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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the Southern California Edison Company (U 338-E) for: (1) Authority to Increase Its Energy Cost Adjustment Billing Factors, Increase Its Annual Energy Rate, and Increase Its Electric Revenue Adjustment Billing Factor Effective June 1, 1988; (2) Authority to Implement Modifications to its Energy Cost Adjustment Clause as More Specifically Set Forth in this Application; (3) Authority to Revise the Incremental Energy Rate, the Energy Reliability Index, and Avoided Cost Pricing; (4) Review of the Reasonableness of Edison's Operations During the Period from December 1, 1986, through November 30, 1987; and (5) Review of the Reasonableness of Edison Payments to Qualifying Facilities Under Nonstandard Contracts During the Period from December 1, 1984, through November 30, 1987.	Application 88-02-016 (Filed February 11, 1988)

OPINION

Background

In this decision, the Commission reviews filings which have been made in both this application and Application (A.) 87-05-007. In A.87-05-007, the Southern California Edison Company (Edison) sought authority to establish a holding company. This corporate reorganization was approved in Decision (D.) 88-01-063.

The instant application, A.88-02-016, is Edison's 1988 Energy Cost Adjustment Clause (ECAC) proceeding. The ECAC is divided into two phases, a forecast phase and a reasonableness review phase. D.88-09-031, issued on September 14, 1988, in the

forecast phase, addressed Edison's revenue requirement, qualifying facility (QF) payments, and revenue allocation. Currently pending is the Commission's review of the reasonableness of Edison's operations for the 1987 reasonableness review period and the reasonableness of its nonstandard contracts with QFs for a three-year period beginning December 1, 1984.

The motions to be considered in this decision directly relate to the Commission's reasonableness review of Edison's nonstandard contracts with QFs. It is necessary to resolve these motions before hearings commence in this phase of Edison's ECAC.

DRA Request to Modify D.88-01-063 and to Consolidate A.87-05-007 with A.88-02-016

On December 5, 1988, the Division of Ratepayer Advocates (DRA) filed a document in A.87-05-007 which DRA entitled "Motion of the Division of Ratepayer Advocates for an Order Modifying Decision 88-01-063, and For Other Specified Relief." Prior to accepting this request for filing, the Commission's Docket Office retitled the filing "Petition for Modification of D.88-01-063."

While the relief sought by DRA in its filing did include a request to modify D.88-01-063, the modifications requested by DRA were largely based on evidence which DRA intends to present during the reasonableness review in this proceeding. For this reason, DRA also included a request for consolidation of A.87-05-007 with this application.

On December 14, 1988, a prehearing conference was held in this proceeding to establish a schedule for Edison's ECAC reasonableness review. At that time, the Administrative Law Judge (ALJ) directed DRA to file its December 5 petition in this proceeding as well. This step was taken to ensure proper consideration of all of the allegations included and relief requested in this filing.

On December 27, 1988, DRA filed a document in this proceeding identical to its December 5 petition changing only its title. The title of the filing made in this proceeding reads: "Division of Ratepayer Advocates' Motion in ECAC for Consolidation of A.87-05-007 with A.88-02-016 to Consider Modifying D.88-01-063 and Other Specified Relief." Parties to Edison's ECAC were directed to respond to both the petition in A.87-05-007 and the motion in this proceeding by January 3, 1989.

The relief requested by DRA in its ECAC motion and holding company petition includes the following:

(1) The Commission should modify D.88-01-063 to prohibit Edison from entering into any new purchase power agreements with QF affiliates or, alternatively, should require Edison to apply to the Commission for permission to enter into any new nonstandard agreement with a QF affiliate.

(2) The Commission should direct the holding company to divest itself of all ownership in all QF/Edison ventures which sell electricity to Edison.

(3) If divestment is not ordered, the Commission should order a ratemaking adjustment which DRA terms an "Affiliate Cost Adjustment." This adjustment would flow through to Edison's ratepayers the profits Edison's QF affiliates earn above Edison's authorized return or, as an alternative, profits in excess of the average return earned by California QFs.

(4) If the Commission declines to take any of the preceding actions, DRA asks that the Commission direct that all future Edison QF affiliate transactions be limited to standard contracts.

(5) To the extent that Edison is permitted to purchase electricity from affiliated QFs, the Commission should increase reporting about such dealings. DRA suggests that Edison's current ECAC reasonableness review include information, among other

> things, identifying each QF in which Edison or its affiliate has an ownership interest, the percent of ownership, the name of the affiliate, and the date ownership was acquired.

DRA states that its requested relief is based on evidence which it has uncovered in its reasonableness investigation conducted in this proceeding. That evidence, according to DRA, demonstrates that "Edison's dealings with its QF affiliates have abused its ratepayers and unaffiliated QFs." (DRA 12/27 Motion, at p. 2.) Specifically, DRA claims that its investigation reveals (1) that Edison and its QF affiliates do not function as truly separate corporations, (2) that Edison's negotiations with its QF subsidiaries conflict with its ratepayers interests and with fair competition among QFs, and (3) that Edison's ratepayers have overpaid large sums of money to Edison's QF affiliates.

The evidence relied upon by DRA to support these conclusions is recited in detail in its motion. Much of this evidence relates to a large power purchase contract between Edison and a QF affiliate, the Kern River Cogeneration Company (KRCC). Partnership in the company is divided equally between Southern Sierra Energy Company, a wholly owned subsidiary of Edison, and the Getty Energy Company (GEC).

DRA notes that the KRCC contract was negotiated prior to the issuance of D.88-01-063. DRA asserts, however, that this fact does not diminish the need for further Commission action restraining Edison from entering new contracts with QF affiliates. In this regard, DRA argues that the safeguards against utility self-dealing adopted in D.88-01-063 and Order Instituting Rulemaking (OIR) 2 would not have prevented the abuses which it

discovered related to the KRCC contract nor would they prevent similar contractual arrangements in the future.[1]

Except for its request for the Commission to prohibit Edison from entering new QF contracts with affiliates, DRA asks that any Commission response to its other recommendations await the conclusion of hearings in Edison's current ECAC reasonableness review. DRA believes that presentation of its evidence demonstrating Edison's affiliate abuse in this proceeding is the most expedient way to provide support for reconsideration of the holding company decision. To this end, DRA asks that A.87-05-007 and A.88-02-016 be consolidated.

DRA believes, however, that the Commission should act immediately to prohibit Edison from entering into new affiliate QF contracts. According to DRA, this action is required given Edison's abuse of its holding company status and the potential for further abuses. DRA acknowledges that safeguards were adopted by the Commission in D.88-01-063 and OIR 2 for the purpose of ensuring the propriety of Edison's relations with its affiliates. It is DRA's position, however, that its evidence of abuse demonstrates that Edison's ratepayers have not been protected by these orders and that a reexamination of D.88-01-063 is therefore required.

On January 3, 1989, Edison and the Cogenerators of Southern California (CSC) responded to DRA's motion and petition. Although the CSC filed its response in both A.87-05-007 and this proceeding, Edison initially filed a response only in A.87-05-007. On January 11, 1989, the same response was filed by Edison in A.88-02-016. Both parties ask the Commission to deny DRA's requested relief.

