE's avoided cost forecast changed due to evolving market conditions. However, the original pricing terms agreed upon still provide SCE's customers reasonable value for firm baseload and firm dispatchable generation.

SCE evaluated the generation economics of the KRCC Contract in a manner consistent with its evaluations of the costs and benefits of other supply- (and demand-) side resources, such as the Mountainview project, the Mohave Generating Station analysis, the San Onofre Nuclear Generating Station (SONGS) steam generator replacement filing and various demand-side management (DSM) cost-effectiveness applications. SCE used the Global Energy Decisions Inc.<sup>27</sup> RISKSYSM production simulation model. The baseline assumptions for the RISKSYSM simulations are consistent with SCE's 2004 Long Term Procurement Plan<sup>28</sup> (LTPP) with updated assumptions for gas prices, loads and resources to better reflect more recent forecast conditions and procurement activities. The baseline assumptions were designed around the overall intent and "loading order" of the joint agency Energy Action Plan.<sup>29</sup>

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<sup>27</sup> Formerly Henwood Energy Services, Inc.

<sup>28</sup> R.04-04-003. The 2004 LTPP was found reasonable and adopted by the Commission on December 16, 2004 in D.04-12-048, subject to modifications that do not significantly affect the need, timing, costs or benefits analysis of the KRCC Contract. SCE's LTPP can be found at <http://www3.sce.com/law/cpucproceedings.nsf/vwUFiling?SearchView&Query=long+term+procurement+plan&Start=1&Count=30>. Specifically, the analysis used to evaluate the economics of the KRCC Contract ties directly to SCE's Medium Load Scenario.

<sup>29</sup> State of California Energy Action Plan, adopted May 8, 2003. *See* [http://www.energy.ca.gov/energy\\_action\\_plan](http://www.energy.ca.gov/energy_action_plan).

SCE separately measured the expected energy and capacity benefits and costs of the KRCC Contract. The forecast energy benefits of the KRCC Contract are calculated by means of conventional production simulation analyses. The forecast energy benefits of the KRCC Contract are measured as the difference between the total portfolio operating costs when KRCC is included in SCE's resource portfolio – the “in” case – and the total portfolio operating costs when KRCC is excluded from SCE's resource portfolio and substituted with an equivalent amount of combustion turbine (CT) capacity of the same kind which defines SCE's long-run incremental cost of firm capacity (CT proxy) – the “out” case.<sup>30</sup>

The energy costs, or variable operating costs, of the KRCC Contract are simply based on the operating costs under the KRCC Contract – *i.e.*, the “in” case. These costs include dispatch fuel, variable operations and maintenance (O&M), startup fuel and non-fuel startup costs.

The capacity value of the KRCC Contract is based on KRCC's reliability contribution as compared to SCE's five-year forecast of firm capacity value. Capacity value for the short term (up to 3 years) is derived from an option analysis of forward electricity prices. Capacity value for the long term (beyond 3 years) is based on the annual deferral value of incremental firm capacity, as described in SCE's General Rate Case (GRC) application.<sup>31</sup> Capacity value in all years is allocated across months according to the seasonal capacity valuation factors<sup>32</sup> also consistent with SCE's GRC application.<sup>33</sup> The fixed costs, or capacity costs, of the KRCC Contract are based on the negotiated contract terms and conditions, with appropriate adjustments for forced and maintenance outages.

The testimony submitted concurrently in support of this Application contains a detailed analysis of the present value of total benefits (avoided energy and firm capacity) and the present

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<sup>30</sup> This substitution is necessary for two reasons. First, the CT capacity backfills the resource plan to maintain portfolio reserve margin levels when the KRCC resource is removed. Without any such capacity, the plan would be under-resourced which may then overstate energy prices. Second, the CTs provide a necessary ceiling on the energy benefits equal to the operating cost of a CT because the CT may realize contributions to its fixed costs when dispatched. This ceiling is necessary to prevent double-counting capital cost recovery already provided in the capacity value proxy.

