allegations by the Division of Ratepayer Advocates (DRA) that Edison failed to provide information regarding its affiliates and that Edison favored its affiliated QFs over nonaffiliates. The Commission did not adopt DRA's recommendation for a rate of return penalty, but it did direct Edison to inform all QFs of certain nonstandard terms and conditions:

> "Because of Edison's favoritism toward [Kern River Cogeneration Company] and alleged favoritism toward [Sycamore Cogeneration Company] and [Watson Cogeneration Company], we conclude that Edison's good faith obligations include the obligation to inform all QFs of significant terms and conditions that Edison has made available to other QFs, affiliated or nonaffiliated. We recognize the public policy choice between open information, which would encourage development of the QF industry, and restricted information, which would encourage lower rates. In this instance, Edison's favoritism toward affiliate QFs tips the balance toward open information."[1]

Edison had volunteered to file a semiannual report which describes contract administration and interpretation activities between Edison and affiliated QFs, but the Commission concluded that a report was not adequate to fulfill Edison's obligations.[2]

On January 27, 1993, Edison and DRA executed a modified settlement agreement (Settlement Agreement) which resolved many affiliate QF disputes. In D.93-03-021, issued in this proceeding and in several ECAC applications, the Commission approved the Settlement Agreement. Under its terms, Edison: (1) returned $250 million, plus interest, to ratepayers by a one-time credit to

1 D.91-12-076, 42 Cal. PUC 2d 645, discussion at 740; Conclusion of Law 79 at 757-758 (1991).

2 D.91-12-076, 42 Cal. PUC 2d 645, Conclusion of Law 80 at 758 (1991).

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Decision 95-07-003 July 6, 1995

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 Authority to Increase its Authorized Level of Base Rate Revenue Under the Electric Revenue Adjustment Mechanism for Service Rendered Beginning January 1, 1992 and to Reflect this Increase in Rates.	Application 90-12-018 (Filed December 7, 1990)
	I.89-12-025 (Filed December 18, 1989)
And Related Matters.	I.91-02-079 (Filed February 21, 1991)

ORIGINAL

(See Decision (D.) 91-12-076, D.92-06-020, D.92-12-022, D.93-12-034, D.94-10-041, and D.95-01-018 for appearances.)

TWENTY-FOURTH INTERIM OPINION:
QUALIFYING FACILITY NOTIFICATION

1. Summary of Decision

A petition for modification of Decision (D.) 91-12-076 filed by Southern California Edison Company (Edison) concerning notification of terms and conditions in nonstandard qualifying facility (QF) agreements is granted. The obligation of Edison to inform all QFs of significant terms and conditions that Edison has made available to other QFs, affiliated or nonaffiliated, is rescinded. Instead, in future Energy Cost Adjustment Clause (ECAC) applications Edison must describe contract administration and interpretation activities between Edison and affiliated QFs.

2. Background

In D.91-12-076, the Commission resolved many issues in Phase 1 of Edison's test year 1992 general rate case, including

regarding disclosure of settlement negotiations. Finally, notification to many QFs causes Edison practical problems.

4. Discussion

We will grant Edison's petition because the balance between open information and restricted information has changed since we issued D.91-12-076. Edison correctly concludes that the Settlement Agreement now protects ratepayers and the public against favoritism concerns that led to the QF notification provisions ordered in this proceeding. We agree with Edison that the notification provisions are no longer necessary and should be rescinded.

However, in granting the petition we do not endorse all of Edison's arguments. Edison has not shown that D.91-12-076 is vague and ambiguous, or that the QF notification provisions therein cause increased litigation with QFs. More importantly, we cannot conclude from the record before us that we should not support development of the QF industry. The industry may be gaining strength over time, but the evidence in this proceeding does not prove that to be true. Without such a factual record, we must continue present policies regarding QF development. In any event, we must comply with legislative mandates regarding QF development, for example those found in Public Utilities Code §§ 454.4 and 454.7.

As mentioned above, Edison has volunteered to file reports on dealings between the utility and affiliated QFs. At the time the Commission issued D.91-12-076, such reports were inadequate to inform the QF industry of Edison's activities. We now find that such information would be useful, even with the protections against favoritism that began with the Settlement Agreement. Edison cannot amend any affiliate QF contract without Commission approval, but the reports would contain information about contract administration and interpretation activities that do

the ECAC balancing account; (2) agreed not to purchase power from new affiliate generating projects, except in very limited circumstances; and (3) agreed not to amend any existing affiliate QF contract without prior Commission approval. DRA agreed to withdraw several disallowance and penalty recommendations before the Commission, including the rate of return penalty proposed in this proceeding.