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1 OIR 2 was the Commission's generic proceeding establishing guidelines for standard offer and nonstandard offer contracts between utilities and QFs. This effort has been continued in A.82-04-044, et al.

In its response, Edison focuses on DRA's request to modify D.88-01-063. Edison objects to the changes in this order proposed by DRA on the following grounds:

(1) The safeguards against public utility self-dealing which the Commission has adopted in OIR 2 and D.88-01-063 are sufficient to protect the ratepayers' interests and should not be rescinded.

(2) DRA has not shown nor even contended that any act or omission by Edison in dealing with QF affiliates following the holding company decision justifies modification of the safeguards now in place. Edison further asserts that in the present ECAC proceeding it will demonstrate the reasonableness of the KRCC contract executed prior to the issuance of D.88-01-063.

(3) The alternative relief requested by DRA is unfair, unnecessary, overbroad, adverse to the ratepayers interest, beyond the Commission's jurisdiction to grant, and contrary to federal and state policy. In this regard, Edison notes, among other things, that both federal law and Commission decision permit an electric utility to hold up to a 50% interest in a QF facility.

In contrast to Edison's concern with DRA's proposed modifications of D.88-01-063, CSC primarily objects to DRA's request to consolidate the holding company proceeding with the present application. CSC states that granting DRA's requested consolidation would (1) significantly complicate and confuse the proper focus of the present ECAC reasonableness review, (2) unreasonably expand the scope of this review, and (3) prejudice the interests of the non-Edison parties to the nonstandard contracts subject to review.

The foundation for these objections is CSC's position that the reasonableness review of QF nonstandard contracts in ECAC

is limited to whether the payment stream included in nonstandard contract is less than or comparable to the expected avoided costs of the applicable standard offer. CSC states that this standard was developed in D.82-01-103 in OIR 2 and was designed to maintain ratepayer indifference to the type of contract entered between the QF and the utility.

Using this standard, CSC argues that the existence of any "self-dealing" by the utility is irrelevant to the reasonableness review of a nonstandard contract when that contract includes risks and costs no greater than that of the applicable standard offer. CSC therefore proposes that any issue of "self-dealing" by Edison should be handled through an entirely separate phase of A.88-02-016 and not be allowed to confuse or complicate the reasonableness review.

On January 18, 1989, DRA replied to Edison's and CSC's responses to its motion. In responding to Edison's objections, DRA reiterates that no order issued in either OIR 2 or A.87-05-007 provides safeguards which would have prevented Edison from entering the KRCC contract or would prevent similar contracts in the future. DRA states that the OIR 2 and holding company orders provide only general guidelines for a utility's electricity purchases from QFs subject to the utility's "interpretation."

In response to CSC, DRA states that the consolidation of A.87-05-007 and A.88-02-016 will save time and money and will not prejudice other parties. DRA states that it requested consolidation because much of the evidence which it intends to present in the current reasonableness review is also directly relevant to the relief sought by DRA in its motion and petition. DRA argues that consideration of this evidence in two separate proceedings would therefore be a waste of time.

In contrast to CSC, DRA also believes that its evidence of Edison's relations with its QF affiliates is completely relevant to a reasonableness review. According to DRA, much of its

testimony demonstrates how Edison's ratepayers pay more under the KRCC contract and bear greater risks than under a standard QF contract. In DRA's view, "self-dealing" is a relevant issue to this inquiry as it is presumed harmful to ratepayers, even in the absence of specific damages, and demonstrating its existence is necessary to a full understanding of the KRCC contract.

Related Discovery and Issue Limitation Motions Filed in A.88-02-016

DRA's motion and petition reviewed raise the issue of the scope of Edison's current ECAC reasonableness review. A similar issue is the focus of both a discovery motion filed by DRA and a motion filed by CSC seeking to establish the scope of this proceeding.

With respect to DRA's discovery motion, this request was filed by DRA in this proceeding on March 23, 1988. By this motion, DRA seeks to compel production of certain information "in the possession and control of Southern California Edison Company, Mission Energy Company, Southern Sierra Energy Company, Kern River Cogeneration Company, various other subsidiaries of Edison, Getty Energy Company, and the Cogenerators of Southern California." (DRA 3/23/88 Motion, at p. 2.) DRA asserts that this information, outlined in detail in its motion, (1) relates to matters under review in this proceeding; (2) is relevant or reasonably calculated to lead to the discovery of relevant evidence; and (3) is required to ensure a full and informed review of the reasonableness of the nonstandard contracts under review in this proceeding, the reasonableness of purchases by Edison under these agreements during the 1985-1987 record periods, and the reasonableness of Edison's administration of these contracts during these record periods.

The information requested by DRA includes the KRCC financial statements, KRCC partnership records, and the names of each chief officer of each company member of the CSC. In support of its request, DRA asserts that its review of the reasonableness

of Edison's purchase power agreements requires "a clear understanding of the corporate relationships between Edison and its various subsidiaries and affiliates, both organizational and operational, at the time these nonstandard agreements were negotiated." (DRA Motion, at p. 1.) DRA references the many statutory provisions giving the Commission broad discovery powers in its regulation of utilities.

With respect to this information, DRA notes that, at DRA's request, CSC had disclosed the names of CSC member companies and the projects of each member company under review in this proceeding, but had declined to identify the chief officer of each member company. Further, while Edison had allowed DRA to inspect and take notes of the financial statements of KRCC for 1985 and 1986, Edison had not allowed DRA to receive a copy of these documents.

According to DRA, Edison's refusal to supply the KRCC partnership documents stemmed from objections of Edison's subsidiary's partner in the project, GEC. These objections, which apparently related to the confidentiality and proprietary nature of these agreements, have never been directly presented to the Commission by GEC. To date GEC has merely joined in a reply filing submitted by CSC. This filing is reviewed below.

In its motion, DRA explains that it is also its understanding that GEC had asserted that the sole relevant issue in this ECAC proceeding is "'a determination of whether payments to KRCC under its Parallel Generation Agreement with SCE are above those which it would receive under a standard offer.'" (DRA 3/23/88 Motion, at p. 10.) DRA believes that this view, shared by KRCC, is far "too narrow and short-sighted." (Id.)

Citing the original order establishing guidelines for QF purchase power agreements (D.82-01-103), DRA asserts that the guiding principle for nonstandard contracts is that the contract terms, taking into account the associated risks, are not more than

expected avoided costs under the standard offer. When a contract significantly shifts the risks and obligations of the parties, the Commission, according to DRA, must ascertain whether such risks were reasonable or fair. DRA asserts that in order to understand the full extent of such risks, the Commission must understand the context in which the project was undertaken.

