

**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-____

**MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY
(U 338-E) FOR A PROTECTIVE ORDER**

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Dated: **December 23, 2005**

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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.

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Pursuant to Rule 45 of the Commission’s Rules of Practice and Procedure, Southern California Edison Company (“SCE”) respectfully files this Motion for a Protective Order in this proceeding (“Motion”). SCE moves the Commission for an order: (1) granting leave to file the confidential and proprietary portions of its testimony filed in support of its Application for Approval of a Power Purchase Agreement (“Application”), and the power purchase agreement that is the subject of the Application (collectively known as the “Protected Materials”), filed concurrently with this Motion and under seal; and (2) expressly adopting a similar protective order that was issued on May 20, 2003 in R.01-10-024 (“Protective Order”), a copy of which is attached hereto as Exhibit 1, to govern access to and use of protected documents, workpapers, and other information that may subsequently be produced by SCE and potentially other parties in discovery in this proceeding.

This Motion is made pursuant to the Public Utilities Code Sections 454.5(g) and 583, Evidence Code Section 1060, General Order 66-C, and the provisions of the Protective Order. The grounds for this Motion are that the redacted matters in the Protected Materials are confidential trade secrets and market sensitive information that must be protected from public disclosure under the Protective Order and applicable law. The information requested to be

protected are the negotiated terms of the power purchase agreement with Kern River Cogeneration Company (the “KRCC Contract”). SCE is currently negotiating with other Qualifying Facility¹ (“QF”) and non-QF parties regarding similar contractual arrangements. If the terms that SCE has agreed to were revealed, those parties would treat the KRCC Contract terms as a floor and would seek to negotiate better terms, thereby weakening SCE’s bargaining position on behalf of its customers.

I.

INTRODUCTION

Concurrently with this Motion, SCE has filed an application for approval of the KRCC Contract. The Kern River Cogeneration Company (“KRCC”) is a qualifying cogeneration facility under PURPA. KRCC is 50% owned by an SCE affiliate. For reasons discussed in more detail below, SCE seeks the protection of confidential, market sensitive information regarding the terms and conditions of the KRCC Contract and negotiations and economic analysis related to the KRCC Contract. Protection of this information is necessary in order to prevent market participants from gaining an unfair business advantage with SCE.

II.

THE COMMISSION IS REQUIRED TO PROTECT CONFIDENTIAL TRADE SECRETS AND MARKET SENSITIVE INFORMATION FROM DISCLOSURE

Public Utilities Code Section 454.5(g) specifically requires the Commission to devise a mechanism to maintain the confidentiality of “market sensitive information.” It provides:

¹ QFs are defined under the Public Utility Regulatory Policies Act (“PURPA”), codified in part at 16 U.S.C. § 824a-3. PURPA and regulations of the Federal Energy Regulatory Commission implementing PURPA provide that qualifying cogeneration facilities and qualifying small power production facilities are entitled to sell their output to utilities pursuant to regulations implemented at the state level. The Commission is charged with implementing PURPA in the state of California.

“The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation’s proposed procurement plan or resulting from or related to its approved procurement plan, including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are nonmarket participants shall be provided access to this information under confidentiality procedures authorized by the commission.”²

While Section 454.5(g) contemplates that non-market participants, like the Office of Ratepayer Advocates and certain other non-market participants,³ shall have access to market sensitive information under appropriate confidentiality protections, Section 454.5(g) does not provide a similar right to market participants.

General Order 66-C also requires the Commission to protect confidential information that would place a utility at an “unfair business disadvantage” if it were publicly disclosed. It categorizes as information that is “not open to public inspection,” those “[r]eports, records, and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage.”⁴ Furthermore, Public Utilities Code Section 583 provides protection from disclosure of confidential information furnished to the Commission by a utility.⁵

As further discussed below, the redacted information in SCE’s Protected Materials, which SCE seeks leave to file under seal, is market sensitive and would place SCE at an unfair

² Cal. Pub. Util. Code § 454.5(g) (*emphasis added*).

³ SCE plans to provide the Protected Materials to its procurement review group (“PRG”) subject to the protective order and any non-disclosure agreement applicable to PRG members.

⁴ General Order 66-C, § 2.2(b).

⁵ Section 583 of the Public Utilities Code provides:

“No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges such information is guilty of a misdemeanor.”

business disadvantage if revealed. The Commission must therefore protect such information from public disclosure.

The redacted matters in SCE's Protected Materials are also confidential trade secrets.