3. Edison's Request

On December 22, 1993, Edison filed a petition for modification of D.91-12-076, requesting that the Commission delete the discussion language regarding QF notification and an associated conclusion of law. Notice of the petition appeared in the Commission's Daily Calendar on January 3, 1994. No party protested or responded to the petition.

Edison offers several arguments in support of its petition. First, Edison claims that the Settlement Agreement established protective mechanisms which address the favoritism concerns that led to the QF notification provisions in D.91-12-076. The prohibition against power purchases from new affiliate projects will protect ratepayers from future self-dealing or anticompetitive favoritism. The requirement for Commission approval of amendments to existing affiliate QF contracts will make all such terms and conditions subject to public review. Second, Edison argues that its obligation to inform QFs of the availability of contract terms and conditions is vague and ambiguous. Third, Edison believes that notification is harmful to ratepayer interests. Because the QF industry is now stronger and more mature, its development no longer requires Commission support. Confidentiality of contract negotiations between Edison and QFs will promote lower electricity rates. Fourth, notification provisions may engender further litigation with QFs. Such notification is inconsistent with Rule 51.9 of the Commission's Rules of Practice and Procedure

3. Edison should be ordered to serve ECAC testimony on contract administration and interpretation activities between Edison and affiliated QFs.

TWENTY-FOURTH INTERIM ORDER

IT IS ORDERED that:

1. The petition for modification of Decision (D.) 91-12-076 filed December 22, 1993 by Southern California Edison Company (Edison) is granted as set forth below.

2. The last full paragraph of Section 12.3.2 in D.91-12-076, at mimeo. p. 176, 42 Cal. PUC 2d 645, 740 (1991), is revised to read:

> "We will order Edison to file an ECAC exhibit annually on interpretation and administration of existing affiliated QF contracts, which Edison volunteered to file with the Commission if directed to do so. Such an exhibit will adequately inform all QFs of Edison's dealings with its affiliates."

3. Conclusions of Law 79 and 80 in D.91-12-076, at mimeo. p. 218, 42 Cal. PUC 2d 645, 757-758 (1991), are revised to read:

> "79. Edison's obligations to bargain in good faith with QFs include the obligation to inform the Commission, the DRA, and all interested QFs of contract interpretation and administration activities occurring between Edison and affiliated QFs.
>
> "80. An annual ECAC exhibit would adequately fulfill that obligation."

4. Edison shall, in the exhibit on the reasonableness of qualifying facility purchases required in all future annual Energy Cost Adjustment Clause proceedings by Ordering Paragraph 4 of D.90-08-088, describe all contract administration and

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3 See Exh ... Charles B. McCarthy, pp. 6-7.

4 D.90-09-088, 37 Cal. PUC 2d 488, Ordering Paragraph 4 at 580 (1990).

not require contract amendments.[3] Therefore, we will order Edison to amend its annual ECAC showing to include this information. Edison is currently required to file an exhibit on affiliate QF information with its annual ECAC showings.[4]

Findings of Fact

1. In a petition for modification of D.91-12-076 filed December 22, 1993, Edison requests that the Commission delete discussion language regarding QF notification and associated Conclusion of Law 79.

2. Notice of the petition appeared in the Commission's Daily Calendar on January 3, 1994.

3. No party protested or responded to the petition.

4. A hearing in this matter is not necessary.

5. The Settlement Agreement approved in D.93-03-021 protects ratepayers and the public against favoritism concerns that led to the QF notification provisions ordered in D.91-12-076.

6. The QF notification provisions ordered in D.91-12-076 are no longer necessary.

7. An ECAC exhibit on contract administration and interpretation activities between Edison and affiliated QFs would contain useful information on dealings that do not require contract amendments.

Conclusions of Law

1. Edison's petition for modification of D.91-12-076 should be granted.

2. The QF notification provisions in D.91-12-076 should be rescinded.

3 See Exhibit 143, Prepared Testimony of Edison Witness Charles B. McCarthy, pp. 6-7.

4 D.90-09-088, 37 Cal. PUC 2d 488, Ordering Paragraph 4 at 580 (1990).

interpretation activities between Edison and affiliated qualifying facilities during the reasonableness review period.

This order shall become effective 30 days from today.

Dated July 6, 1995, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners

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

Wesley Franklin
Acting Executive Director