DRA notes that in D.82-01-103, the Commission stressed that the burden is on the utility to demonstrate why the nonstandard offer is in the ratepayer's interest. Further, DRA states that the Commission has also indicated its intent to provide greater scrutiny of utility operations related to utility ownership of QFs. According to DRA, this approach was taken to protect the interests of both ratepayers and QFs who might be disadvantaged competitively by such partial utility ownership. (D.82-01-103, at p. 12.) DRA therefore states that the reasonableness review of nonstandard agreements, particularly those involving Edison's subsidiaries, is not limited to the face of these contracts, but must necessarily consider the overall costs, risk, and obligations of those transactions.

On March 31, 1988, CSC filed a motion to limit discovery and to establish the scope of this proceeding. In this motion, CSC asks the Commission to deny DRA's discovery requests related to CSC members. Additionally, CSC asks the Commission to define the "scope of [this] proceeding as a determination of whether Edison's payments to nonstandard contracts were reasonable in light of the payments it would have made under the standard offer contracts or projected avoided costs as available at the time of execution." (CSC Motion, at pp. 21-22.) CSC is also concerned that the Commission understand that three of the projects under consideration in this proceeding are "nonsubsidiaries" of Edison.

On April 4, 1988, both CSC and Edison filed responses to DRA's discovery motion. CSC renewed its position that the

information requested by DRA was beyond the scope of this proceeding as defined by CSC.

In its response, Edison states that based on GEC's objections, it has refrained from producing the material requested by DRA. Edison states that its shares GEC's concerns although it remains willing to provide the information under its control if directed to do so by the Commission. Edison notes, however, that any release of this information would not amount to a waiver by Edison of any of its rights to object to the admissibility of the material into evidence.

On April 11, 1988, DRA replied to the responses of CSC and Edison to its motion. This reply focuses in large part on the apparent lack of cooperation of Edison in providing the requested information, despite its filed statements to the contrary, and the failure of GEC to file on its own behalf stated objections to the production of this material.

Additionally, DRA in its reply again rejects any attempt to narrowly define the scope of the reasonableness inquiry related to nonstandard contracts. Specifically, DRA asserts that "[w]hile the reasonableness inquiry may begin with the comparison of payment streams, it is absurd to suggest that the inquiry must end with a comparison of the payments streams." (DRA Reply, at p. 8.) Citing D.83-10-093 in OIR 2, DRA states that "[t]he terms of a negotiated contract which alter the risks to the ratepayer are no less important than the pricing provisions." (Id., at pp. 8-9.)

On April 21, Edison responded to CSC's motion to limit discovery and establish the scope of proceeding and to DRA's response. In this filing, Edison states that it supports a Commission ruling defining the scope of reasonableness review of nonstandard QF contracts. Citing D.82-01-103, it is Edison's position that the Commission has established "avoided cost" as the reasonable basis for payment by a utility in purchasing power from QFs. Edison asserts that this standard of reasonableness is also

applicable to the evaluation of nonstandard contracts and that, once having met that standard, Edison is entitled to recover through rates payments made under such agreements.

Edison also notes that both Commission decisions and federal legislation have permitted utilities to own up to 50% of a QF project and to receive payments at full avoided cost for that project. With respect to both its affiliate QF and nonaffiliate QF agreements, Edison states that it has already provided DRA with "overwhelming proof" that all of its QF contracts were prudently executed and administered.

On April 22, 1988, CSC replied to the responses of DRA and Edison. For the first time in any of these filings, CSC is joined by GEC. In its reply, CSC again argues that the information sought by DRA is "far outside the scope of this proceeding and border[s] on harassment." (CSC Reply, at p. 4.) CSC also expresses concern regarding confusion on the issue of CSC's membership as opposed to those companies included as Edison's subsidiaries. CSC claims that listings by the Commission and DRA of these members and subsidiaries may not be accurate. With respect to DRA's reference to D.83-10-093, CSC argues that the standard announced in that decision permits "evaluation of nonprice provisions of the parallel generation agreements to the extent such provisions affect the cost to Edison of power purchased under the nonstandard contract." (Id., at p. 4, emphasis original.)

In an ALJ ruling of November 17, 1988, the parties were directed to meet and confer regarding DRA's March 23 discovery request. According to a letter dated December 22, 1988, from the attorney for DRA, this meeting took place on December 2, 1988. On December 13, 1988, DRA received a letter from certain of the parties offering a conditional response to DRA's request. DRA's attorney indicates that this offer is unacceptable to DRA on the ground that the terms of the offer would unreasonably limit the

scope of discovery. DRA's attorney concludes the letter by asking that its March 23, 1988, motion to compel production be granted.

Discussion

In D.88-01-063 in A.87-05-007, the Commission approved Edison's proposed plan to reorganize and create a holding company structure. Our approval, however, was conditioned on Edison following certain guidelines in the operation of its holding company. These conditions for approval were largely the result of compromises and accords reached between DRA and Edison.

The primary purpose of these conditions was to ensure that Edison's holding company structure would not result in any "diminution of the Commission's ability to regulate Edison effectively or Edison's ability to provide reliable utility service at reasonable rates." (D.88-01-063, at pp. 21-22.) To this end, these conditions were designed (1) to ensure that all costs incurred by Edison resulting from its affiliates' activities were recovered from the affiliates, (2) to provide the Commission with access to all information necessary to thoroughly analyze Edison's costs and to monitor the relationships between Edison and its nonutility affiliates, (3) to ensure Edison ratepayers were insulated from all effects of nonutility activities, (4) to preserve the regulatory control which the Commission currently has over Edison's activities, and (5) to ensure the financial health of the utility's operations.

In A.87-05-007, DRA had expressed concern regarding the potential for self-dealing between the utility and its QF affiliates to the detriment of the utility's ratepayers. DRA had therefore recommended that a condition be imposed on the reorganization which would have prohibited Edison from entering into any new contracts for power with QF affiliates in Edison's service territory.

We rejected this recommendation finding that we had addressed this matter in OIR 2 through the adoption of a QF bidding

process. Specifically, this process requires that an electric utility acquire any needed deferrable resource additions from QFs through a bidding process. Utilities were also permitted to accept bids from their QF affiliates. (See, D.86-07-004, D.87-05-060; D.88-01-063, at p. 34.)

In D.88-01-063, we acknowledged, however, that certain unique issues might arise with respect to the operational relationship between an Edison-affiliate QF selected in the bidding process and Edison. We chose in D.88-01-063, however, "not to specify broad rules for those relationships at this time." (D.88-01-063, at p. 35.) Instead, we found as follows:

> "In keeping with all relevant Commission decisions, we will expect Edison to minimize the cost of service for its regulated operations and to deal fairly and evenhandedly with all QFs; we will be prepared to examine any evidence to the contrary if and when it is presented. The other conditions we impose should preserve the information relevant to such an investigation as well as our staff's ability to examine such information." (D.88-01-063, at p. 35; emphasis added.)

DRA, in its motion in this proceeding and its petition for modification of D.88-01-063, claims that it has now uncovered evidence of such self-dealing by Edison. Further, DRA has indicated that it intends to introduce this evidence in the reasonableness review in this ECAC proceeding.