"Trade secrets" are defined under California law as:

"[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) [d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy."⁶

As further detailed below, the redacted information in the Protected Materials has been kept secret by SCE and does derive independent economic value from not being generally known to the public or to market participants who could obtain economic value from its disclosure and use. The owner of a trade secret "has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice."⁷ Accordingly, the Commission should also allow SCE to file the redacted portions of its Protected Materials under seal because the redacted materials are trade secrets that must remain privileged under California law.

In addition, it should be noted that in R.05-06-040, the Commission will be making a decision as to the treatment of confidential, market sensitive information for certain procurement related information. This proceeding will include a determination as to whether specific contract terms and negotiations and economic analyses related to a contract are considered confidential. To the extent a determination is made in R.05-06-040, SCE will make any necessary changes to its redacted materials in accordance with that decision.

⁶ Cal. Civ. Code § 3626.1(d); *see also* Cal. Evid. Code § 1061(a)(1).

⁷ Cal. Evid. Code § 1061.

Finally, on May 20, 2003, the ALJ in R.01-10-024 issued a ruling adopting a modified protective order filed on April 14, 2003 by SCE.⁸ SCE respectfully requests that the Commission expressly adopt a similar Protective Order to govern access to and use of the redacted matters in SCE's Protected Materials, and any other protected information that may subsequently be produced by SCE and potentially other parties in discovery in this proceeding.

III.

THE DISCLOSURE OF THE REDACTED PORTIONS OF THE PROTECTED MATERIALS WILL HARM RATEPAYERS

In general, SCE has redacted two categories of information from the Protected Materials: (1) the specific contract terms and conditions of the KRCC Contract that were the result of extensive arms-length negotiations; and (2) information related to the negotiation of and the economic analysis of the KRCC Contract. These categories of information are market sensitive and would place SCE at an unfair business disadvantage if disclosed to market participants. SCE is in active negotiations with other potential QF and non-QF suppliers of power. Revealing the terms SCE has agreed to with KRCC and SCE's economic analysis of those terms would severely weaken SCE's bargaining position with those parties, thereby harming the interests of SCE's customers. Those other potential suppliers would take SCE's concessions as a floor and seek to negotiate greater advantages for tier constituents at the expense of SCE's customers. Moreover, this information derives independent economic value from not being disclosed to the public, and in particular, from not being disclosed to market participants. Consequently, it would significantly harm SCE's ratepayers if this redacted information were disclosed to the public in this proceeding.

In addition, information related to the terms and conditions of the KRCC contract and the negotiations of and economic analysis of the KRCC Contract are maintained by SCE, in the

⁸ See Administrative Law Judge's Ruling Adopting Modified Protective Order, R.01-10-024, issued May 20, 2003.

normal course of business, as confidential. SCE's negotiations with KRCC are subject to a non-disclosure agreement between the parties, which is then made part of the negotiated contract. This standard practice of entering into non-disclosure agreements should be honored.

A. The Terms And Conditions Of The KRCC Contract Must Be Kept Confidential

The KRCC Contract has been filed concurrently with SCE's Application. The terms and conditions of the contract, including descriptions of the terms and conditions in the Protected Materials, is confidential, market-sensitive information. The release of this type of information is likely to place SCE at a disadvantage when negotiating a future contract. The circumstances of each contract, including the counterparty, project, market conditions and other factors are unique. Therefore, contract terms and conditions that make an agreement desirable for one market participant, at a given point in time, may not be suitable for a future contract with another market participant. Furthermore, nearly all contracts involve the resolution of issues as a result of compromised positions initially put forward at the outset of negotiation. However, given a different counterparty with different circumstances, as well as different market conditions, it may not be in SCE's or its ratepayers' best interests to accept the same, or similar, contract terms. Making specific contract details public, or contract administration details public, would only serve to enhance a counterparty's negotiating leverage.

For example, if the terms and conditions of the KRCC Contract were publicly released, these terms and conditions would serve as the "floor" for any future negotiations for competitive terms with other counterparties. This "floor" would undermine SCE's ability to negotiate and would only lead to higher procurement costs for SCE and its ratepayers. Accordingly, this type of information should be protected.

