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March 15, 2002

VIA FACSIMILE & U.S. MAIL

Commissioner Carl W. Wood
Commissioner Geoffrey F. Brown
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

The Honorable Bruce DeBerry
Administrative Law Judge
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

Re: A. 02-01-035, Application And Request of Southern California Edison Company For *Ex Parte* and Expedited Approval of Proposed Qualifying Facility Contract Amendments, Agreements and Certain Amendments Thereof Executed After July 31, 2001; and

A.01-11-033, Application By Southern California Edison Company for an Order Approving Proposed Settlement Agreement Regarding QFID 2014 (NP Cogen, Inc.) and Authorizing Edison's Recovery of Payments under the Proposed Settlement Agreement

Dear Commissioner Wood, Commissioner Brown and the Honorable Judge DeBerry:

Southern California Edison Company ("Edison") filed the captioned applications (the "Applications"), seeking approval by the California Public Utilities Commission ("Commission") of agreements resolving disputes under qualifying facility ("QF") contracts, including disputes related to Edison's suspension of payments to QFs during the period November 1, 2000 through March 26, 2001 ("QF Payment Suspension"). As pointed out in the Applications, these agreements are based substantially upon agreements and/or forms of agreement previously approved by the Commission for use by Edison in the resolution of QF Payment Suspension-related disputes. The Commission has recently confirmed that its prior approval of similar agreements extends only to agreements entered into on or before July 31, 2001 (the "Safe Harbor Deadline"), and that any agreements negotiated after the Safe Harbor Deadline would have to be approved through the filing of a new application. These Applications seek the Commission's approval of agreements entered into after the Safe Harbor Deadline. The Commission has not yet acted on the Applications.[1]

[1] A draft decision that would grant the application that is specific to the N.P. Cogen settlement agreement (A.01-11-033) is on the Commission's March 21, 2002 meeting agenda. The last day for filing a protest in respect of A. 02-01-035 was Monday March 4, 2001. ORA filed the only protest in that proceeding. ORA's protest was limited to agreements affecting only one of the sixteen QF projects covered by that application (Ontario

On March 1, 2002, as part of implementing its plan to reestablish its creditworthiness, Edison made a series of payments representing substantially all of its outstanding, past due indebtedness, including payments to its QF creditors, for electricity deliveries during the period of the QF Payment Suspension. Payments made to QFs who had entered into Commission-approved settlement agreements triggered the immediate effectiveness, under such agreements, of releases by the QFs of claims arising from or related to the QF Payment Suspension.

To achieve its goal of being restored to creditworthiness, Edison determined that it was important to include within the March 1 payments those QFs whose agreements are the subject of the Applications. However, because material aspects of the settlement agreements with these QFs remain subject to Commission Approval, the QFs' releases of QF Payment Suspension-related claims set forth in those agreements would not, absent further action of the parties, have become immediately effective upon payment, as was the case with respect to QFs under fully-approved settlements. Accordingly, in order to permit Edison to pay the QFs included in these Applications concurrently with its other creditors, and, at the same time, to protect its ratepayers, Edison and these QFs entered into interim agreements in anticipation of the March 1 payment[2] In most of the cases, the interim agreement (entitled "Conditional Release and Waiver") includes a provision whereby Edison received a full release of all Payment Suspension-related claims in return for the payment that was made on March 1 and Edison's agreement not to further challenge the energy price upon which the payment was based.[3] In two unique cases, where the subject QFs made an argument that no aspect of their settlements remained subject to Commission approval, the parties instead entered into a "Reservation of Rights Waiver Agreement" whereby both parties agreed to reserve all of their rights and positions regarding the matters in dispute notwithstanding the payment that was subsequently made on March 1. Based upon these interim agreements, Edison paid each of the QFs whose agreements are the subject of the Applications (other than San Gabriel Hydroelectric Partnership, *see* above) amounts claimed to be owed for electricity delivered by the QFs during the Payment Suspension period.[4]

These interim agreements do not resolve all material matters addressed by the agreements which are the subject of the Applications. Other important matters, including, in some cases, changes in the price to be paid for QF electricity deliveries, the release of certain claims other than claims covered by the interim agreement, and other significant matters, remain to be addressed. Indeed, the interim agreements expressly provide that the release and other terms of these interim

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Cogeneration, QFID No. 2037). ORA has not requested a hearing with respect to that protest. Edison filed a reply to the ORA protest on March 14, 2002.

2 One QF whose agreements are the subject of the A. 02-01-035, San Gabriel Hydroelectric Partnership (QFID No. 4029), a public entity, did not enter into an interim agreement, and accordingly, did not receive payment, because it has been unable to secure authority to enter into the agreement from its Board of Directors.

3 In the case of one QF, as to whom Edison has filed a cross-complaint, the QF's release of Edison in the Conditional Release and Waiver Agreement contains a limited exception that permits the QF to assert certain Payment Suspension-related claims and defenses against Edison, but only in the event that Edison chooses to prosecute its cross-complaint against the QF.

4 In certain of the cases, the parties also entered into agreements extending the time within which Commission approval of the agreements was required to be obtained in order to avoid termination of the agreements for failure to timely obtain Commission approval.

agreements will be superseded by the more comprehensive release and other terms of agreements which are the subject of the Applications, if and when such agreements are approved. Accordingly, Edison continues to request that the Commission approve the agreements which are the subject of the Applications, in their entireties, at the earliest possible time.

Please advise the undersigned if the Commission desires to review any of the interim agreements referenced above, or if there are any other questions about Edison's March 1, 2002 payment of its creditors, including the QFs whose agreements are the subjects of these Applications. Also, if the Commission deems it appropriate, we request that this letter, which is being served concurrently on the service lists for both Applications, be made a part of the record in these two proceedings.

Thank you for your consideration of this matter.

Very truly yours,

J. Eric Isken

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cc: A.02-01-035, A.01-11-033, and All Parties of Record in R.99-11-022 Service Lists (via e-mail)
President Loretta M. Lynch (via facsimile and U.S. mail)
Commissioner Henry M. Duque (via facsimile and U.S. mail)
Commissioner Michael R. Peevey (via facsimile and U.S. mail)