PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

December 4, 2003 Alternate to Agenda ID # 2992
Ratesetting

TO: PARTIES OF RECORD IN APPLICATION 03-07-032

RE: NOTICE OF AVAILABILITY OF ALTERNATE PROPOSED DECISION GRANTING IN PART AND DENYING IN PART SOUTHERN CALIFORNIA EDISON COMPANY'S APPLICATION TO ACQUIRE MOUNTAINVIEW POWER COMPANY, LLC (MVL)

Consistent with Rule 2.3(b) of the Commission's Rules of Practice and Procedure, I am issuing this Notice of Availability of the above-referenced alternate draft decision. The alternate proposed decision was issued by Commissioner Lynch on December 4, 2003. An Internet link to this document was sent via e-mail to all the parties on the service list who provided an e-mail address to the Commission. An electronic copy of this document can be viewed and downloaded at the Commission's Website (www.cpuc.ca.gov). A hard copy of this document can be obtained by contacting the Commission's Central Files Office [(415) 703-2045].

This is the alternate proposed decision of Commissioner Lynch. It will not appear on the Commission's agenda for at least 14 days after the date it is mailed. This matter was categorized as ratesetting and is subject to Pub. Util. Code § 1701.3(c). Pursuant to Resolution ALJ-180 a Ratesetting Deliberative Meeting to consider this matter may be held upon the request of any Commissioner. If that occurs, the Commission will prepare and mail an agenda for the Ratesetting Deliberative Meeting 10 days before hand, and will advise the parties of this fact, and of the related ex parte communications prohibition period.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at http://www.cpuc.ca.gov. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages.

Consistent with the service procedures in this proceeding, parties should send comments in electronic form to those appearances and the state service list that provided an electronic mail address to the Commission, including ALJ Carol Brown at cab@cpuc.ca.gov and Commissioner Lynch's Advisor Aaron Johnson at ajo@cpuc.ca.gov. Service by U.S. mail is optional, except that hard copies should be served separately on ALJ Brown and Aaron Johnson, and for that purpose I suggest hand delivery, overnight mail or other expeditious methods of service. In addition, if there is no electronic address available, the electronic mail is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall immediately arrange for alternate service (regular U.S. mail shall be the default, unless another means – such as overnight delivery is mutually agreed upon). The current service list for this proceeding is available on the Commission's Web page, www.cpuc.ca.gov.

The Commission may act at the regular meeting, or it may postpone action until later. If action is postponed, the Commission will announce whether and when there will be a further prohibition on communications.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:epg

Attachment

Decision **ALTERNATE PROPOSED DECISION OF COMMISSIONER LYNCH** (Mailed 12/4/2003)

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 under PUHCA Section 32(k) Between the Utility and a Wholly-owned Subsidiary and for Authority to Recover the Costs of Such Power Purchase Agreements in Rates.	Application 03-07-032 (Filed July 21, 2003)

(See Appendix A for a list of appearances.)

OPINION GRANTING IN PART AND DENYING IN PART SOUTHERN CALIFORNIA EDISON COMPANY'S APPLICATION TO ACQUIRE MOUNTAINVIEW POWER COMPANY, LLC (MVL)

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OPINION GRANTING IN PART AND DENYING IN PART SOUTHERN CALIFORNIA EDISON COMPANY'S APPLICATION TO ACQUIRE MOUNTAINVIEW POWER COMPANY, LLC (MVL)

I. Summary

This opinion grants Southern California Edison Company (Edison) a certificate of public convenience and necessity (CPCN) authorizing it to acquire, develop, construct, own, and operate Mountainview Power Project (Mountainview) as a utility-owned generation project, and denies Edison's request to acquire Mountain Power Company, LLC (MVL) as a wholly-owned subsidiary of Edison and to enter into a power purchase agreement (PPA) with MVL for the purchase of electricity from Mountainview. The granting of the CPCN authorizes Edison to exercise its option to purchase MVL in its entirety before the expiration of the option date of February 29, 2004.

In its application, Edison asks the Commission to find that that a CPCN is not required for Mountainview and that no further review under the California Environmental Quality Act (CEQA) is required by this Commission to approve the PPA. Instead, this decision finds that a CPCN is necessary and the project, as presented by Edison, tendered all of the elements required for a CPCN—need, cost-effectiveness, cost cap and environmental review, and the record addressed each element. We find that a CPCN is necessary, and we grant Edison a CPCN to acquire, develop, construct, own, and operate Mountainview as a utility-owned project. We also find, given these unique circumstances and equivalent CEC review, that no further CEQA review is necessary to grant the CPCN.

II. Background

A. Proposed Project

Edison filed an application on July 21, 2003, seeking Commission authorization to enter into a Power Purchase Agreement (PPA) with a to-be-acquired wholly-owned utility subsidiary that currently has the rights, permits, and contracts to build a new state-of-the-art combined -cycle gas turbine (CCGT) generating station, known as Mountainview. Mountainview is located in Redlands, California, 60 miles east of the City of Los Angeles, within Edison's load center, with an expected net electrical output of 1,054 MW and with a low target heat rate of 7,100 Btu/kWh. The facility will use natural gas as its sole fuel, and the gas will be delivered via a new 17.5-mile gas interconnection lateral to be built by Southern California Gas Company (SoCalGas). The water supply for Mountainview will be treated reclaimed wastewater from the City of Redlands and groundwater from wells on the site.

Mountainview is presently owned by MVL, a wholly owned subsidiary of Sequoia Generating Company, LLC (Sequoia). Edison has entered into an option agreement with Sequoia for the right to acquire MVL in its entirety, as a wholly -owned subsidiary, including existing entitlements and obligations. Sequoia has contractual arrangements intended to cover engineering, procurement, construction, major equipment as well as gas, water, and electric interconnections. In addition, MVL already completed an Application for Certification (AFC) from the California Energy Commission (CEC) and received a license for the project from the CEC in March 2001. As part of the AFC process, the CEC conducted an environmental analysis of the project—this process is the functional equivalent of preparing an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA).

In its application, Edison proposed acquiring MVL. Then MVL, an Exempt Wholesale Generator (EWG), will complete construction of the facility pursuant to Sequoia's already negotiated construction contracts, and MVL will commit the output of the facility to Edison as a dispatchable resource dedicated to Edison's customers at cost-based rates when it comes on line in 2006. Under the option agreement, if Edison acquires MVL by November 30, 2003, the price is fixed. Edison may extend the option term through February 29, 2004, but the price and option payments increase.