Although DRA may eventually prove instances of self-dealing by Edison in this ECAC, its current statements are merely allegations which have yet to be subject to the hearing process. We believe that, under these circumstances, any change in the conditions adopted in D.88-01-063 or our approval of Edison's holding company would be premature and inappropriate at this time.

In this regard, we note that the record developed in A.87-05-007 clearly substantiated our approval of Edison's reorganization and the conditions of that approval. As

acknowledged by DRA, the "evidence" which it claims requires a modification of D.88-01-063 was not presented during our consideration of Edison's holding company proposal.

We therefore find no reason at the present time to modify D.88-01-063 nor to reopen hearings in that proceeding. This conclusion is reinforced by the fact that, as DRA has even noted, a forum presently exists for the presentation of this evidence--Edison's current ECAC reasonableness review. While we indicated a willingness in D.88-01-063 to examine evidence of unfairness by Edison in its dealings with all QFs, the forum to consider such evidence was not limited to the holding company application. We also believe that this pending ECAC application currently provides the most expeditious and reasonable forum for hearing this evidence.

In this regard, we note that an ALJ ruling was issued in this proceeding on January 19, 1989, establishing a hearing schedule for Edison's 1988 ECAC reasonableness review. That schedule calls for this review to take place in two phases, as requested by Edison. In the first phase, we will be examining all issues raised in DRA's Evaluation Report Reasonableness Review for the 1987 Record Period and the reasonableness of Edison's execution and administration of the KRCC contract. DRA's report addresses all issues to be raised in this proceeding other than those related to Edison's standard and nonstandard QF contracts. In the second phase, the Commission will consider issues related to the remaining nonstandard QF contracts and Edison's administration of standard QF contracts during the 1985, 1986, and 1987 record periods. Hearings in Phase I commence on February 21, 1989.

This schedule is well-suited to our consideration of DRA's asserted evidence of Edison's self-dealing. We disagree with CSC's suggestion that some additional phase of the ECAC proceeding should be established to examine claims of "self-dealing." By including the KRCC contract in the first phase of the

reasonableness review, the Commission can quickly consider the validity of DRA's primary claims and determine their impact, if any, on other nonstandard agreements. We do not see how any party will be significantly disadvantaged by this approach. Further, Edison's ratepayers will be better served by a process designed to promptly address these issues.

By including DRA's proposed evidence of self-dealing in the current ECAC proceeding, the Commission will also have the advantage of hearing all testimony relevant to Edison's negotiations and execution of its QF contracts. Upon the issuance of our decisions in the reasonableness phase of this ECAC, DRA may then decide, based on our ultimate findings, whether it is appropriate to renew its request for modifications of D.88-01-063.

In response to Edison and CSC, we concur with DRA that it is irrelevant whether Edison's negotiation and execution of the KRCC contract predated our issuance of D.88-01-063. The Commission does not intend to ignore evidence which, if adduced during hearing, would have or should have impacted the conditions for our approving the holding company structure. We would not be fulfilling our duty to protect the utility's ratepayers if we did not ensure that the safeguards we imposed did in fact address potential abuses by the utility.

We therefore conclude that no modification of D.88-01-063 is appropriate at this time and that the reasonableness review in this ECAC is an appropriate forum for consideration of DRA's asserted evidence of Edison's self-dealing. To this end, we will issue a decision in A.87-05-007 denying as premature DRA's petition for modification of D.88-01-063.

Having reached these conclusions, however, it is now necessary to address the arguments of Edison and CSC which would essentially limit the scope of the ECAC reasonableness review in a manner which would effectively exclude DRA's "evidence." Obviously, the Commission is quite concerned that DRA not be completely foreclosed from presenting its claimed evidence of self-dealing in some forum.

Both Edison and CSC argue that the Commission's reasonableness review of nonstandard QF contracts is very limited. Basically, these parties assert that our determination of the reasonableness of a nonstandard contract depends solely on comparable price streams between the nonstandard agreement and the applicable standard offer.

We are surprised at Edison's and CSC's assertions especially given that both parties represent long-time participants in the development of our rules governing QF power purchase agreements. As these parties must be aware, beginning with D.82-01-103 and continuing through more recent OIR 2 decisions and separate requests for approval of nonstandard agreements, our review of the reasonableness of nonstandard agreements has reached far beyond specific price terms. These decisions reflect that, to protect the utilities' ratepayers and ensure equality in the treatment of all QFs, we have examined the overall impact of not only the specific terms of these agreements, but also the negotiations which led to their execution.

In these decisions, issued over the past seven years, our policy has been shaped with respect to not only the negotiation, terms, and execution of nonstandard contracts, but also utility ownership of QFs. These decisions make clear that, while price might be the most significant issue in a review of a nonstandard agreement with a nonaffiliated QF, the introduction of the utility as a partner to the agreement necessarily raises other separate and distinct issues which the Commission has committed itself to

examine in each instance. These issues include (1) the impact of utility ownership of the QF on competition and the regulated aspects of its operation, including the impact on its ratepayers, (2) the terms of the agreement as compared to the applicable standard offer, and (3) its approach in negotiations with affiliated QFs and nonaffiliated QFs.

Consideration of these issues has stemmed from our long-time concern related to the impact of utility ownership of QFs. Edison and CSC are correct in noting that utility ownership of QFs, up to a 50% equity interest, has been established under both federal law and our decisions. (D.82-01-103, at p. 11.) We have been aware since the early stages of QF development, however, of the potentially negative aspects of such ownership. Among our concerns have been the potential for anticompetitive activities by the utility and the creation of incentives for utilities to keep avoided costs high and to take steps "toward utility diversification into unregulated activities." (Id.)

On this latter point, we have expressed reservations that such diversification into unregulated ventures could have an impact on the regulated utility business for which this Commission is responsible. In this regard, we have noted that our primary duty is to protect the financial integrity of the regulated entity and to prevent any subsidization by the regulated entity and its ratepayers of the unregulated business.

Given these concerns, we have concluded:

> "[S]uch involvement will require greater scrutiny of utility operations on our part.... Any utility may come forward with proposal for partial ownership of a QF and we will review these matters on a case-by-case basis, with the intent of protecting the interest of both ratepayers and any QFs who might be disadvantaged competitively." (D.82-01-103, at p. 12.)

With respect to contract terms, we have determined that the object of nonstandard negotiations is to produce a contract which was the "economic equivalent of the standard offer." (D.82-01-103, at p. 91.) The reasonableness of these agreements is to be examined in the utility's ECAC proceedings or by individual application in the event that the utility seeks advance approval of the agreement.

In this regard, we have determined that "[t]he guiding principle for nonstandard contracts upon which applications [for advance approval] should be based is that the contract terms, taking into account the associated risks, should not be more than expected avoided costs under the standard offer." (D.82-01-103, at p. 103.) Any application for approval of a nonstandard offer, however, is required to include a statement of all the differences between the contract and the standard offer and the identification of all benefits and risks for the utility's ratepayers. The application is also required to demonstrate why ratepayers should either be indifferent to or prefer the nonstandard contract over the standard offer. Further, we have found that in "all cases, the burden is on the applicant to demonstrate why the nonstandard offer is in the ratepayers' interest." (Id.)