<sup>31</sup> Firm capacity as defined by the deferral value of a CT proxy. Application A.05-05-023, filed September 6, 2005, at 22.

<sup>32</sup> Also known as relative loss-of-load probability (LOLP) factors.

<sup>33</sup> Application A.05-05-023, filed September 6, 2005, at 30.

value of total costs (operating and fixed) for the KRCC Contract. Overall, the pricing terms of the KRCC Contract are consistent with SCE's forecast avoided cost of generation over the next five years.

**D. The KRCC Contract Is Not Unfair To Non-Affiliated QFs**

Pursuant to D. 90-09-088, an application for preapproval of a non-standard contract with an affiliated QF must demonstrate that the non-standard contract will not result in harm to non-affiliated QFs.<sup>34</sup> The KRCC Contract is fair to non-affiliated QFs.

First, and as explained above, at all times during the KRCC Contract negotiations, SCE bargained on behalf of itself and its customers at arms length from KRCC. Indeed, SCE rejected KRCC's proposals where they were out of line with traditional counteroffers and insisted upon terms consistent with renewable or all-source contracts then being negotiated. Further, if the KRCC Contract is approved, SCE will offer comparable contract terms and prices to other similarly situated QFs. In sum, non-affiliated QFs will not be harmed by the approval of the KRCC Contract and may, in fact, benefit by the opportunity to enter into firm capacity contracts on similar terms.

**IV.**

**PROPOSED SCHEDULE**

The KRCC contract was executed by the parties on December 15, 2005. As discussed above, commencement of the term of the KRCC Contract is contingent on final Commission approval of the contract. SCE, therefore, requests expedited approval of this Application in order to ensure that the benefits of the KRCC Contract are realized in time for the 2006 summer on-peak season.

This Application and the testimony submitted herewith contain sufficient information and constitute a sufficient record for the Commission to rule on the Application in accordance with

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<sup>34</sup> See, e.g., D.90-09-088, 12 Cal.P.U.C.2d at 569.

Code sections 701 and 451, without the need for evidentiary hearings. Nevertheless, SCE anticipates that the Application may be protested and proposes the following schedule:

Application Filed	12/23/05
Daily Calendar Notice Appears	12/28/05
Protests and Responses Due	01/27/06
Reply to Protests and Responses Due	02/06/06
Proposed Decision Mailed	03/13/06
Comments on Proposed Decision Due	04/03/06
Reply Comments Due	04/10/06
Final Decision Issued	04/13/06

## V.

### **STATUTORY AND PROCEDURAL REQUIREMENTS**

#### **A. Statutory and Other Authority**

This Application is made pursuant to the provisions of Public Utilities Code Sections 701 and 451, the Commission’s Rules of Practice and Procedure, and prior orders and resolutions of this Commission.

#### **B. Compliance With Rule 6(a)(1)**

Pursuant to Rule 6(a)(1) of the Commission’s Rules of Practice and Procedure, SCE proposes that this proceeding be categorized as “ratesetting” because the power purchase agreement constitutes a “mechanism that . . . sets the rates” for SCE, “a specifically named utility.” *See* Rule 5(c). In addition, Rule 6.1(c) provides that if a proceeding does not clearly fit within one of the three established categories, the proceeding generally should be conducted under the rules for ratesetting proceedings. The need for evidentiary hearings on this matter is set forth in Section IV, above.

**C. Legal Name and Correspondence – Rules 15(a) and 15(b)**

The applicant is Southern California Edison Company, an electric public utility organized and existing under the laws of the State of California. The location of SCE's principal place of business is 2244 Walnut Grove Avenue, Post Office Box 800, Rosemead, California 91770.