B. Proposed Financing Mechanism

Edison proposes entering into a PPA with MVL that is subject to Federal Energy Regulatory Commission (FERC) jurisdiction because Edison, the utility, would not own the plant under its proposal. The Mountainview PPA is structured as a tolling agreement, giving Edison the responsibility for gas procurement, hedging, and plant dispatch. The PPA will not be a market-based contract; instead it is a cost-based contract providing for recovery of investment, fixed and variable costs, and a regulated rate of return, over the 30-year life of the contract. Edison proposes financing the acquisition of Mountainview as a wholly-owned subsidiary through existing debt and equity proceeds with the operation and maintenance costs recovered through the ratemaking mechanism established for recovering procurement costs. Edison structured the transaction to satisfy investors that they will receive their cost recovery through FERC under the federal Filed Rate Doctrine (FRD).

C. Concerns Raised by Application

Because the option agreement has such an abbreviated term, Edison presented this generation opportunity to the Commission without requesting a CPCN and without inviting Requests for Proposal (RFP) or engaging in a

competitive bidding process. Edison anticipated that if it were to acquire and complete Mountainview itself, the normal and reasonable time required to process the necessary CPCN would extend beyond the option expiration date, and Edison would lose this financially advantageous opportunity.[1]

Out of the same concern for time exigency, Edison did not engage in a competitive bidding process and invite Requests for Proposal (RFP). Numerous intervenors raised concerns that without the "market test" that a RFP provides, the Commission would not have sufficient cost information to rule on the application. Parties were requested to brief whether an RFP was necessary, and if so, how could a meaningful one be done in a timeframe that would allow a Commission decision before the end of the year. Briefs on the RFP issue were received from the Alliance for Retail Energy Markets (AReM) and the Western Power Trading Forum (WPTF); Sempra Energy Resources (SER); Office of Ratepayer Advocates (ORA); Navajo Nation; Independent Energy Producers Association (IEP); California Cogeneration Council (CCC); Cogeneration Association of California (CAC)[2] and the Energy Producers and Users Coalition (EPUC);[3] Sequoia Generating Company (Sequoia); and Edison.

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[1] Edison's application, July 21, 2003, p. 17.

[2] CAC represents the power generation, power marketing and cogeneration operation interests of the following entities: Coalinga Cogeneration Company, Mid-Set Cogeneration Company, Kern River Cogeneration Company, Sycamore Cogeneration Company, Texaco Kern Field projects, Sargent Canyon Cogeneration Company, Salinas River Cogeneration Company, Texaco North Midway Cogeneration Project, Texaco McKittrick Cogeneration Project, Midway Sunset Cogeneration Company, and Watson Cogeneration Company.

[3] EPUC is an ad hoc group representing the electric end use and customer generation interests of the following companies: Aera Energy LLC, BP America Inc. (including

Footnote continued on next page

The assigned Commissioner did not require Edison to conduct an RFP for Mountainview because of the expedited schedule dictated by the short-term option date. Instead, the assigned Commissioner directed Edison's Procurement Review Group (PRG) to convene and examine Edison's proposal and review the un-redacted documents.

In addition, the mechanism Edison chose for this transaction, owning Mountainview as a wholly-owned subsidiary under a 30-year contract to the regulated utility that will be reviewed and approved by the FERC, instead of applying to the Commission for a CPCN, was also of concern to the Commission and many intervenors. Parties were asked to brief whether Edison's proposed mechanism was in the public interest from a ratepayer perspective. Briefs on this issue were received from CAC and EPUC; California Large Energy Consumers Association (CLECA); AReM; the Navajo Nation; ORA; the Utility Reform Network (TURN); and Edison. The briefs raised important issues that were explored on cross-examination.

Protests to Edison's application were received from AReM; the Center for Energy Efficiency and Renewable Technologies (CEERT); the California Manufacturers & Technology Association (CMTA); CLECA; CCC; CAC and EPUC; IEP; and ORA.

The Assigned Commissioner issued a scoping memorandum on September 16, 2003, setting forth the procedural schedule and addressing the scope of the proceeding. Evidentiary hearings were held October 14 through 24,

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Atlantic Richfield Company), Chevron U.S.A. Inc., Exxon Mobil Corporation, THUMS Long Beach Company, Occidental Elk Hills, Inc., and Valero Refining Company – California.

2003, and post-hearing concurrent briefs were received on November 6, 2003, from Edison, ORA, TURN, the Navajo Nation, CCC, CUE, Sequoia, IEP, CAC, and EPUC. The matter was submitted on November 6, 2003.

III. Motions

A. IEP's Motion for Un-Redacted Copy of Application

On July 21, 2003, Edison filed this application along with a motion to file the un-redacted versions of the application, testimony, and workpapers under seal. This instant application concerns a discrete issue: should the Commission authorize Edison to purchase Mountainview. Simultaneously the Commission is processing a Rulemaking (R.) 01-10-024 to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development (Procurement) for all the California electric utilities. In that proceeding there is a protective order, an order that was crafted after much litigation and participation of the parties. In that Rulemaking, certain participants, designated as Market Participating Parties (MPP) are not granted access to the protected materials.

On August 1, 2003, the Administrative Law Judge (ALJ) assigned to the Mountainview proceeding issued a ruling adopting the protective order from R.01-10-024 as the protective order for this Mountainview application proceeding.

On August 19, 2003, IEP filed a motion for an order compelling production of an un-redacted copy of the application, testimony, and workpapers. The gravamen of the motion was that IEP was denied access to the documents filed under seal by Edison, and that denial disabled IEP from making a fully informed assessment of the application. Without access to the un-redacted documents IEP anticipated that it could not participate in a meaningful way in this proceeding.

Edison opposed the motion claiming that IEP was clearly a MPP, and since IEP was prohibited from reviewing the un-redacted documents in the procurement proceeding, and the confidentiality orders in that proceeding and the Mountainview were identical, IEP should be excluded from the confidential documents in this proceeding. In addition, Edison's Mountainview application included two categories of confidential data: (1) Edison's confidential information concerning its future resource needs; and (2) Sequoia's confidential cost data. There was concern on the part of Edison and Sequoia that the cost data should not be released under any circumstances as it was not germane to whether Mountainview should be authorized or not, and release of the data could compromise the competitive electricity generation market. Opposition was also received from Sequoia and San Diego Gas & Electric Company.

The conundrum IEP's motion created was whether a modification of the protective order in the Mountainview proceeding would undermine the protective order in the procurement proceeding. Both proceedings involved the future resource needs of Edison, and the Mountainview project could have been included in the procurement proceeding, but for the truncated schedule afforded because of the expiration date of the option agreement (February 29, 2004). The Commission determined that Mountainview should not be consolidated into the procurement rulemaking so that Mountainview could proceed on its own schedule. Therefore, there was concern that if the confidentiality agreement was modified in this proceeding for a MPP, it could open the floodgates for other MPP in the procurement proceeding. This bifurcation of a significant procurement component from the procurement proceeding highlights the procedural snafus that develop when this Commission does not analyze procurement in a comprehensive or integrated manner.