B. Information Related To The Negotiation Of And The Economic Analysis Of The KRCC Contract Must Be Kept Confidential

The KRCC contract was the result of extensive and complex arms-length negotiations. These negotiations, which are discussed in the testimony accompanying the Application,⁹ contain commercially sensitive, confidential and proprietary information regarding SCE's negotiation strategy and economic analysis of potential offers. Specifically, the information contains discussions of the areas where SCE is willing to negotiate with counterparties, as well as information regarding the tools SCE uses to evaluate the offers it receives. Maintaining the confidentiality of this information is critical to protecting SCE's ability to procure resources, for the benefit of its ratepayers, at a competitive cost. If this information were to fall into other market participants' hands, it could and would be used to take advantage of SCE as it seeks to secure, fairly-priced transactions for new capacity. As SCE continues to negotiate contract terms with other counterparties and bidders to solicitations, releasing such information could unfairly disadvantage SCE in contract talks and could lead to unnecessarily higher prices for its customers.

For example, if the detailed information of the economic analysis that SCE expects to use when evaluating offers were released, the information could be used strategically by future offerors in their offer pricing to the detriment of the buyers. In short, the redacted information provides confidential valuation information and negotiation information that could be used strategically by counterparties and offerors in their offer pricing to the detriment of the buyers as it provides some insight to the method of measurement of risk-reward trade-offs with regard to credit risk and valuation being made by SCE.

⁹ SCE's Application also contains generic discussions of negotiations with KRCC. These discussions, however, are not considered confidential, market sensitive information because it does not reveal information regarding SCE's negotiating strategy that could be used against it in future procurement. SCE's testimony, on the other hand, contains more specific information regarding SCE's negotiation strategy and economic analysis of specific terms, and, therefore, is considered market sensitive.

IV.

THE REDACTED PORTIONS OF SCE'S PROTECTED MATERIALS MUST BE FILED UNDER SEAL

This section sets forth the specific portions of SCE's Protected Material that are considered confidential. The following portions all relate to information regarding the specific contract terms and conditions of the KRCC Contract or information related to the negotiation of or the economic analysis of the KRCC Contract:

- **Page 1, 2nd Paragraph:** The information that has been redacted relates to the specific terms of the KRCC Contract and economic analysis used in evaluation of the KRCC Contract.
- **Page 4, 2nd and 3rd Paragraphs and Footnote 8:** The information that has been redacted relates to specific negotiations between SCE and KRCC.
- **Page 4, Footnote 7:** The information that has been redacted relates to the specific terms of the KRCC Contract.
- **Page 5, 3rd Paragraph and 1st Bullet Point:** The information that has been redacted relates to the specific terms of the KRCC Contract and specific negotiations between SCE and KRCC.
- **Page 6, 2nd and 3rd Bullet Points:** The information that has been redacted relates to the specific terms of the KRCC Contract and specific negotiations between SCE and KRCC.
- **Table 1, Pages 8-12:** The information that has been redacted relates to the specific terms of the KRCC Contract as compared to RSO1 and ISO4. Page 9 also contains redacted information regarding pricing terms for specific contracts.
- **Page 13, 1st, 2nd and 4th Paragraphs:** The information that has been redacted relates to the specific pricing terms of the KRCC Contract.
- **Page 14, 1st, 2nd and 4th Paragraphs:** The information that has been redacted relates to the specific terms of the KRCC Contract.

- **Page 15, 1st, 2nd and 3rd Paragraphs:** The information that has been redacted relates to the specific terms of the KRCC Contract.
- **Page 16, 3rd, 5th, 6th and 7th Paragraphs:** The information that has been redacted relates to the specific terms of the KRCC Contract.
- **Page 17, 1st, 2nd and 3rd Paragraphs:** The information that has been redacted relates to the specific terms, including pricing, of the KRCC Contract.
- **Page 19, 5th Paragraph:** The information that has been redacted relates to the specific terms of the KRCC Contract and economic analysis used in evaluation of the KRCC Contract.
- **Figure 1, Page 20:** The information that has been redacted relates to economic analysis used in evaluation of the KRCC Contract.
- **Page 20, 2nd Paragraph and Footnote 19:** The information that has been redacted relates to the specific terms of the KRCC Contract and economic analysis used in evaluation of the KRCC Contract.
- **Page 21, 1st Paragraph:** The information that has been redacted relates to the specific terms of the KRCC Contract and economic analysis used in evaluation of the KRCC Contract.
- **Table 3, Page 21:** The information that has been redacted relates to economic analysis used in evaluation of the KRCC Contract.
- **Page 23, 3rd Paragraph and Footnote 28:** The information that has been redacted relates to economic analysis used in evaluation of the KRCC Contract.
- **Page 24, 1st and 2nd Paragraphs:** The information that has been redacted relates to economic analysis used in evaluation of the KRCC Contract.
- **Page 25, 1st, 2nd and 3rd Paragraphs:** The information that has been redacted relates to economic analysis used in evaluation of the KRCC Contract.
- **Appendix B to the Prepared Testimony:** Appendix B is the KRCC Contract. Therefore, it has been redacted in full.