Please address correspondence or communications in regard to this application to:

J. Eric Isken  
Southern California Edison Company  
Post Office Box 800  
Rosemead, California 91770  
Telephone: (626) 302-3141  
Facsimile: (626) 302-1904  
E-mail: case.admin@sce.com

**D. Articles of Incorporation – Rule 16**

A copy of SCE's Certificate of Amendment and Restated Articles of Incorporation, effective at the close of business on June 1, 1993, and as presently in effect, certified by the California Secretary of State, was filed with the Commission on June 15, 1993, in connection with Application No. 93-06-022,<sup>35</sup> and is by reference made a part hereof. Additionally, a copy of SCE's Certificate of Correction of Restated Articles of Incorporation filed with the California Secretary of State on August 21, 1997, and as presently in effect, certified by the California Secretary of State, was filed with the Commission on September 19, 1997, in connection with Application No. 97-09-038,<sup>36</sup> and is by reference made a part hereof. A copy of SCE's Certificate of Amendment of Restated Articles of Incorporation filed with the California Secretary of State on January 12, 2005, and as presently in effect, certified by the California Secretary of State, was filed with the Commission on January 20, 2005, in connection with Application No. 05-01-018,<sup>37</sup> and is by reference made a part hereof. A copy of SCE's

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<sup>35</sup> Application No. 93-06-022, filed on June 15, 1993, addresses approval of a self-generation deferral agreement.

<sup>36</sup> Application No. 97-09-038, filed on September 19, 1997, addresses approval of a termination agreement for termination of an ISO4 power purchase agreement.

<sup>37</sup> Application No. 05-01-018, filed on January 20, 2005, addresses a default rate design for large customers' proposals.

Certificate of Determination of Preferences of the Series A Preference Stock filed with the California Secretary of State on April 21, 2005, and as presently in effect, certified by the California Secretary of State, was filed with the Commission on June 2, 2005, in connection with Application No. 05-06-003,<sup>38</sup> and is by reference made a part hereof. A copy of SCE's Certificate of Determination of Preferences of the Series B Preference Stock filed with the California Secretary of State on September 15, 2005, and as presently in effect, certified by the California Secretary of State, was filed with the Commission on September 30, 2005, in connection with Application No. 04-12-008 (Amended),<sup>39</sup> and is by reference made a part hereof. A copy of SCE's Certificate of Amendment of Restated Articles of Incorporation filed with the California Secretary of State on December 5, 2005, and as presently in effect, certified by the California Secretary of State, is being filed with this Application as Appendix A and is by reference made a part hereof.

**E. Service**

SCE has served a copy of the public version of this Application on all parties to R.04-04-003 (QF Issues) and R.04-04-025 (QF Issues), along with a Notice of Availability of the public version of its supporting testimony. An unredacted copy of the Application and testimony has been served on the Commission under Section 583 of the Public Utilities Code and General Order 66-C.

**VI.**

**CONCLUSION**

The KRCC Contract is the product of conscientious bilateral negotiations between the parties which resulted in a contract with terms more advantageous to ratepayers than those of available standard offer contracts. The approval of the

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<sup>38</sup> Application No. 05-06-003, filed on June 2, 2005, addresses approval of contracts for capacity.

<sup>39</sup> Application No. 04-12-008 (Amended), filed on September 30, 2005, requests a Certificate of Public Convenience and Necessity (CPCN) to construct certain transmission projects.

KRCC Contract will harm neither ratepayers nor non-affiliated QFs. Accordingly, SCE respectfully requests that the Commission:

1. Grant expedited consideration of this Application;
2. Approve the KRCC Contract as reasonable and prudent;
3. Find that any payments to be made by SCE under the KRCC Contract are recoverable in full by SCE through rates or such other cost recovery mechanism as may be authorized by the Commission, subject only to SCE's prudent administration of the KRCC Contract; and
4. Grant such other and further relief as the Commission finds just and reasonable.

Respectfully submitted,

J. ERIC ISKEN  
FRANK J. COOLEY  
BERJ K. PARSEGHIAN  
WILLIAM V. WALSH

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By: J. Eric Isken

Attorneys for  
SOUTHERN CALIFORNIA EDISON COMPANY

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E-mail: j.eric.isken@sce.com

December 23, 2005

**VERIFICATION**

I am an officer of the applicant corporation herein and am authorized to make this verification on its behalf. I am informed and believe that the matters stated in the foregoing document are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this **22nd day of December 2005**, at Rosemead, California.