We reluctantly deny IEP's motion though the Commission intends to open its review process to further public scrutiny and is taking steps to do so in the Procurement proceeding. IEP was a very involved and effective participant in the proceeding, asking probing questions on cross-examination, producing valuable testimony, and filing a post-hearing brief that was helpful to the Commission in drafting this decision. Despite the handicap of the protective order, IEP did effectively participate.

B. Motion of The Utility Reform Network for Acceptance of Late-filed Notice of Intent to Claim Compensation

On October 10, 2003, TURN filed a motion for acceptance of a late-filed Notice of Intent (NOI) to claim compensation. No opposition being filed, and seeing no harm or prejudice to any party, TURN's motion for acceptance of late-filed NOI is granted.

C. Motion of the Nevada Hydro Company, Inc. and the Elsinor Valley Municipal Water District to Intervene as a Party and Submit Comments

On November 6, 2003, the Nevada Hydro Company, Inc. and the Elsinor Valley Municipal Water District (TNHC) filed a motion to intervene and to file comments. On November 14, 2003, Edison filed a response opposing the motion.

Edison responded to the TNHS motion and urged the Commission to deny TNHS party status in the proceeding since their proposed entry is "woefully late," coming after hearings are concluded, issues fully briefed, and the matter submitted. Edison states that TNHC presents no explanation for the late entry, and fails to comply with the Commission's Rules of Practice and Procedure on motions for intervention. In addition, Edison asserts, to accept TNHC's comments would require reopening the record and this case is on an expedited

schedule that does not allow for reopening the record. And finally, Edison argues that TNHC is only advancing its own pecuniary interest by advertising its project.

We disagree that the comments would require a reopening of the record. Given the fast track upon which this proceeding has advanced, outside the comprehensive procurement proceeding, it is understandable that parties which do not make a full-time occupation of participating before the Commission may file late. This Commission should welcome alternate points of view, especially when the party goes to the considerable effort and expense of navigating the Commission's processes in an effort to make its voice heard. To develop as robust a record as possible given the extremely truncated process we have employed here, we accept TNHC's motion for party status and its comments filed thereto.

TNHC are developing the Lake Elsinore Advanced Pumped Storage (LEAPS) and Talega-Escondido/Valley-Serrano 500-kV Interconnect (TE/VS) projects. TNHC suggests that these projects are ideally suited to helping Edison meet its stated goals, but Edison failed to consider the TE/VS projects instead of acquiring another gas-fired generator. TNHC seeks to intervene in this proceeding to bring these deficiencies to the Commission's attention.

TNHC advances that the LEAPS and the TE/VS Interconnect projects would allow the grid manager and Edison to better manage their resources and facilitate the use of renewable energy from geothermal and wind resources in the region. TNHC suggests that its projects could contribute to Edison's portfolio, potentially at a cost lower than that of Mountainview, and TNHC urges this Commission to require Edison to evaluate these projects before committing to Mountainview.

And finally, TNHC argues that since Edison articulated that it needs additional generation resources to meet its customers' likely peak demand, Edison should consider using the LEAPS and TE/VS projects for its peaking needs. TNHC believes pumped hydro storage projects are uniquely suited for generating power during periods of high demand and for supplying reserve capacity to complement the output of large base load plants.

The motion of TNHC is granted and its position was considered in reviewing this matter. We decline to adopt their proposal in accepting the Mountainview project herein due to the many unique benefits offered by Mountainview as described in more detail herein.

IV. Summary of Parties' Positions

A. Overview of Individual Parties' Positions

Edison seeks Commission authorization to own and operate Mountainview as a utility wholly-owned subsidiary, dedicating all the output of the fully dispatchable facility to Edison customers in accordance with a cost-based, unit-contingent, gas tolling PPA. The PPA was drafted by Edison to provide security to the investors in light of Edison's financial health and Edison's claim that the regulatory scheme in California is uncertain.[4] In support of the application, Edison requests that the Commission make the following findings:

- The PPA is reasonable.

[4] Since Edison filed its application on July 21, 2003, Fitch, Moody's and Standard & Poor's, all three of the dominant credit rating agencies, have given Edison investment grade credit ratings and a draft decision in the Procurement Rulemaking (R.) 01-10-024 issued presenting a regulatory scheme for the electric utilities' short-term and long-term procurement needs and resource plans.

- Required findings under Section 32(k) of the Public Utility Holding Company Act (PUHCA).

- The Commission's Affiliate Transaction Rules (ATR) are not applicable to the interactions between Edison and MVL.

- The Environmental Review done by the California Energy Commission (CEC) is sufficient to satisfy the requirements of the California Environmental Quality Act (CEQA).

- There is no requirement that MVL obtain a certificate of public convenience and necessity (CPCN).

- Edison may use Financing Authorization.

- The Qualifying Facilities (QFs) settlement adopted by D.93-03-021 does not apply.

- Edison may recover the Mountainview PPA costs through the Energy Recovery Resource Account (ERRA).

- Approve an Advice Letter process as proposed by Edison.

- Approve the inclusion of Mountainview decommission studies in the 2006 General Rate Case filing.

- Authorize the creation of a memorandum account as of July 21, 2003, to track option agreement costs.

- Give explicit Commission support for Edison's filing of the PPA at FERC.

TURN found many problems with Edison's application, not the least of which are the lack of a competitive process, the use of FERC jurisdiction with an unregulated utility subsidiary, dubious coordination with the utility's long-term planning process, and the compressed timeframe. Despite all of these "vexing

weaknesses," TURN claimed that the potential value Mountainview could provide Edison ratepayers warranted supporting Edison's application so long as the Commission adopts the limitations, modifications, and conditions advanced by TURN. However, TURN would prefer to see the project completed as a traditional utility-owned plant.

ORA characterized Edison's application as a "Frankenstein," made of ill-fitting and poorly defined chunks of FERC jurisdiction and ratemaking, and of federal court filed-rate interference with California regulation policy. Despite this colorful description, ORA's main opposition was that the Commission is being asked to delegate its ratemaking responsibilities to FERC. ORA argued this ceding of jurisdiction is unlawful, is bad policy, and puts California ratepayer protection at risk. To remove these impediments, ORA urged the Commission to direct Edison to finance, construct, and operate Mountainview as a pure utility project.