In D.82-01-103, we also addressed the issue of how the utilities are to negotiate with QFs. In that order, we adopted staff's view that utilities are expected to negotiate in good faith with all QFs. While our concern at the time was the utility's responsiveness to QF requests, certain of our findings are equally applicable when the utility is one of the QF partners. In this regard, we have concluded that "[t]he best evidence of good faith is a collection of written documentation compiled along the way." (D.82-01-103, at p. 106.) We have further found that a "utility found not to have bargained in good faith will stand in violation of this order and will be open to potential punitive action by this Commission." (Id.) Obviously, a measure of a utility's "good

faith" negotiations with QFs would also be whether the utility has engaged in favoritism between QFs or "self-dealing" to ensure or improve its own QF-related interests.

These principles relating to the negotiation and execution of contracts by utility affiliates have been amplified in subsequent OIR 2 decisions. In D.83-10-093, we rejected a utility request for authority to alter nonprice provisions of the standard offer without jeopardizing the status of that offer. Specifically, we concluded that "[c]hanges in nonprice terms can have very real economic effects on ratepayers and the parties to the contract." (D.83-10-093, at p. 78.) We further stated that the "economic balance represented by the standard offer should be maintained in negotiated contracts" and that this "economic balance is not limited to the exchange of dollars between the parties." (Id.)

In a subsequent order addressing a utility's unilateral addition of a provision to the standard offer, we found that the provision, though a nonprice term, impacted QF development "to the same degree as our establishment of capacity prices." (D.84-08-031, at p. 36.) The provision in question attempted to define the parties' responsibilities for transmission limitations being experienced by the utility. Even though unrelated to the avoided cost payments to be made under the agreement, the provision was found to have "a significant economic impact on QFs from the potential magnitude of the changes and costs involved to the uncertainty of the extent of the QF's liability." (Id., at p. 37.)

In D.83-10-093 and D.84-08-031, we also reiterated the utility's obligation to negotiate in good faith. We concluded that the Commission was to serve as "the final judge of a utility's 'good faith' in its negotiations with QFs." (D.84-08-031, at pp. 53-54.)

A review of individual applications for approval of nonstandard contracts and changes to existing standard offer agreements also reflects that our inquiry into the reasonableness

of those agreements has reached far beyond comparing the price terms of those nonstandard agreements with those of the applicable standard offers. Specifically, we have examined and considered the negotiations leading to execution of the agreement; all benefits and risks to be incurred by the utility's ratepayers; the certainty of the QF's technology and the integrity and viability of the project; the prevailing financial and legislative climates; the impact of unique contract terms on the utility's bond rating, interest coverage, and ability to raise capital; the societal benefits of the development of a particular project; the timeliness of the capacity being added to the utility's system; the operating flexibility afforded the utility by the QF (i.e, dispatchability or curtailment); and the manner of payment. (See, e.g., Decisions 82-04-087, 82-07-021, 86-09-040, 86-10-044, 87-03-068, 87-07-023, 87-07-086, 87-09-080, 88-03-036, 88-05-030, and 88-08-021.) Most recently, we rejected a proposed settlement requesting modifications to a standard offer agreement for its failure to insulate ratepayers from development risk and its questionable viability. (D.88-08-054.)

In another recent decision considering the reasonableness of a proposed amendment of a standard offer agreement, we reiterated our obligation in determining its reasonableness to protect ratepayer interests. Specifically, we concluded:

> "Utilities are held to a standard of reasonableness based upon the facts that are known or should be known at the time. While this reasonableness standard can be clarified through the adoption of guidelines, the utilities should be aware that guidelines are only advisory in nature and do not relieve the utility of its burden to show that its actions were reasonable in light of circumstances existent at the time. Whatever guidelines are in place, the utility always will be required to demonstrate that its actions are reasonable through clear and convincing evidence."
> (D.88-03-036, at p. 5.)

All of these orders lead to the obvious conclusion that our examination of nonstandard contracts in an ECAC reasonableness review is in no way limited to the issue of price as urged by Edison and CSC. For transactions between a utility and an affiliated QF in particular, we are obligated to review the negotiations, all contract terms, and the ownership relation between the parties. These steps are necessary to ensure that the agreement was reasonable and fair to the utility's ratepayers and to all QFs.

In this regard, the documents sought by DRA seem only to be the most basic information that DRA would require to determine the relations between the utility and the QFs with whom it has entered nonstandard agreements. The evidence of self-dealing which DRA seeks to introduce in this proceeding is also clearly within the scope of our reasonableness review.

We are disturbed by Edison's apparent attempt to shield information from DRA on the basis of objections from its QF partners. It had been our hope through the conditions established in D.88-01-063 and all of the decisions issued in OIR 2 and related power purchase applications that the utility would not use its nonregulated activities to hinder our legitimate inquiry into its regulated activities.

We further reiterate for Edison, as we did in D.88-03-036 recited above, that no matter what guidelines or standards are or were in place at the time of contract execution, it is the utility's obligation to demonstrate that its actions were reasonable through clear and convincing evidence. In D.88-01-063, we concluded:

> "We remind TURN and emphasize to Edison in particular that it is the utility's burden to prove its contentions in any proceeding before the Commission. To fail to produce witnesses as necessary or required on the technicality of non-jurisdiction would be a grave mistake because of the power the Commission has to invoke penalties." (D.88-01-063, at p. 29.)

Consistent with our previous findings, we deny as premature and inappropriate DRA's motion to consolidate this proceeding with A.87-05-007 and all other relief requested in that motion. The evidence summarized by DRA in that motion, however, can and will be considered in upcoming hearings in the reasonableness review in this proceeding. The scope of this review shall include a consideration of all facets of Edison's negotiation, execution, and administration of its nonstandard contracts. Close scrutiny will particularly be applied to those agreements involving Edison and its QF affiliates.

DRA's March 23, 1988, motion to compel production of the information listed in that document is granted. Edison shall produce all of the information requested by DRA to the extent that it is within the utility's power and control.

We also encourage CSC to seize the opportunity presented by this reasonableness review to clarify for the Commission the composition of its membership. CSC is quick to point out our misunderstanding of this organization. We find, however, that this misunderstanding, if one exists, can only be effectively corrected by CSC. Based on our preceding findings, CSC's motion in this proceeding to limit discovery in this proceeding and establish the scope of this proceeding as defined by CSC is denied.

Findings of Fact

1. On December 5, 1988, DRA filed a petition in A.87-05-007 which, among other things, sought to modify D.88-01-063 in which the Commission granted Edison authority to establish a holding company.

2. The relief requested by DRA in its petition was largely based on evidence which DRA intends to present during the ECAC reasonableness review in this proceeding and included a request to consolidate A.87-05-007 with this application.

3. To ensure proper consideration of all of the allegations included and relief requested by DRA in its December 5 petition,

DRA was properly directed by the assigned ALJ to file its petition in this proceeding as well.

4. On December 27, 1988, DRA filed a document in this proceeding identical to its December 5 petition changing only its title to a motion for consolidation and other specified relief.