- **Appendix C to the Prepared Testimony:** Appendix C is SCE's workpapers in connection with the KRCC Contract. The Appendix contains specific contract terms of the KRCC Contract as well as detailed information regarding SCE's economic analysis of the KRCC Contract. Therefore, it has been redacted in full.

V.

CONCLUSION

For all the foregoing reasons, SCE respectfully moves the Commission for an order directing that the confidential trade secrets and market sensitive information appearing in the unredacted version of SCE's Protected Materials, which has been redacted in the public version, shall continue to remain under seal and shall not be made accessible or disclosed to anyone other than Commission staff except pursuant to the Protective Order, which the Commission should expressly adopt in this proceeding.

Respectfully submitted,

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Dated: [December 23, 2005](#)

(Proposed Ruling)

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Application No. 05-12-____

**ADMINISTRATIVE LAW JUDGE'S RULING ON SOUTHERN CALIFORNIA EDISON
COMPANY'S MOTION FOR PROTECTIVE ORDER**

On December 23, 2005, Southern California Edison Company (SCE) filed a motion requesting a protective order maintaining the confidentiality of certain information contained in its testimony filed in support of its Application for Approval of a Power Purchase Agreement (Application), and the power purchase agreement that is the subject of the Application (the Confidential Information).

This order grants SCE's motion. Public disclosure of the Confidential Information that SCE seeks to protect would cause imminent and direct harm to SCE and its ratepayers.

Accordingly, it is ORDERED that:

- The protective order, a copy of which is attached hereto as Exhibit 1, shall govern access to and the use of all Confidential Information in this proceeding.
- The Confidential Information, which confidential version has been submitted under seal as an attachment to SCE's Motion, shall not be made accessible or

disclosed to anyone other than Commission staff except pursuant to or on the further order or ruling of the Commission, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

Dated: _____, 2005, at San Francisco, California.

Administrative Law Judge

Exhibit 1

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
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In the Matter of the Application of SOUTHERN)	
CALIFORNIA EDISON COMPANY (U 338-E))	Application No. 05-12-___
for Approval of a Power Purchase Agreement)	
Between the Utility and an Affiliate and for)	Filed December 23, 2005
Authority to Recover the Costs of Such Power)	
Purchase Agreement in Rates.)	
_____)	

PROPOSED PROTECTIVE ORDER

1. This Protective Order shall govern access to and the use of all SCE Protected Materials in this proceeding as hereinafter defined. Notwithstanding any order terminating this docket, this Protective Order shall remain in effect until, after notice and a reasonable opportunity to be heard, it is specifically modified or terminated by the Assigned Commissioner, the Assigned Administrative Law Judge (ALJ), the Law and Motion Judge (Law and Motion ALJ) or the California Public Utilities Commission (CPUC or Commission). This Protective Order does not address the right of employees of the Commission acting in their official capacities to view Protected Materials, because Commission employees are entitled to view such protected materials in accordance with the requirements of Section 583 of the Public Utilities Code and the Commission's General Order 66-C and, as applicable, Section 454.5(g) of the Public Utilities Code.

2. This proceeding involves the review of an Application for approval of a Power Purchase Agreement between SCE and an affiliate and for authority to recover the costs of such power purchase agreement in rates. The amount of data that is confidential or proprietary may differ from time to time. If disagreements arise over whether information should be subject to the provisions of the Protective Order, the parties are to work cooperatively with the Assigned ALJ, the Law and Motion ALJ, the Assigned Commissioner or the full Commission, as the case

may be, to devise and implement resolution of the differences, and such modifications as may be necessary to the Protective Order in as timely a manner as possible.

3. Definitions. The terms in this Order shall have a meaning consistent with the provisions of SCE's Commission-approved AB57 Procurement Plan currently in effect. The term "Procurement Plan" means SCE's Commission-approved of plan for evaluating, identifying and purchasing energy and/or capacity, managing short and long positions, dispatching resources, obtaining or managing gas transportation, which includes storage and hedging activities, and administering and dispatching Department of Water Resources contracts.