The Navajo Nation's primary focus in this proceeding was the future of the Mohave Generating Station (Mohave). The Navajo Nation urged the Commission to reject Edison's application on the ground that Mountainview, when compared with Mohave, cannot be in the public interest. The Navajo Nation sought specific findings from the Commission in this proceeding that Mohave surpasses Mountainview in terms of public benefit, and that nothing in this decision should adversely affect the prospect of Mohave continuing as an Edison-owned utility asset after 2005. From the Navajo Nation's perspective, the project is not advantageous no matter whether the facility is under CPUC or FERC jurisdiction.

IEP opposed the application primarily because the proposed PPA represented a new and dangerous level of utility "self-dealing," and through the

mechanism created by Edison, Edison will gain all the benefits associated with a rate-based utility project yet avoid what it considers to be the risks of traditional utility ratemaking processes. IEP was concerned that the proposal does not comport with the ATRs, that the required PUHCA findings cannot be made, and that the project was not vetted in the Procurement OIR, R.01-10-024. As an alternative to rejecting the application, IEP suggested that 12 conditions be imposed on the PPA before this Commission approves the deal, so that the conditions will be subject to the federal FRD. These conditions were drafted by IEP as what they believed were the minimum constraints necessary due to the affiliate relationship between Edison and MVL to inject "a modicum of consumer and competitor protection in the PPA."[5]

EPUC urged the Commission to reject Edison's application on the following grounds: (1) the PPA avoids the jurisdiction of this Commission; (2) the PPA shifts risk from shareholders to ratepayers; (3) the PPA violates state and federal laws encouraging the promotion of cogeneration resources; (4) the utility-subsidiary setup presents unfair economic advantage to MVL and discriminates against other market participants; (5) the structure violates the ATRs since revenues will flow from MVL to Edison's parent; (6) the resource may not be needed; and (7) the facility may not be cost effective since there was no competitive bidding process. In sum, EPUC argued that the PPA is not in the public interest from a ratepayer perspective.

CAC also asked the Commission to reject the application. Specifically, CAC argues that the proposed special transactional structure: (1) is a violation of

[5] IEP/Cicchetti Direct Testimony, Exhibit 31, 33:10 – 34:2.

state and federal laws encouraging promotion of cogeneration resources; (2) gives unfair economic advantage to MVL and discriminates against other market participants; (3) will violate the ATRs, or if an exemption is granted, equal treatment should be afforded to all Edison affiliates; and (4) there has not been sufficient demonstration of need.

CCC advised rejection of Edison's application. Primarily, CCC was concerned for its members since Edison stated that it will not purchase power from QFs, unless a QF successfully bids in one of Edison's competitive resource solicitations. Many CCC member contracts have expired, or are due to expire, during the 30-year PPA period. CCC members do not want the approval of Mountainview to obviate Edison's need to purchase QF power in the future, which could undermine the development of coherent long-term procurement policies and discourage independent power producers from investing in California generation. In the alternative, if the Commission is inclined to approve the application, CCC recommended that Edison not be allowed to skirt its obligation to purchase QF power and that the price Edison pays MVL doesn't discriminate against QFs.

CUE supported the application because it was convinced that the additional generation is needed for reliability beginning in 2006, because the plant will be cost-effective for ratepayers, and because there is no need to peform a market test. CUE opined that even if Edison did not need Mountainview in 2006, and it was not cost-effective for ratepayers, ratepayers are better off securing generation now, rather than later, given the abundance of currently available supply.

Sequoia sees Edison's proposal as a good deal for ratepayers because development of Mountainview provides significant reliability and reserve

benefits, fills a hole in Edison's portfolio, and does so on a cost-effective basis. Sequoia urges the Commission to stick to the schedule set forth in the scoping memo and support Edison's filing at FERC to approve the PPA, and to support Sequoia's filing at FERC to transfer Mountainview to Edison.

B. Discussion

By denying Edison the proposed PPA but granting a CPCN, we believe the Commission is ensuring that the reliability and reserve benefits of this project will accrue to ratepayers, without complicating the transaction with the FERC jurisdictional PPA and introducing unnecessary risk and legal infirmities into the project. Because we are denying Edison's request to pursue the FERC jurisdictional PPA, and granting Edison a CPCN to acquire, develop, construct, own, and operate Mountainview as a utility-owned generation asset, the following issues are no longer relevant: findings required under Section 32(k) of PUHCA; FERC jurisdiction: applicability of the ATRs; applicability of the QF settlement; analysis of the PPA; and modifications to the PPA. Most importantly, granting Edison a CPCN now gives Edison all the regulatory authority it needs to exercise its option agreement with Sequoia to purchase MVL before the option expiration date of February 29, 2004. This quick resolution will allow Edison to avoid potentially two additional months of option payments to Sequoia, further lowering the cost of the project.

As discussed below, the major objection to Edison's application posited by most of the intervenors is the FERC jurisdictional PPA financing mechanism proposed by Edison and the affiliate issues attendant to that scheme. We find the entirety of the concerns raised by parties and the attendant risks to outweigh the benefits of the project under the proposed PPA and, as such, determine that the PPA is not in the public interest from a ratepayer perspective. By denying

the PPA, and ordering Edison to move forward with the project as a utility-owned generation facility, these two significant concerns, the FERC jurisdiction and affiliate rules waivers, are no longer before us.

We are cognizant of the issues raised by IEP, EPUC, CCC, and CAC that the proposed PPA, as well as the acquisition of the Mountainview facility no matter what its ownership and jurisdictional structure, creates concerns for the other producers and providers of electricity—especially the cogenerators and QFs. Our decision on Mountainview in no way impacts or prejudices Edison's ability or responsibility to meet its resource needs from a balanced portfolio that includes QFs, cogeneration, short and long-term contracts, and other utility-owned generation, including power from Mohave.

As in the procurement proceeding, this Commission should evaluate all potential resource sources and compare them against all current resource sources – especially those aging gas fired plants that are more than 30 years old. In this context, the Mountainview project need not be pitted against the Mohave generating station in our mutual quest to develop secure, just and reasonably priced, environmentally beneficial and diverse supply resources for Edison's power portfolio.

We will examine each of the significant issues raised by parties in more detail in the following sections.

V. FERC Jurisdictional PPA

In its application, Edison requests that the Commission approve its proposal to enter into a PPA with MVL, after Edison acquires MVL as a wholly-owned subsidiary, and support the concept that the PPA will be a 30-year, cost-of-service contract, that will give investors adequate assurance of regulatory commitment and cost recovery under the FRD. By choosing this

mechanism, the PPA will be reviewed and approved by FERC, instead of being reviewed by this Commission as part of an application for a CPCN. As referenced above, parties were asked to brief whether this proposed mechanism was in the public interest from a ratepayer perspective, and then there was ample record development on this issue during the evidentiary hearings.