5. In related matters in this proceeding, DRA has filed a motion to compel production of certain information and CSC has filed a motion to limit discovery and establish the scope of Edison's pending reasonableness review.

6. The motions and petition filed by DRA in this proceeding and A.87-05-007 and CSC's motion in this proceeding directly impact the Commission's reasonableness review of Edison's nonstandard contracts with QFs.

7. It is necessary to address the filings referenced in the finding above before hearings commence on February 21, 1989, in the reasonableness review phase of this ECAC proceeding.

8. In its December 5 petition in A.87-05-007 and its December 27 motion in this proceeding, DRA claims that it has uncovered evidence in its reasonableness investigation of self-dealing by Edison in its negotiation and execution of nonstandard contracts with affiliated QFs, in particular the Kern River Cogeneration Company (KRCC).

9. Based on its evidence, DRA seeks to modify D.88-01-063 to provide an immediate prohibition on Edison entering into any new purchase power agreements with QF affiliates and other appropriate relief depending on the record developed in the reasonableness review in this proceeding.

10. In D.88-01-063 in A.87-05-007, the Commission conditioned its approval of Edison's holding company structure on Edison following certain guidelines and safeguards in the operation of its holding company.

11. The primary purpose of the conditions adopted in D.88-01-063 was to ensure that Edison's holding company structure

would not result in any "diminution of the Commission's ability to regulate Edison effectively or Edison's ability to provide reliable utility service at reasonable rates." (D.88-01-063, at p. 21-22.)

12. In A.87-05-007, we rejected DRA's recommendation to prohibit Edison from entering into contracts with QF affiliates in its service territory based on our finding that this matter had been addressed in OIR 2 through the adoption of a QF bidding process.

13. In D.88-01-063, we indicated our expectation that Edison minimize the cost of service for its regulated operations and deal fairly and evenhandedly with all QFs and that we would be "prepared to examine any evidence to the contrary if and when it is presented." (D.88-01-063, at p. 35.)

14. Although DRA may eventually prove instances of self-dealing by Edison in this ECAC, its current statements in its motion and petition are merely allegations which have yet to be subject to the hearing process.

15. The record developed in A.87-05-007 clearly substantiated the Commission's approval in D.88-01-063 of Edison's reorganization and the conditions for that approval.

16. The evidence which DRA claims requires a modification of D.88-01-063 was not presented during the Commission's consideration of Edison's holding company proposal.

17. Based on the preceding findings, any change in the conditions adopted in D.88-01-063 or our approval of Edison's holding company would be premature at this time; it is therefore reasonable for the Commission to issue an order in A.87-05-007 denying DRA's petition for modification of D.88-01-063 as premature.

18. A forum presently exists for the presentation by DRA of its evidence of self-dealing referenced in its motion and petition--Edison's current ECAC reasonableness review.

19. Although the Commission in D.88-01-063 indicated a willingness to examine evidence of unfairness by Edison in its dealings with all QFs, the forum to consider such evidence was not limited to the holding company application.

20. Edison's pending ECAC reasonableness review and the schedule adopted for this review provide the most expeditious and reasonable means of hearing DRA's asserted evidence of self-dealing by Edison.

21. Consideration of DRA's evidence in the reasonableness review as currently structured will not disadvantage any party and will better serve Edison's ratepayers by promptly addressing all issues related to Edison's negotiation and execution of nonstandard contracts with both affiliated and nonaffiliated QFs.

22. Upon the issuance of our decisions in the reasonableness phase of this ECAC, DRA may then decide, based on our ultimate findings, whether it is appropriate to renew its request for modifications of D.88-01-063.

23. It is DRA's continued claim that the current conditions and safeguards adopted in OIR 2 and A.87-05-007 did not address nor would they prevent the type of abuses DRA claims arose during Edison's negotiation and execution of the KRCC contract.

24. The Commission does not intend to ignore evidence which, if adduced during hearing, would have or should have impacted the conditions for our approving the holding company structure.

25. Based on the preceding findings, it is irrelevant to our consideration of potential utility abuses whether Edison's negotiation and execution of the KRCC contract predated the issuance of D.88-01-063.

26. No modification of D.88-01-063 is appropriate at this time, but DRA's asserted evidence of Edison's self-dealing is appropriate for consideration in the pending reasonableness review in this proceeding.

27. In order to determine whether any obstacles exist to the presentation of DRA's evidence of Edison's self-dealing in Edison's current reasonableness review, it is necessary to resolve the issue of the proper scope of this review, an issue which has been raised by CSC and addressed by Edison and DRA.

28. It is Edison's and CSC's position that the Commission's reasonableness review of nonstandard QF contracts is basically limited to a comparison of the price streams between the nonstandard agreement and the applicable standard offer.

29. Contrary to this position, beginning with D.82-01-103 and continuing through more recent OIR 2 decisions and separate requests for approval of nonstandard agreements, the Commission's review of the reasonableness of nonstandard QF agreements has reached far beyond specific price terms.

30. To protect the utilities' ratepayers and ensure equality in the treatment of all QFs, the Commission's review of nonstandard agreements has included an examination of the overall impact of not only the specific terms of these agreements, but also the negotiations which led to their execution.

31. In decisions issued over the last seven years, the Commission has shaped its policy with respect to not only the negotiation, terms and execution of nonstandard contracts, but also utility ownership of QFs.

32. The Commission's prior decisions make clear that, while price might be the most significant issue in a review of a nonstandard agreement with a nonaffiliated QF, the introduction of the utility as a partner to the agreement necessarily raises other separate and distinct issues which the Commission is committed to examine in each instance and which require greater scrutiny of utility operations.

33. In dealing with unregulated ventures by utilities, the Commission has recognized its duty to protect the financial integrity of the regulated entity, to prevent any subsidization by

the regulated entity and its ratepayers of the unregulated business, to avoid the potential for anticompetitive activities by the utility, and to ensure that the utility's avoided costs are not artificially inflated.

34. The issues to be considered in reviewing nonstandard contracts with utility-affiliates include (1) the impact of utility ownership of the QF on competition and the regulated aspects of its operation, including the impact on its ratepayers, (2) the terms of the agreement as compared to the applicable standard offer, and (3) the utility's approach in negotiations with affiliated and nonaffiliated QFs.

35. The Commission has determined that utilities are expected to negotiate in good faith with all QFs.

36. A measure of a utility's "good faith" negotiations with QFs includes whether the utility has engaged in favoritism between QFs or "self-dealing" to ensure or improve its own QF-related interests.

37. While the object of nonstandard negotiations is to produce a contract which is the "economic equivalent of the standard offer" (D.82-01-103, at p. 91), the Commission has also found that this "economic balance is not limited to the exchange of dollars between the parties" and that "[c]hanges in nonprice terms can have very real economic effects on ratepayers and the parties to the contract." (D.83-10-093, at p. 78.)