- a. The term "redacted" refers to situations in which confidential, commercially sensitive or proprietary information in a document, whether the document is in paper or electronic form, has been covered, masked or blocked out. Thus, the "redacted version" of a document is one in which the document is complete except that the confidential, commercially sensitive or proprietary information contained therein is not visible because it has been covered, masked or blocked out. The term "unredacted" refers to situations in which confidential or proprietary information in a document, whether in paper or electronic form, has not been covered, masked or blocked out. Thus, the "unredacted version" of a document is one in which the document is complete, and the confidential or proprietary information contained therein is visible.
- b. The term "Protected Materials" means the confidential or proprietary information contained in the unredacted version, and not contained in the redacted version, of any of the following: (i) any testimony provided in this proceeding, (ii) any workpapers provided in this proceeding, (iii) any data request or data response provided in this proceeding, (iv) any pleading provided in this proceeding, (v) any document provided in this proceeding.
- c. Protected Material shall also include (i) any information contained in or obtained from the unredacted materials described in the preceding paragraph, (ii) any other

materials that are made subject to this Protective Order by any assigned ALJ, Law and Motion ALJ, or Assigned Commissioner, or by the CPUC or any court or other body having appropriate authority, (iii) notes of Protected Materials, and (iv) copies of Protected Materials. All parties, including Commission Staff, when creating any Protected Materials, shall physically mark such materials on each page (or in the case of materials such as computer diskettes, on each item) as “PROTECTED MATERIALS” or words of similar import as long as one or more of the terms “Protected Materials,” “Section 583,” “Section 454.5(g),” or General Order No. 66-C” is included in the designation to indicate that the materials in question are Protected Materials.

- d. The term “Notes of Protected Materials” means memoranda, handwritten notes, or any other form of information (including information in electronic form) that copies or discloses materials described in Paragraph 3(b) and (c). Except as specifically provided otherwise in this Order, notes of Protected Materials are subject to the same restrictions as are Protected Materials.
- e. Protected Materials shall not include (i) any information or document contained in the public files of the CPUC or any other state or federal agency, or in any state or federal court, unless such information or document has been determined to be protected by such agency or court, or (ii) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order.
- f. The term “Non-Disclosure Certificate” shall mean the certificate annexed hereto as Appendix A by which persons who have been granted access to the Protected Materials of SCE shall, as a condition of such access, certify their understanding that such access is provided pursuant to the terms and restrictions of this Protective Order, and that such persons have read such Protective Order and agree

to be bound by it. All Non-Disclosure Certificates shall be sent to and retained by SCE.

g. The term Non-Market Participating Party (“NMPP”) Reviewing Representative shall mean a person who is

- 1) An employee of: (a) a state governmental agency that (i) is not a Market Participating Party as defined in Paragraph 3(h)(1) hereof, and (ii) is statutorily authorized to obtain access to confidential data held by another state governmental agency upon execution of a written agreement to treat the data so obtained as confidential, as provided in Government Code Section 6254(e); or (b) any other consumer or customer group that SCE and the Director of the Commission’s Energy Division or his designee (“Division Director”) agree has a bona fide interest in participating on behalf of end-use customers in SCE regulatory proceedings on ratemaking and electric procurement, and which group is not a Market Participating Party as defined in paragraph 3(h)(1); or
- 2) An attorney, paralegal, expert or employee of an expert retained by a NMPP for the purpose of advising, preparing for or participating in the proceeding in this docket.
- 3) NMPPs shall identify their proposed Reviewing Representatives to SCE and Division Director and provide curriculum vitae of the candidate, including a brief description of the candidate’s professional experience and past and present professional affiliations for the last 10 years. SCE shall advise the proposing party in writing within seven business days from receipt of the notice if it objects to the proposed Reviewing Representative, setting forth in detail the reasons therefore. In the event of such objection, the proposing party, SCE and the Division Director shall promptly meet and confer to try to resolve the issue, and if necessary seek

a ruling from either the assigned ALJ or the Law and Motion ALJ. In addition to determining whether the proposed Reviewing Representative has a need to know, the ALJ in ruling on the issue will evaluate whether the candidate is engaged in the purchase, sale or marketing of energy or capacity (or the direct supervision of any employee(s) whose duties include such activities), or the bidding on or purchasing of power plants or consulting on such matters (or the direct supervision of any employee(s) whose duties include such bidding, purchasing or consulting). Absent unusual circumstances as determined by the ALJ, a candidate who falls within the criteria set forth in the preceding sentence will ordinarily be deemed ineligible to serve as a NMPP Reviewing Representative.