Edison has made its position quite clear: in the absence of legislation in California that would secure assurances of full and reasonable cost recovery to investors, parallel to what the federal FRD does, Edison will only go forward with the Mountainview application if the PPA is submitted to and approved by FERC. Edison argued that investors require the certainty that the FRD provides.

This argument at base challenges the Commission's jurisdiction to act in the best interest of Edison's ratepayers while ensuring that the utility recovers reasonable costs to ensure adequate electric service. If Edison failed to follow an order of this Commission which provided it with regulatory assurances that its reasonable costs would be recovered in the acquisition of operation of the Mountainview asset for the benefit of the ratepayers, as this order does, Edison and its management would likely be subject to shareholder lawsuits for breach of its fiduciary duties, among other of action, especially given the enhanced customer load protections provided below.

One of the primary justifications for the PPA arrangement was that Edison's financial status remained sufficiently precarious that only a PPA would give investors adequate assurance of regulatory commitment to, and full cost recovery for, the project. However, in light of recent developments, this ostensible justification for the PPA no longer has any persuasive value.

In July of 2003 when Edison filed its application, Edison's creditworthiness status was precarious, and the proceeding before the Commission to establish

rules and guidelines for the electric utilities to plan for and meet their short-term and long-term resource needs, R.01-10-024, was ongoing. Now, all three credit rating agencies, Standard and Poor's, Moody's and Fitch, have given Edison investment-grade credit ratings. In addition, the Commission issued a proposed decision in R.01-10-024 on November 18, 2003, and the Commission is expected shortly to issue a final decision that will set forth a clear delineation of the future rules and guidelines that the electric utilities are to follow in their future short-term and long-term procurement power procurement activities. [6]

The additional regulatory certainty provided by the Commission's movement forward in the procurement proceeding, coupled with the assurances granted by Assembly Bill 57 (Wright, 2002), provide Edison with a great deal of regulatory certainty for procurement cost recovery. Edison has also achieved full creditworthiness status, and its recent upgrades are noteworthy in the financial community and should provide additional investor security for Edison's transactions. These additional certainties ameliorate Edison's general arguments about the need to lean on the FRD to guarantee this project.

However, notwithstanding Edison's adamant assertion of its position, the major objection to Edison's application posited by most of the interveners is the FERC jurisdictional PPA financing mechanism proposed by Edison and the affiliate issues attendant to that scheme. We find their concerns to be legitimate and their arguments to be compelling. Their concerns converge with our own,

[6] It is noteworthy that Standard & Poor's upgraded Edison to investment grade on December 3, 2003, significantly after the proposed decision in the procurement proceeding was mailed out for public comment, giving a clear indication of the Commission's commitment to developing long-term procurement and cost recovery mechanisms.

and lead us to find that the PPA is not in the public interest from a ratepayer perspective. By denying the PPA, and authorizing Edison to move forward with the project as a utility-owned generation facility, the FERC jurisdiction and affiliate rules are no longer before us. We are convinced that by authorizing Edison to go forward with the project as a direct utility-owned project not only maximizes the advantages to customers and ratepayers, but removes most of the vexing risks noted by TURN.

In light of the fact that the major obstacles that Edison perceived when it proposed the FERC jurisdictional PPA are no longer an issue, the Commission denies the application as framed. However, since we also determine that Edison's proposed acquisition of Mountainview is in the public interest, in this Decision, we will grant Edison the authority to go forward with the project, but as a direct utility-owned facility.

No party participating in the hearings and filing post-hearing briefs argued that the proposal by Edison to use a FERC jurisdictional PPA with an unregulated utility subsidiary is a superior mechanism to having Mountainview operate as a utility -owned generation facility. Our denial of the FERC jurisdictional PPA, while granting the CPCN, should both allay the fears of the interveners regarding the problematic nature of the proposed PPA, and, at the same time affirm the view of Edison and many of the other parties to this proceeding that the acquisition of Mountainview by Edison is in the public interest and will benefit consumers.

The interveners raised serious concerns with the PPA. TURN proposed a litany of modifications to the PPA that would have made the transaction more palatable for ratepayers, though still not preferable to a utility-owned project. ORA's primary concern with the PPA was that the Commission would have to

delegate its ratemaking responsibilities and jurisdiction to FERC, and ORA was convinced that this Commission provides proven ratepayer protection that FERC does not provide. Instead of authorizing the PPA, ORA urged the Commission to direct Edison to pursue Mountainview as a pure utility project.

The Navajo Nation was not convinced that the mechanism proposed by Edison that did, which does not allow this Commission to have jurisdiction over MVL, would sufficiently protect ratepayers. Instead, the Navajo Nation urged the Commission to focus on Mohave, a facility over which this Commission possesses full regulatory authority, but which is the subject of another proceeding before this Commission, as discussed above. IEP shared other parties' skepticism over the wisdom of having a 30-year contract outside this Commission's direct jurisdiction and preferred that Mountainview go forward as a utility--owned facility. EPUC and CAC were concerned that the PPA as proposed would not allow this Commission to insure that rates charged by Mountainview are just and reasonable. Sequoia simply urged the Commission to allow the project to go forward under Edison's control. AReM's primary concern was that if certain contingencies occur, like the re-instatement of direct access, there could be stranded costs from the Mountainview facility. AReM wanted the Commission to prohibit Edison from seeking recovery of the potential stranded costs from direct access customers. CLECA also preferred Mountainview as an Edison-owned project and opined that it should be subject to the CPCN process.

After careful analysis of the justifications advanced by Edison for the use of the FERC jurisdiction PPA, and the cogent arguments presented by the intervenors against the mechanism, we find ourselves in the same place as TURN: we prefer a traditional utility-owned generation project, and agree that there are "vexing weaknesses" with the PPA. The proposed PPA structure,

while designed to simulate cost-of-service ratemaking, ultimately delegates the regulatory control of the cost of the project to the FERC. California ratepayers need rate relief from the high rates in place since the Energy Crisis of 2000-01, and we are attempting to rectify these rate problems by re-asserting control over many aspects of the electricity industry that were delegated to other entities in the run-up to the Energy Crisis. Therefore, based on what we know today about Edison's improved financial situation, we conclude the most expeditious way to build Mountainview is to deny the PPA, and approve a CPCN for the project in order to allow Mountainview to proceed as a utility-owned plant.

Once it is built and operational, we will include Mountainview in Edison's rate base and employ traditional ratemaking processes to ensure cost recovery for Edison, and we adopt herein a new construction cost cap that approximates the cost limit proposed currently by Edison. By granting a CPCN, we believe we are providing the reliability and reserve benefits to ratepayers, which, as Edison has demonstrated, Mountainview will provide, without complicating the transaction with a problematic and unnecessary FERC-jurisdictional PPA.