38. In decisions addressing individual applications for approval of nonstandard contracts and changes to existing standard offer agreements, the Commission has examined and considered the following: the negotiations leading to execution of the agreement; all benefits and risks to be incurred by the utility's ratepayers; the certainty of the QF's technology and the integrity and viability of the project; the prevailing financial and legislative climates; the impact of unique contract terms on the utility's bond rating, interest coverage, and ability to raise capital; the

societal benefits of the development of a particular project; the timeliness of the capacity being added to the utility's system; the operating flexibility afforded the utility by the QF (i.e, dispatchability or curtailment); and the manner of payment.

39. Based on the preceding findings, it is clear that the Commission's reasonableness review in ECAC of nonstandard QF contracts is not limited to the issue of price as urged by Edison and CSC.

40. For transactions between a utility and an affiliated QF in particular, the Commission is obligated to review the negotiations, all contract terms, and the ownership relation between the parties.

41. The evidence of self-dealing which DRA seeks to introduce in this proceeding is clearly within the scope of the Commission's reasonableness review.

42. No matter what guidelines or standards are or were in place at the time of contract execution, it is the utility's obligation to demonstrate that its actions were reasonable through clear and convincing evidence.

43. Any misunderstanding by the Commission or DRA of the membership composition of CSC can only be corrected by CSC.

Conclusions of Law

1. DRA's December 5, 1988, petition for modification of D.88-01-063 filed in A.87-05-007 and its December 27, 1988, motion for consolidation of this proceeding and A.87-05-007 and for other specified relief should be denied without prejudice as premature.

2. An order denying DRA's petition for modification of D.88-01-063 should be issued in A.87-05-007.

3. It is reasonable for the evidence summarized by DRA in its December 5 petition and December 27 motion to be presented in upcoming hearings in the reasonableness review to be conducted in this proceeding.

4. The scope of the Commission's reasonableness review in this proceeding should include a consideration of all facets of Edison's negotiation, execution, and administration of its nonstandard contracts.

5. In the pending reasonableness review, close scrutiny should be applied to those nonstandard agreements entered between Edison and its QF affiliates.

6. DRA's March 23, 1988, motion to compel production of the information listed in that document should be granted.

7. Edison should be directed to produce all of the information requested by DRA in its March 23 motion to the extent that it is within the utility's power and control.

8. CSC's motion in this proceeding to limit discovery and establish the scope of this proceeding as defined by CSC should be denied.

9. Because of the commencement of hearings on February 21, 1989, in the reasonableness review in this proceeding, this order should be made effective the date of issuance.

O R D E R

IT IS ORDERED that:

1. The motion for consolidation of this proceeding and A.87-05-007 and for other specified relief filed by the Division of Ratepayer Advocates (DRA) on December 27, 1988, in this proceeding is denied without prejudice. The same document filed by DRA on December 5, 1988, in A.87-05-007, but entitled "Petition for Modification of D.88-01-063," should be denied without prejudice by an order to be issued in A.87-05-007.

2. DRA's motion to compel production of certain information filed on March 23, 1988, in this proceeding is granted. Southern California Edison Company (Edison) is directed to produce all of

the information requested by DRA in that motion to the extent that it is within Edison's power and control.

3. The motion to limit discovery and to establish the scope of this proceeding filed by the Cogenerators of Southern California on March 31, 1988, is denied.

4. The scope of the pending reasonableness review in this proceeding shall include consideration of all facets of Edison's negotiation, execution, and administration of its nonstandard contracts. In particular, the Commission will apply close scrutiny to those nonstandard agreements entered between Edison and its QF affiliates including consideration of any evidence of self-dealing by Edison in these transactions.

This order is effective today.

Dated JAN 27 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Victor Weisser, Executive Director

On December 27, 1988, DRA filed a document in this proceeding identical to its December 5 petition changing only its title. The title of the filing made in this proceeding reads: "Division of Ratepayer Advocates' Motion in ECAC for Consolidation of A.87-05-007 with A.88-02-016 to Consider Modifying D.88-01-063 and Other Specified Relief." Parties to Edison's ECAC were directed to respond to both the petition in A.87-05-007 and the motion in this proceeding by January 3, 1988.

The relief requested by DRA in its ECAC motion and holding company petition includes the following:

(1) The Commission should modify D.88-01-063 to prohibit Edison from entering into any new purchase power agreements with QF affiliates or, alternatively, should require Edison to apply to the Commission for permission to enter into any new nonstandard agreement with a QF affiliate.

(2) The Commission should direct the holding company to divest itself of all ownership in all QF/Edison ventures which sell electricity to Edison.

(3) If divestment is not ordered, the Commission should order a ratemaking adjustment which DRA terms an "Affiliate Cost Adjustment." This adjustment would flow through to Edison's ratepayers the profits Edison's QF affiliates earn above Edison's authorized return or, as an alternative, profits in excess of the average return earned by California QFs.

(4) If the Commission declines to take any of the preceding actions, DRA asks that the Commission direct that all future Edison QF affiliate transactions be limited to standard contracts.

(5) To the extent that Edison is permitted to purchase electricity from affiliated QFs, the Commission should increase reporting about such dealings. DRA suggests that Edison's current ECAC reasonableness review include information, among other

discovered related to the KRCC contract nor would they prevent similar contractual arrangements in the future.[1]

Except for its request for the Commission to prohibit Edison from entering new QF contracts with affiliates, DRA asks that any Commission response to its other recommendations await the conclusion of hearings in Edison's current ECAC reasonableness review. DRA believes that presentation of its evidence demonstrating Edison's affiliate abuse in this proceeding is the most expedient way to provide support for reconsideration of the holding company decision. To this end, DRA asks that A.87-05-007 and A.88-02-016 be consolidated.

DRA believes, however, that the Commission should act immediately to prohibit Edison from entering into new affiliate QF contracts. According to DRA, this action is required given Edison's abuse of its holding company status and the potential for further abuses. DRA acknowledges that safeguards were adopted by the Commission in D.88-01-063 and OIR 2 for the purpose of ensuring the propriety of Edison's relations with its affiliates. It is DRA's position, however, that its evidence of abuse demonstrates that Edison's ratepayers have not been protected by these orders and that a reexamination of D.88-01-063 is therefore required.

On January 3, 1988, Edison and the Cogenerators of Southern California (CSC) responded to DRA's motion and petition. Although the CSC filed its response in both A.87-05-007 and this proceeding, Edison initially filed a response only in A.87-05-007. On January 11, 1989, the same response was filed by Edison in A.88-02-016. Both parties ask the Commission to deny DRA's requested relief.

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1 OIR 2 was the Commission's generic proceeding establishing guidelines for standard offer and nonstandard offer contracts between utilities and QFs. This effort has been continued in A.82-04-044, et al.

process. Specifically, this process requires that an electric utility acquire any needed deferrable resource additions from QFs through a bidding process. Utilities were also permitted to accept bids from their QF affiliates. (See, D.86-07-004, D.87-05-060; D.88-01-063, at p. 34.)