- h. The term Market Participating Party (“MPP”) Reviewing Representative shall mean a person who is
 - 1) An employee of a private, municipal, state or federal entity that engages in the purchase, sale or marketing of energy or capacity, or the bidding on or purchasing of power plants, or the bidding on or purchase of electric transmission resources, or the purchase, sale or marketing of natural gas, or the bidding on or purchase of natural gas transportation or storage, or hedging activities, or consulting on one or more of the foregoing matters, or an employee of a trade association comprised of such entities that engage in one or more of such activities; or
 - 2) An attorney, paralegal, expert or employee of an expert retained by an MPP for the purpose of advising, preparing for or participating in Procurement Plan and Compliance Reviews regarding SCE.
- i. The term “ISO Reviewing Representative” shall mean a person who is employed by the California Independent System Operator, a nonprofit public benefit corporation created pursuant to Article 3, Chapter 2.3 of the Public Utilities Act

(Public Utilities Code Sections 345 et seq.). The ISO shall identify its proposed Reviewing Representatives to SCE and Division Director and provide a curriculum vitae of the candidate, including a brief description of the candidate's professional experience and past and present professional affiliations for the last 10 years. In addition, the ISO shall provide for each proposed ISO Reviewing Representative a copy of the ISO's Employees' Code of Conduct signed by the proposed ISO Reviewing Representative. SCE and Division Director shall advise the ISO in writing within three (3) business days from receipt of the notice if either or both of them object to the proposed Reviewing Representative, setting forth in detail the reasons therefore. In the event of such objection, the ISO, SCE and Division Director shall promptly meet and confer to try to resolve the issue, and if necessary, seek a ruling from either the assigned ALJ or the Law and Motion ALJ. In addition to determining whether the proposed Reviewing Representative has a need to know, the ALJ in ruling on the issue, will evaluate whether the candidate is engaged in the purchase, sale or marketing of energy or capacity (or the direct supervision of any employee(s) whose duties include such activities), or the bidding on or purchasing of power plants or consulting on such matters (or the direct supervision of any employee(s) whose duties include such bidding, purchasing or consulting). Absent unusual circumstances as determined by the ALJ, a candidate who falls within the criteria set forth in the preceding sentence will ordinarily be deemed ineligible to serve as an ISO Reviewing Representative; provided, however, that for purposes of this protective order, the ordinary operation by the ISO of the ISO Controlled Grid and the ordinary administration by the ISO of ISO administered markets, including markets for Ancillary Services, Supplemental Energy, Congestion Management, and Local Area Reliability Services, shall not be deemed to be the purchase, sale or marketing of energy or capacity.

j. The term Market Participating Party shall mean a private, municipal, state or federal entity that engages in the purchase, sale or marketing of energy or capacity, or the bidding on or purchasing of power plants, or the bidding on or purchase of electric transmission resources, or the purchase, sale or marketing of natural gas, or the bidding on or purchase of natural gas transportation or storage, or hedging activities, or consulting on one or more of the foregoing matters, or a trade association comprised of such entities that engage in one or more of such activities.

4. Access of NMPP Reviewing Representatives to Protected Materials shall be granted only pursuant to the terms of this Protective Order. Participants in this proceeding who are MPP Reviewing Representatives shall not be granted access to Protected Material, but shall instead be limited to reviewing redacted versions of documents that contain Protected Material.

5. Whenever SCE submits a document in this proceeding that includes data that SCE contends is confidential or proprietary, SCE shall also prepare a redacted version of such document. The redacted version shall be sufficiently detailed in organization so that persons familiar with this proceeding can determine with reasonable certainty the nature (but not the magnitude) of the data that has been redacted. The redacted version of any document required by this paragraph shall be served on all parties on the service list (or, in the case of discovery, on all persons entitled to the discovery responses) who are not entitled to obtain access to Protected Material hereunder. All disputes regarding redacted versions of documents shall be submitted for resolution to the CPUC in accordance with Paragraph 13 of this Protective Order.

6. Within thirty (30) days after (a) the issuance of final Commission decision approving SCE's Application in this proceeding, or (b) the date on which the final Commission decision is no longer subject to judicial review, a NMPP Reviewing Representative shall, if requested to do so in writing by SCE, return or destroy the Protected Materials. Within the same 30-day period, the NMPP Reviewing Representative shall also submit to SCE an affidavit stating that, to the best of the NMPP Reviewing Representative's knowledge, all Protected Materials

subject to the request have been returned or destroyed. Notwithstanding the two preceding sentences, the NMPP Reviewing Representative may retain Notes of Protected Materials and copies of filings, official transcripts and exhibits, if any, prepared in the course of the NMPP Reviewing Representative's review of the Protected Materials, provided that such retained materials are maintained in accordance with Paragraphs 9 and 12 below. To the extent that Protected Materials are not returned or destroyed pursuant to this paragraph, they shall remain subject to this Protective Order, Section 583 of the California Public Utilities Code and CPUC General Order No. 66-C.