VI. Affiliate Issues

The PPA as presented by Edison raises three affiliate transaction issues: (1) application of the ATRs; (2) application of the holding from D.93-03-021, referenced as the KRCC settlement, or the QF Settlement; and (3) effect of the moratorium adopted in D.02-10-062. Although Edison argued that the PPA should not trigger any affiliate issues since MVL will be a direct subsidiary of Edison, not Edison International (EIX) and MVL is prohibited by the terms of the PPA from selling to third parties, the intervenors were not so convinced. TURN and ORA were adamant that the ATRs apply to Edison's proposed transaction.

All of the other intervenors expressed concerns over the potential for affiliate abuses. The structure proposed by Edison for the PPA is so unusual that the potential for affiliate abuses is difficult to estimate. However, by denying the proposed PPA, and granting a CPCN, we remove the all the affiliate issues from the table, and do not have to address: (1) whether the ATRs apply, and if so, whether a waiver should be granted; (2) whether the moratorium on affiliate transactions apply, and if so, whether a waiver should be granted; and (3) the application of the QF settlement. This comports with the general direction in which the Commission is moving on affiliate issues in the procurement proceeding, which has moved away from problematic relationships with affiliates, and towards a greater degree of electric utility re-integration.

VII. Issuance of a CPCN

In its application, Edison requests that the Commission find that a CPCN is not required for Mountainview.[7] Specifically, Edison posits that were it to acquire and complete Mountainview itself, the CPCN could not be processed before the option expired in early 2004. In addition, Edison argues that a CPCN is not necessary because: (1) the proposed EWG/PPA structure does not require a CPCN since MVL will not be a "public utility" and (2) Edison is not "beginning" construction — the facility is already partially constructed.

California Public Utility Code Section 1001 reads in pertinent part:

> 'No . . . electric corporation . . . shall begin construction of a street railroad or of a line plant or system or of any extension thereof without first obtaining from the Commission a certificate that the present or future

[7] Edison's application filed July 21, 2003, p. 17.

> public convenience and necessity require or will require such construction.'

Because we are rejecting Edison's PPA, but a need for the plant has been demonstrated, we now determine that Edison, an electric corporation, should acquire, develop, construct, own, and operate Mountainview. Therefore, we find, consistent with PU Code Section 1001, that a CPCN is necessary for Edison to undertake these activities. The application as presented by Edison tendered to us the issue of whether a CPCN is required for this facility, and the parties to the proceeding developed the record on each and every element that must be addressed before this Commission can grant a CPCN.

In addition, TURN has expressed its preference that Mountainview proceed as a utility-owned project; ORA has urged the Commission to direct Edison to file a CPCN for Mountainview so it can be operated as a utility-owned asset; and CUE states a clear preference that Mountainview be utility-owned. The Navajo Nation also argues that a CPCN is necessary for the project.

Two different regulatory schemes define this Commission's responsibilities in reviewing Edison's application to own and operate Mountainview: Public Utilities Code §§ 1001 et seq., require that before Edison can resume construction of this project, this Commission must grant a CPCN on the grounds that the present or future public convenience and necessity require or will require construction of the project. Also, before granting a CPCN, the Commission generally considers an analysis of the financial impacts of the proposed project on the utility's ratepayers and shareholders. The Commission reviews the expected cost of the project and for those projects estimated to cost more than $50 million, such as this one, we set a cap establishing the maximum

amount that the utility may spend on the project without seeking further Commission approval.

A. Environmental Review

Besides the CPCN prerequisites, Public Resources Code Sections 21000 et seq. (CEQA) require that the Commission, if it is the lead agency for the project, prepare an EIR assessing the environmental implications of the project for its use in considering the request for a CPCN. (See generally Re Southern California Edison Company D. 90-09-059 37 CPUC2d 413 421.)

As previously discussed, when MVL completed an AFC seeking a license for the project from the CEC, the CEC, as the lead agency, conducted an environmental analysis of the project.[8] The CEC reviewed the impacts of Mountainview with respect to air quality, public health, hazardous materials management, worker safety, biological resources, cultural resources, paleontology, waste management, land use, noise, socio-economics, soil and water resources, traffic and transportation, visual resources, and alternatives.[9] In sum, the CEC concluded that there were no significant impacts that would result from the construction and operation of the project, that could not be mitigated by specified conditions on the following topics: air quality, water resources, biology, land use, and visual impact.[10]

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[8] In the matter of Application of Southern California Edison Company A. 01-07-01 D.01-09-049 *mimeo* p. 4 (September 20, 2001).

[9] The CEC decision approving the AFC is attached to Edison's Exhibits 1 and 2 as Appendix B.

[10] Exhibit2 1 and 2, Appendix B, p. 26.

Independently of its obligations under CEQA, PU Code Section 1002 creates a statutory obligation for the Commission to consider the following factors in determining whether or not to grant a CPCN: (1) community values; (2) recreational and park areas; (3) historical and aesthetic values; and (4) influence on the environment. In the case of Mountainview these four enumerated criteria have already been thoroughly addressed as part of the CEC's environmental review. Moreover, in this application, there was no testimony presented by any party that called into question any of the findings made by the CEC in its environmental analysis relating to the community values, recreational and park areas, historical and aesthetic values, or influence on the environment associated with the proposed Mountainview project.

This Commission is further relieved of any CEQA obligation for Mountainview by Public Resources Code Section 21000(b)(6). This code section exempts public agency actions from CEQA if those actions relate to a thermal power plant previously certified by the CEC. This conclusion is consistent with the Commission's own regulations for implementing CEQA. Specifically, Rule 17.1 of the Commission's Rules of Practice and Procedure was developed to comply with CEQA. Rule 17.1(c) provides in pertinent part:

> (c) Applicability. This rule shall apply to CEQA projects for which Commission approval is required by law, except projects for which an application must be filed with the California Energy Resources Conservation and Development Commission pursuant to Public Resources Code Section 25500.

In Decision 01-09-049, the Commission determined that it did not have to conduct a CEQA review to issue Edison a CPCN to construct a new 230 kV line because the CEC had fully reviewed the project pursuant to the Public Resources

Code § 25500 certification process. The Commission concluded "Rule 17.1 of the Commission's Rules of Practice and Procedure specifically exempts projects subject to CEC review under Public Resources Code § 25500 from the requirement of preparing and submitting a proponent's environmental assessment and undergoing an environmental impact report."[11] Because the CEC reviewed Mountainview pursuant to Public Resources Code § 25500, and granted it a license in March of 2001, this Commission does not have to conduct further CEQA review -- the requirements have been satisfied.