In D.88-01-063, we acknowledged, however, that certain unique issues might arise with respect to the operational relationship between an Edison-affiliate QF selected in the bidding process and Edison. We chose in D.88-01-063, however, "not to specify broad rules for those relationships at this time." (D.88-01-063, at p. 35.) Instead, we found as follows:

> "In keeping with all relevant Commission decisions, we will expect Edison to minimize the cost of service for its regulated operations and to deal fairly and evenhandedly with all QFs; we will be prepared to examine any evidence to the contrary if and when it is presented. The other conditions we impose should preserve the information relevant to such an investigation as well as our staff's ability to examine such information." (D.88-01-063, at p. 35; emphasis added.)

DRA, in its motion in this proceeding and its petition for modification of D.88-01-063, claims that it has now uncovered evidence of such self-dealing by Edison. Further, DRA has indicated that it intends to introduce this evidence in the reasonableness review in this ECAC proceeding.

Although DRA may eventually prove instances of self-dealing by Edison in this ECAC, its current statements are merely allegations which have yet to be subject to the hearing process. We believe that, under these circumstances, any change in the conditions adopted in D.88-01-063 or our approval of Edison's holding company would be premature at this time.

In this regard, we note that the record developed in A.87-05-007 clearly substantiated our approval of Edison's reorganization and the conditions of that approval. As

acknowledged by DRA, the "evidence" which it claims requires a modification of D.88-01-063 was not presented during our consideration of Edison's holding company proposal.

We therefore find no reason at the present time to modify D.88-01-063 nor to reopen hearings in that proceeding. This conclusion is reinforced by the fact that, as DRA has even noted, a forum presently exists for the presentation of this evidence--Edison's current ECAC reasonableness review. While we indicated a willingness in D.88-01-063 to examine evidence of unfairness by Edison in its dealings with all QFs, the forum to consider such evidence was not limited to the holding company application. We also believe that this pending ECAC application currently provides the most expeditious and reasonable forum for hearing this evidence.

In this regard, we note that an ALJ ruling was issued in this proceeding on January 19, 1988, establishing a hearing schedule for Edison's 1988 ECAC reasonableness review. That schedule calls for this review to take place in two phases, as requested by Edison. In the first phase, we will be examining all issues raised in DRA's Evaluation Report Reasonableness Review for the 1987 Record Period and the reasonableness of Edison's execution and administration of the KRCC contract. DRA's report addresses all issues to be raised in this proceeding other than those related to Edison's standard and nonstandard QF contracts. In the second phase, the Commission will consider issues related to the remaining nonstandard QF contracts and Edison's administration of standard QF contracts during the 1985, 1986, and 1987 record periods. Hearings in Phase I commence on February 21, 1989.

This schedule is well-suited to our consideration of DRA's asserted evidence of Edison's self-dealing. We disagree with CSC's suggestion that some additional phase of the ECAC proceeding should be established to examine claims of "self-dealing." By including the KRCC contract in the first phase of the

reasonableness review, the Commission can quickly consider the validity of DRA's primary claims and determine their impact, if any, on other nonstandard agreements. We do not see how any party will be significantly disadvantaged by this approach. Further, Edison's ratepayers will be better served by a process designed to promptly address these issues.

By including DRA's proposed evidence of self-dealing in the current ECAC proceeding, the Commission will also have the advantage of hearing all testimony relevant to Edison's negotiations and execution of its QF contracts. Upon the issuance of our decisions in the reasonableness phase of this ECAC, DRA may then decide, based on our ultimate findings, whether it is appropriate to renew its request for modifications of D.88-01-063.

In response to Edison and CSC, we concur with DRA that it is irrelevant whether Edison's negotiation and execution of the KRCC contract predated our issuance of D.88-01-063. The Commission does not intend to ignore evidence which, if adduced during hearing, would have or should have impacted the conditions for our approving the holding company structure. We would not be fulfilling our duty to protect the utility's ratepayers if we did not ensure that the safeguards we imposed did in fact address potential abuses by the utility. It is significant to note DRA's continued claim that the current conditions and safeguards adopted in OIR 2 and A.87-05-007 did not address nor would they prevent the type of abuses DRA claims arose during Edison's negotiation and execution of the KRCC contract.

We therefore conclude that no modification of D.88-01-063 is appropriate at this time and that the reasonableness review in this ECAC is an appropriate forum for consideration of DRA's asserted evidence of Edison's self-dealing. To this end, we will issue a decision in A.87-05-007 denying as premature DRA's petition for modification of D.88-01-063.

Consistent with our previous findings, we deny as premature DRA's motion to consolidate this proceeding with A.87-05-007 and all other relief requested in that motion. The evidence summarized by DRA in that motion, however, can and will be considered in upcoming hearings in the reasonableness review in this proceeding. The scope of this review shall include a consideration of all facets of Edison's negotiation, execution, and administration of its nonstandard contracts. Close scrutiny will particularly be applied to those agreements involving Edison and its QF affiliates.

DRA's March 23, 1988, motion to compel production of the information listed in that document is granted. Edison shall produce all of the information requested by DRA to the extent that it is within the utility's power and control.

We also encourage CSC to seize the opportunity presented by this reasonableness review to clarify for the Commission the composition of its membership. CSC is quick to point out our misunderstanding of this organization. We find, however, that this misunderstanding, if one exists, can only be effectively corrected by CSC. Based on our preceding findings, CSC's motion in this proceeding to limit discovery in this proceeding and establish the scope of this proceeding as defined by CSC is denied.

Findings of Fact

1. On December 5, 1988, DRA filed a petition in A.87-05-007 which, among other things, sought to modify D.88-01-063 in which the Commission granted Edison authority to establish a holding company.

2. The relief requested by DRA in its petition was largely based on evidence which DRA intends to present during the ECAC reasonableness review in this proceeding and included a request to consolidate A.87-05-007 with this application.

3. To ensure proper consideration of all of the allegations included and relief requested by DRA in its December 5 petition,

4. The scope of the Commission's reasonableness review in this proceeding should include a consideration of all facets of Edison's negotiation, execution, and administration of its nonstandard contracts.

5. In the pending reasonableness review, close scrutiny should be applied to those nonstandard agreements entered between Edison and its QF affiliates.

6. DRA's March 23, 1988, motion to compel production of the information listed in that document should be granted.

7. Edison should be directed to produce all of the information requested by DRA in its March 23 motion to the extent that it is within the utility's power and control.

8. CSC's motion in this proceeding to limit discovery and establish the scope of this proceeding as defined by CSC should be denied.

9. Because of the commencement of hearings on February 21, 1989, in the reasonableness review in this proceeding, this order should be made effective the date of issuance.

O R D E R

IT IS ORDERED that:

1. The motion for consolidation of this proceeding and A.87-05-007 and for other specified relief filed by the Division of Ratepayer Advocates (DRA) on December 27, 1988, in this proceeding is denied without prejudice. The same document filed by DRA on December 5, 1988, in A.87-05-007, but entitled "Petition for Modification of D.88-01-063," should be denied without prejudice as by an order to be issued in A.87-05-007.

2. DRA's motion to compel production of certain information filed on March 23, 1988, in this proceeding is granted. Southern California Edison Company (Edison) is directed to produce all of