7. In the event the CPUC receives a request for a copy of or access to Protected Material from a state governmental agency that is authorized to enter into a written agreement sufficient to satisfy the requirements for maintaining confidentiality set forth in Government Code Section 6254.5(e), the CPUC may, after giving written notice to SCE of the request, release such Protected Material to the requesting government agency, upon receiving from the requesting agency an executed Interagency Confidentiality Agreement. Such Agreement shall (i) provide that the agency will treat the requested Protected Material as confidential in accordance with this Protective Order, (ii) include an explanation of the purpose for the agency's request, as well as an explanation of how the request relates to furtherance of the agency's functions, (iii) be signed by a person authorized to bind the agency contractually, and (iv) expressly state that furnishing of the requested Protected Materials to employees or representatives of the agency does not, by itself, make such Protected Materials public. In addition, the Interagency Confidentiality Agreement shall include an express acknowledgement of the CPUC's sole authority (subject to judicial review) to make the determination whether the Protected Material should remain confidential or be disclosed to the public, notwithstanding any provision to the contrary in the statutes or regulations applicable to the agency.

8. If a request is made pursuant to the Public Records Act ("PRA"), Government Code Section 6250, *et seq.*, that Protected Material filed with or otherwise in the possession of the CPUC be produced, the CPUC will notify SCE of the PRA request and will notify the

requester that the Protected Materials are public records that fall within the exclusions listed in Section 2 of General Order No. 66(c), and/or that there is a public interest served by withholding the record. *See* paragraphs 2.2 and 3.3 of General Order 66-C. In the event the CPUC receives a request from a federal governmental agency or via a judicial subpoena for the production of Protected Materials in the CPUC's possession, the CPUC will also notify SCE promptly of such request. In the event that a PRA requester brings suit to compel disclosure of Protected Materials, the CPUC will promptly notify SCE of such suit, and Commission Staff and SCE shall cooperate in opposing the suit.

9. Protected Materials shall be treated as confidential by each NMPP Reviewing Representative and by each ISO Reviewing Representative in accordance with the certificate executed pursuant to Paragraphs 3(f) and 11 hereof. Protected Materials shall not be used except as necessary for the conduct of this proceeding, and shall not be disclosed in any manner to any person except (i) other NMPP Reviewing Representatives who are engaged in this proceeding and need to know the information in order to carry out their responsibilities, (ii) persons employed by or working on behalf of the CEC or other state governmental agencies covered by Paragraph 7, and (iii) the ISO Reviewing Representatives (with the exception of price information). In the event that a NMPP not covered by Paragraph 7 or the ISO is requested or required by applicable laws or regulations, or in the course of administrative or judicial proceedings (in response to oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any confidential information, the NMPP or the ISO agrees to oppose disclosure on the grounds that the requested information has already been designated by the Commission as Protected Materials subject to this Protective Order lawfully issued by the Commission and, therefore, may not be disclosed. The ISO or NMPP shall also immediately inform the utility of the request, and the utility may, at its sole discretion and cost, direct any challenge or defense against the disclosure requirement, and the NMPP or ISO shall cooperate with the utility to the maximum extent practicable to oppose the disclosure of the Protected Materials consistent with the applicable law. If an agency

or court of competent jurisdiction nevertheless orders disclosure, or if the utility agrees to disclosure without such an order, the NMPP and/or ISO shall cooperate with the utility to obtain confidential treatment of the Protected Materials by the entity in whose favor disclosure has been ordered or agreed to, consistent with this Protective Order, prior to any such disclosure. If there are multiple requests for substantially similar Protected Materials in the same case or proceeding where the NMPP or ISO has been ordered to produce certain specific Protected Materials, the ISO or NMPP may, upon requests for substantially similar Protected Materials by a similarly situated party, respond in a manner consistent with that order to those substantially similar requests for those Protected Materials.