Once a full environmental review of a project pursuant to CEQA has been conducted, CEQA provides that no subsequent review is necessary unless: (1) substantial changes are proposed for the project, or (2) substantial changes occur with respect to circumstances under which the project will be undertaken, or (3) new information becomes available which would substantially alter the analysis of significant impacts or mitigation measures.[12]

Sequoia, the current owner of Mountainview, initiated construction of the project as authorized by the CEC. When the option agreement is exercised and Edison becomes the owner of Mountainview, Edison will continue with the construction as authorized by the CEC. Since the sale of Mountainview is a paper/financial transaction, and does not result in any physical change to the environment, it does not trigger further CEQA review. The Navajo Nation cautioned that restarting construction after a 20-plus months halt in construction should be viewed as a triggering event and should necessitate further

[11] D. 01-09-049, *mimeo* p. 9.

[12] Public Resources Code § 21166 and CEQA Guidelines §15162.

environmental review. We find that in the absence of substantial changes to the project, substantial changes in circumstances, or new information altering impacts or mitigation, further CEQA review is not required for restarting construction.

We accordingly conclude that the CEC's environmental analysis fully satisfies the environmental assessment requirement that must be met in order for this Commission to issue a CPCN for the Mountainview project.

B. Need for New Plant

We can expedite the review required to issue a CPCN to Mountainview, because we are addressing the issue of Edison's procurement needs in both this decision and in the procurement rulemaking, R.01-10-024. Until Edison submits and receives approval of its long-term plan, we are loath to approve long-term resource commitments. However, Mountainview can be added as a highly cost-effective option under Edison's long-term resource plan that was filed this past April in Commission proceeding R.01-10-024.

The record in this proceeding has established that Edison's acquisition, completion and operation of Mountainview is in the public interest. Moreover, Edison has established a need for the power from Mountainview in light of its growth projections for the foreseeable future, and the expiring Department of Water Resources (DWR) and QF contracts. Although it is unclear if Edison has a need for the entire 1,054 MW of capacity in the years 2006 to 2008, Mountainview can meet Edison's immediate need for dispatchable peaking and intermediate capacity to mitigate forecasted near-term capacity shortfalls. Edison has demonstrated that it will need the base load resources Mountainview can provide by 2010. In the interim, Edison can use the flexibility of this modern gas-fired generation resource to provide peaking capacity. Edison does not now own

or have committed under contract sufficient generation to meet its customers' entire likely peak demands, now or especially in the future, as there is load growth.

In Edison's long-term resource plan filed in the procurement rulemaking, Edison predicts that its gap between committed capacity resources and likely peak demand will grow significantly between 2005 and 2012. Edison argues that it would be prudent for Edison to fill a sizeable portion of this gap with utility resources. Mountainview's online date of 2006 comports well with Edison's projected capacity needs both in the near-term and long-term.

TURN's "official position" is that new resources may be needed as early as 2008, but not in 2006. TURN is also concerned about the regulatory future surrounding the status of direct access, the adoption of a core/non-core framework, community choice aggregation, and the future of Mohave. In light of these issues, TURN fears that there will be stranded costs that could transform Edison's "unique opportunity" into a "unique burden" for ratepayers. TURN witness Marcus testified that if Mountainview, Mohave, and direct access all converged simultaneously it could place bundled customers at serious risk of "rate shock."[13] To address this concern, TURN proposes that the Commission condition the approval of Edison's application on the requirement that all customers other than those currently receiving direct access will be obligated to pay for any stranded costs related to Mountainview for at least the first 10 years of its life. This can be accomplished by rolling Mountainview into the portfolio of resources used to determine exit fees for departing customers, or departing

[13] Marcus testimony, Ex. 38, pp. 7-8.

customers may take a pro rata share of Mountainview power through an off-take agreement between Edison and the customer's Electric Service Provider (ESP).

ORA is concerned that Mountainview will be too costly to ratepayers because they believe it will come on line before it is needed and will contribute to an oversupply of capacity, possibly creating stranded costs.

The Navajo Nation is not convinced that Edison has established the need for Mountainview. Specifically, Edison defines its need as a dispatchable, immediate resource, but then assumes that Mountainview will operate as a baseload facility after 2010. Considering the uncertainty of the future or of the stability of its customer base, the Navajo Nation questions the wisdom of the Mountainview facility — especially when Edison already owns Mohave.

IEP cannot address the issues of need and cost-effectiveness because it was denied access to confidential materials. In addition, IEP feels that need and cost-effectiveness are more properly addressed within the integrated planning process under review in the Commission's procurement rulemaking, R.01-10-024.

CCC claims that Edison has conceded that there are existing uncommitted resources that are available to fill most of the gap between Edison's projected need and its committed resources for at least the next nine years. Therefore, CCC argues that Edison has not demonstrated that Mountainview provides greater benefits than the benefits that Edison could secure through contracts with a mixture of long-term resources, including renewable and non-renewable QF resources. CCC's position is that if Mountainview is approved, Edison will be allowed to replace the power supplied under its expiring QF contracts with power from Mountainview and that will undermine state policy that encourages existing and new cogeneration.

CUE is adamant that Edison needs additional generation by 2006. CUE relies on a CEC October 2003 report, TURN's witness Bill Marcus, and testimony from Dr. Barkovich for CLECA, Thomas Beach for CCC, and Dr. Cicchetti for IEP for support that Edison needs more generation. And since Mountainview is a new combined-cycle plant, it should be cost-effective over the 30-year term because it provides below -cost capacity, low -priced energy, and reduces transmission losses. From CUE's perspective, even if Edison did not need the additional capacity in 2006 and it was not so cost effective for ratepayers, ratepayers benefit by securing generation now, during a period of oversupply, rather than waiting until supplies get tighter, and prices rise. CUE supports Mountainview even if Mohave does not close for any period of time.

Sequoia argues in support of both the need for Mountainview and its cost -effectiveness. In Sequoia's view, California faces a capacity shortfall in the near future, and unless capacity is added, the energy crisis may not be over. Sequoia takes this position even if Mohave stays operational and the QF and cogeneration power is available. Because of Mountainview's low heat rate, high efficiency, and location in Edison's load center, Sequoia believes the facility is even more cost effective.

We find that Edison has met its burden of showing that it needs the capacity of Mountainview. The acquisition of Mountainview is consistent with the Energy Action Plan, Item 3, jointly issued by this Commission, CEC, and California Power Authority (CPA). Edison has forecast that considering its existing resource base of utility-owned generation, QF contracts, inter-utility contracts, Department of Water Resources (DWR) allocated contracts, and transitional contracts, when combined with expiring contracts, forecasted load growth, and the assumed reserve requirements, it will need more capacity by

2006. Edison does admit that there are existing uncommitted resources to meet any gaps between now and 2006. However, moving forward, Edison forecasts a need for dispatchable, peaking and intermediate resources in the short-term, and baseload over the long term. Mountainview, with its 1,054 MW combined-cycle capacity, in Edison's service territory satisfies this resource need. We make this finding independently of any decision concerning the future of Mohave, or of QF or cogeneration contracts.