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Pedro Pizarro  
Senior Vice President  
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue  
Post Office Box 800  
Rosemead, California 91770

**Appendix A**



**State of California**  
**Secretary of State**

I, BRUCE McPHERSON, Secretary of State of the State of California, hereby certify:

That the attached transcript of 4 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.



**IN WITNESS WHEREOF**, I execute this certificate and affix the Great Seal of the State of California this day of

DEC - 5 2005

**BRUCE McPHERSON**  
Secretary of State

CERTIFICATE OF AMENDMENT  
OF  
ARTICLES OF INCORPORATION  
OF  
SOUTHERN CALIFORNIA EDISON COMPANY

DEC - 5 2005

The undersigned, ROBERT C. BOADA and BARBARA E. MATHEWS, hereby certify that they are the duly elected and acting Vice President and Treasurer, and Vice President, Associate General Counsel, Chief Governance Officer and Corporate Secretary, respectively, of SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation, and that the Articles of Incorporation of said corporation are amended as set forth in this certificate.

A. Article Sixth, paragraph 2 is amended by entirely restating the paragraph that formerly read:

"2. CUMULATIVE PREFERRED STOCK AND \$100 CUMULATIVE PREFERRED STOCK: Shares of the Cumulative Preferred Stock may be issued from time to time in one or more series, and shares of the \$100 Cumulative Preferred Stock may be issued from time to time in one or more series. Each series of Cumulative Preferred Stock and each series of \$100 Cumulative Preferred Stock shall be so designated as to distinguish it from other series of such stock. Such designation may include an appropriate reference to its dividend rate and any other characteristics. The Board of Directors is hereby authorized, within the limitations and restrictions stated in this Article, to fix or alter, from time to time, the dividend rights, dividend rate, conversion rights, voting rights (in addition to the voting rights hereinafter provided), rights and terms of redemption (including sinking fund provisions), the redemption price or prices and/or the liquidation preferences of any wholly unissued series of Cumulative Preferred Stock and of any wholly unissued series of \$100 Cumulative Preferred Stock, and to fix the number of shares constituting any unissued series. The term "fixed for such series" and correlative terms shall be deemed to mean as stated in a resolution or resolutions adopted by the Board of Directors in exercise of the authority granted by this paragraph. The term "Board of Directors," as used in this Article Sixth, shall be deemed to include any duly authorized and functioning executive committee of the Board of Directors of the corporation, to the extent such an executive committee is permitted to exercise the powers of the Board of Directors under the California General Corporation Law. The number of shares of Cumulative Preferred Stock, 4.78% Series, heretofore fixed by the resolution of the Board of Directors set forth in the Certificate of Determination of Preferences of said 4.78% Series filed in the office of the Secretary of State of the State of California on February 10, 1958, is determined to be 1,296,769. The dividend rate, redemption price, and voluntary liquidation preferences of shares of said 4.78% Series shall be as heretofore fixed by the resolution of the Board of Directors set forth in said Certificate of Determination of Preferences. In addition to any other rights, preferences, privileges and restrictions that the Board of Directors may grant to or impose upon any wholly unissued series of Cumulative Preferred Stock or any wholly unissued series of \$100 Cumulative Preferred Stock, all of the holders of shares of Cumulative Preferred Stock and \$100 Cumulative Preferred Stock shall be subject to the following rights, preferences, privileges and restrictions:"

to read in full as follows:

"2. CUMULATIVE PREFERRED STOCK AND \$100 CUMULATIVE PREFERRED STOCK: Shares of the Cumulative Preferred Stock may be issued from time to time in one or more series, and shares of the \$100 Cumulative Preferred Stock may be issued from time to time in one or more series. Each series of Cumulative Preferred Stock and each series of \$100 Cumulative Preferred Stock shall be so designated as to distinguish it from other series of such stock. Such designation may include an appropriate reference to

its dividend rate and any other characteristics. The Board of Directors is hereby authorized, within the limitations and restrictions stated in this Article, to fix or alter, from time to time, the dividend rights, dividend rate, conversion rights, voting rights (in addition to the voting rights hereinafter provided), rights and terms of redemption (including sinking fund provisions), the redemption price or prices and/or the liquidation preferences of any wholly unissued series of Cumulative Preferred Stock and of any wholly unissued series of \$100 Cumulative Preferred Stock, and to fix the number of shares constituting any unissued series. The term "fixed for such series" and correlative terms shall be deemed to mean as stated in a resolution or resolutions adopted by the Board of Directors in exercise of the authority granted by this paragraph. The term "Board of Directors," as used in this Article Sixth, shall be deemed to include any duly authorized and functioning committee of the Board of Directors of the corporation, to the extent such committee is permitted to exercise the powers of the Board of Directors under the California General Corporation Law. The number of shares of Cumulative Preferred Stock, 4.78% Series, heretofore fixed by the resolution of the Board of Directors set forth in the Certificate of Determination of Preferences of said 4.78% Series filed in the office of the Secretary of State of the State of California on February 10, 1958, is determined to be 1,296,769. The dividend rate, redemption price, and voluntary liquidation preferences of shares of said 4.78% Series shall be as heretofore fixed by the resolution of the Board of Directors set forth in said Certificate of Determination of Preferences. In addition to any other rights, preferences, privileges and restrictions that the Board of Directors may grant to or impose upon any wholly unissued series of Cumulative Preferred Stock or any wholly unissued series of \$100 Cumulative Preferred Stock, all of the holders of shares of Cumulative Preferred Stock and \$100 Cumulative Preferred Stock shall be subject to the following rights, preferences, privileges and restrictions:"

B. Article Sixth, paragraph 3 is amended by entirely restating the paragraph that formerly read:

"3. PREFERENCE STOCK. Shares of the Preference Stock may be issued from time to time in one or more series. To the extent not prohibited by law, the Board of Directors is authorized (i) to fix the number of shares of any series of Preference Stock and to determine the designation of any such series, (ii) to determine or alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preference Stock, including but not limited to rights, preferences, privileges and restrictions regarding dividends (including provisions specifying dividends at a floating or variable rate or dividends to be determined by reference to an index, formula, auction, bid or other objectively ascertainable criterion), liquidation, conversion, redemption and voting (including provisions specifying no general voting rights or voting rights of more than one vote per share), and (iii) within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series, to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any such series subsequent to the issue of shares of that series. Whenever in this paragraph 3 the Board of Directors is authorized to "fix," "determine," "alter," "increase" or "decrease" the number of shares, designation, rights, preferences, privileges or restrictions of any series of the Preference Stock, the Board of Directors (including any executive committee thereof) shall take such action by resolution, but such resolution may specify any of the foregoing matters by reference to indexes, formulas, conversion rates or other objectively ascertainable criteria."

to read as follows:

"3. PREFERENCE STOCK. Shares of the Preference Stock may be issued from time to time in one or more series. To the extent not prohibited by law, the Board of Directors is authorized (i) to fix the number of shares of any series of Preference Stock and to determine the designation of any such series, (ii) to determine or alter the rights, preferences, privileges and restrictions granted to or imposed upon any

wholly unissued series of Preference Stock, including but not limited to rights, preferences, privileges and restrictions regarding dividends (including provisions specifying dividends at a floating or variable rate or dividends to be determined by reference to an index, formula, auction, bid or other objectively ascertainable criterion), liquidation, conversion, redemption and voting (including provisions specifying no general voting rights or voting rights of more than one vote per share), and (iii) within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series, to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any such series subsequent to the issue of shares of that series. Whenever in this paragraph 3 the Board of Directors is authorized to "fix," "determine," "alter," "increase" or "decrease" the number of shares, designation, rights, preferences, privileges or restrictions of any series of the Preference Stock, the Board of Directors (including any committee thereof) shall take such action by resolution, but such resolution may specify any of the foregoing matters by reference to indexes, formulas, conversion rates or other objectively ascertainable criteria."