10. It shall be a rebuttable presumption that any study that incorporates, describes or otherwise employs Protected Material in a manner that could reveal all or a part of the Protected Material shall also be considered Protected Material that is subject to Section 583 of the Public Utilities Code, the Commission's General Order 66-C, and this Protective Order. It shall also be a rebuttable presumption that where the inputs to studies or models include Protected Material, or where the outputs of such studies or models reveal such inputs or can be processed to reveal the Protected Material, such inputs and/or outputs shall be considered Protected Material subject to this Protective Order, unless such inputs and/or outputs have been redacted or aggregated to the satisfaction of SCE. Unless a party, by means of notice and motion, obtains a ruling from the Assigned ALJ or the Law and Motion ALJ holding that the applicable presumption(s) from among the foregoing has (have) been rebutted with respect to the model or study at issue, then any party who devises or propounds a model or study that incorporates, uses or is based upon Protected Material shall label the model or study "Protected Material," and shall be subject to the terms of this Protective Order.

11. No NMPP Reviewing Representative shall be permitted to inspect, participate in discussions regarding, or otherwise be granted access to Protected Materials pursuant to this Protective Order unless such NMPP Reviewing Representative has first executed a Non-Disclosure Certificate and delivered it to SCE. Attorneys qualified as NMPP Reviewing

Representatives shall ensure that persons under their supervision or control comply with this Protective Order.

12. In the event that a NMPP Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in this proceeding, or is employed or retained for a position whose employer is not qualified to be a NMPP under Paragraph 3(g)(1), then access to Protected Materials by that person shall be terminated. Even if no longer engaged in such reviews, every such person shall continue to be bound by the provisions of this Protective Order and the Non-Disclosure Certificate.

13. All disputes arising under this Protective Order shall be presented for resolution to the Assigned ALJ or the Law and Motion ALJ. Prior to presenting any such disputes to the applicable ALJ, the parties to the dispute shall use their best efforts to resolve it. Neither SCE nor the Commission Staff waives its right to seek additional administrative or judicial remedies after the Assigned ALJ or the Law and Motion ALJ has made a ruling regarding the disputes.

14. All documents containing Protected Materials that are filed with the Commission or served shall be placed in sealed envelopes or otherwise appropriately protected and shall be endorsed to the effect that they are filed or served under seal pursuant to this Protective Order. Such documents shall be marked with the words "Protected Materials" or one of the other, similar terms set forth in paragraph 3(c) hereof, and shall be served upon all NMPP Reviewing Representatives. Service upon the persons specified in the foregoing sentence may either be (a) by electronic mail in accordance with electronic service protocols established for this docket, (b) by facsimile, (c) by U.S. postal mail, (d) by overnight mail, or (e) by messenger service.

15. Nothing in this Protective Order shall be construed as limiting the right of SCE, Commission Staff, or a NMPP from objecting to the use of Protected Materials on any legal ground, such as relevance or privilege.

16. All Protected Materials filed with judicial or administrative bodies other than the Commission, whether in support of or as a part of a motion, brief or other document or pleading, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent

markings indicating that the contents include Protected Materials that are subject to this Protective Order.

17. Neither SCE nor the Commission Staff waives its right to pursue any other legal or equitable remedy that may be available in the event of actual or anticipated disclosure of Protected Materials.

18. SCE and Commission Staff may agree at any time to remove the “Protected Material” designation from any material if, in their mutual opinion, its confidentiality is no longer required. In such case, SCE will notify all parties of that change in designation.

Dated: _____, 2005

(Administrative Law Judge)

APPENDIX A

**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-____ Filed December 23, 2005
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NON-DISCLOSURE CERTIFICATE

I, _____, have been asked by _____ to inspect certain materials that have been designated as “Protected Materials” under Paragraph 3 of the Protective Order entered in the above-captioned matter on _____, 2005 (the “Order”).

1. I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Order in this proceeding, that I have been given a copy of and have read the Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with the Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the California Public Utilities Commission.

2. I understand that my review of Protected Materials is solely for the purpose of participating in the above-captioned matter, and that any other use or disclosure of Protected Materials by me is a violation of the Order.

3. I hereby agree to submit to the exclusive jurisdiction of the California Public Utilities Commission for the enforcement of the undertakings I have made hereby and I waive any objection to venue laid with the Commission for enforcement of the Order.

4.

By:	_____
Date:	_____
Name:	_____
Representing:	_____
Employer:	_____
Position:	_____
Business Address:	_____

Business Phone:	_____

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 MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) FOR A PROTECTIVE ORDER, 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.

Edna Vallecillo Garcia
Project Analyst
SOUTHERN CALIFORNIA EDISON COMPANY