C. Article Thirteenth is deleted in its entirety.

D. Article Fourteenth is deleted in its entirety.

The foregoing amendment of the Articles of Incorporation of Southern California Edison Company has been duly approved by its Board of Directors.

All of the authorized and outstanding shares of the \$100 Cumulative Preferred Stock, 7.23% Series and 6.05% Series, have been reacquired by the corporation by way of redemption. Pursuant to the Restated Articles of Incorporation of Southern California Edison Company, shares redeemed are restored to the status of authorized but unissued shares of the class to which they belong and are no longer authorized shares of any series. In accordance with subdivision (c) of Section 510 of the California Corporations Code, those series are eliminated and the shares are returned to the status of authorized but undesignated shares of the class to which they belong. Pursuant to subdivision (f) of Section 510, the amendments made by Sections C and D above have been approved by the Board of Directors alone and approval by the outstanding shares is not required to adopt those amendments.

The amendments of the Articles of Incorporation made by Sections A and B above have been duly approved by the required vote of shareholders in accordance with Section 902 of the California Corporations Code. The total number of outstanding shares of the corporation is (a) 434,888,104 shares of Common Stock with one vote per share, and (b) 5,150,198 shares of Cumulative Preferred Stock with six votes per share, representing an aggregate of 465,789,292 votes entitled to be cast with respect to the amendments. Within each class of preferred shares, the number and designation of outstanding shares of each series is as follows: Cumulative Preferred Stock, 4.32% Series, 1,653,429; 4.08% Series, 1,000,000; 4.24% Series, 1,200,000; and 4.78% Series, 1,296,769. The number of votes in favor of the amendments exceeded the vote required. The percentage vote required was more than 50% of the total votes entitled to be cast, voting as a single class pursuant to Section 902 of the California Corporations Code. No separate vote of any class of stock was required by Section 903 of the California Corporations Code.

This Certificate of Amendment of Articles of Incorporation shall become effective at the close of business on December 5, 2005.

IN WITNESS WHEREOF, the undersigned have executed this certificate on this 5th day of December, 2005.

Robert C. Boada

Robert C. Boada  
Vice President and Treasurer  
of Southern California Edison Company

Barbara Mathews

Barbara E. Mathews  
Vice President, Associate General Counsel, Chief  
Governance Officer and Corporate Secretary  
of Southern California Edison Company

DECLARATION

The undersigned ROBERT C. BOADA and BARBARA E. MATHEWS, the Vice President and Treasurer, and Vice President, Associate General Counsel, Chief Governance Officer and Corporate Secretary, respectively, of Southern California Edison Company, each declares under penalty of perjury under the laws of the State of California that the matters set forth in the foregoing certificate are true and correct of his or her own knowledge.

Executed at Rosemead, California on this 5th day of December, 2005.

Robert C. Boada

Robert C. Boada  
Vice President and Treasurer  
of Southern California Edison Company

Barbara Mathews

Barbara E. Mathews  
Vice President, Associate General Counsel, Chief  
Governance Officer and Corporate Secretary of  
Southern California Edison Company



**CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of the APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) FOR APPROVAL OF A POWER PURCHASE AGREEMENT on all parties identified on the attached service list. Service was effected by one or more means indicated below:

- Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.
- Placing the copies in sealed envelopes and causing such envelopes to be delivered by hand or by overnight courier to the offices of the Commission or other addressee(s).
- Placing copies in properly addressed sealed envelopes and depositing such copies in the United States mail with first-class postage prepaid to all parties.
- Directing Prographics to place the copies in properly addressed sealed envelopes and to deposit such envelopes in the United States mail with first-class postage prepaid to all parties.

Executed this **23rd day of December 2005**, at Rosemead, California.

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Edna Vallecillo Garcia  
Project Analyst  
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue  
Post Office Box 800  
Rosemead, California 91770