In order to ensure that ratepayers are not over burdened during the early years of the contract with stranded costs if all the power is not needed, we adopt TURN's proposal that all customers other than those currently receiving direct access be obligated to pay for stranded costs related to Mountainview for the first 10 years of its life. This provides additional financial certainty and cost recovery for Edison.

C. Cost Effectiveness

Edison asserts that Mountainview will be a low-cost resource as it provides a cost-effective source of energy at a very low state-of-the-art heat rate of 7,100 Btu/kWh. Edison examined different options to determine if it would be better to add a capacity-only resource, or a facility such as Mountainview, capable of providing both capacity and low-cost energy. To approximate the cost of adding a capacity-only resource, Edison used the economic costs and dispatch features of a new, equivalently-sized combustion turbine (CT), and compared the costs of Mountainview to a newly-built CT and to the costs the CPA indicates for peakers. Edison also compared the costs of Mountainview to recently installed CCGTs and the estimated costs of a new CCGT installed. In all of Edison's comparisons Mountainview was a proven source of low-cost energy.

In addition, if Mountainview is acquired now from Sequoia at the proposed discount price, the benefit to ratepayers is increased.

Edison points out that another benefit of Mountainview is its location. The plant is well-situated—in the heart of Edison's growing load center and on the site of Edison's former San Bernardino Generating Station. To begin, its size and location relative to the transmission grid provide system benefits. It will interconnect with Edison's San Bernardino 230 kV substation and provide generation competition in the eastern area of its service territory. Also, the location provides other system reliability benefits such as voltage support, added reactive margin, and reduced system losses. It is also possible, Edison opines, that with the addition of Mountainview, Edison may be able to defer other major transmission grid expansion projects, resulting in further benefits to ratepayers.

Mountainview also has flexible access to the natural gas delivery system. The natural gas fuel supply will be transported to the facility through a new 17.5-mile lateral pipeline to be constructed and owned by SoCalGas. This ensures that the gas supply is reliable, flexible, and competitively priced. Mountainview will also have access to all major western gas basins, can choose among pipelines, and will be able to use natural gas storage facilities owned by SoCalGas.

And finally, Edison argues that Mountainview will likely provide cost savings benefits for ratepayers from self-providing ancillary services such as spinning reserve, regulation, and voltage support, and may be able to sell these services to third parties. Any monies received from the sale of these services will reduce ratepayer costs.

TURN is not satisfied with Edison's testimony on cost-effectiveness. To begin, TURN contends that Edison's comparisons overstate the attractiveness of

Mountainview. Next, TURN challenges whether the cost estimates reflect reality: the quoted price was premised on Edison exercising its option by November 30, 2003; Edison did not use any of the contingency included in the capital cost limit; the total fixed costs are expected to be higher than estimated; and Edison's projections did not include any estimates for capital additions, refurbishments, betterments, decommissioning, or incentive payments. Therefore, TURN urges the Commission to require, before it votes on the application, that Edison compile and present a summary of all cost categories and forecasted amounts for each category year. TURN advocates that this material be presented to Commission staff and Edison's PRG and entered into the record of this proceeding.

TURN also criticizes the cost comparison presented by Edison for any comparable CCGT plant, and for the fact that Edison failed to compare the economics of Mountainview with alternative resource commitments that are available in the market. TURN's analysis of the facility over the 30-year term, indicates that ratepayers suffer higher costs for most of the first decade and net benefits only during the second and third decades of Mountainview's projected life. Still, TURN does support Mountainview—with TURN's proposed conditions.

ORA opposes Edison's proposal on the ground that the Mountainview plant is not cost effective in its first year of operation and will not pass a first year cost-effectiveness test until 2009, contravening the Commission's policy that consideration of new resource additions should focus on the first year of optimal need. ORA relies on TURN's analysis that Mountainview is not needed until 2008, two years after Mountainview is scheduled to come on line. Therefore, ORA questions the cost-effectiveness of the project.

The Navajo Nation criticizes Edison's presentation on cost -effectiveness since Edison did not provide the all-in cost of energy for Mountainview. However, in its Mohave application, Edison did provide the comparative cost of as-delivered energy from Mohave. When the two facilities are compared, the Navajo Nation is sure that the Commission can only conclude that Mohave is more cost-effective than Mountainview, especially when the cost of natural gas is included. The Navajo Nation opines that the price of natural gas will rise in the future, burdening ratepayers with the entire risk of gas price volatility in the future. Even Edison's witness conceded that as natural gas costs rise, coal-fired generation becomes more cost effective than natural gas-fired units, making Mohave a more cost effective choice.

CCC alleges that Edison overstated Mountainview's cost-effectiveness as (1) compared with other CCGT plants; (2) in comparison to prices for QF contracts; and (3) in comparison with incremental renewable resources. In summary, CCC argues that other sources may produce more cost-effective options than Mountainview, but if Mountainview is approved, the development of coherent long-term procurement policies and investment in generation resources would be undermined.

We agree with TURN and the Navajo Nation that Edison did should make an additional showing on the cost-effectiveness of Mountainview and provide the all-in costs of Mountainview, and adopt TURN's proposal to require Edison to compile a summary of all cost categories and forecasted amounts that would be recoverable from ratepayers for Mountainview. The material will be presented to Commission staff and Edison's PRG and entered into the record of the proceeding.

In the absence of this information, we can still make a finding that Mountainview is cost-effective because it is a new state-of-the-art high efficiency, low heat rate (7,100 Btu/kWh) combined combustion facility that will produce energy efficiently, and environmentally beneficially, especially when it is compared with CT and other CCGTs. We do not need to address the merits of Mohave, QFs, or cogeneration facilities to determine that Mountainview is cost-effective.

D. Cost Cap

A review of Edison's testimony shows that out of the total projected costs for the Mountainview project, assuming a closing date of November 30, 2003, only 10% or so of the forecasted expenses contain any degree of uncertainty. Taking as a given that the project is not closing by November 30, 2003, we can increase the degree of uncertainty a little.. Edison has asked for a contingency allowance that TURN, as a member of the PRG with access to the confidential financial figures, thinks is too high. Edison has asked for a contingency that equates to a 75% margin of error before a 50/50 cost sharing mechanism between ratepayers and shareholders is employed.

We do not find that a contingency allowance of this magnitude is in the public interest, because it does not encourage Edison to bring the project in at cost, or at the lowest cost overrun. We therefore will reduce the total contingency amount to either 5% of the total project cost estimates, or 50% of the costs projected to be subject to uncertainty, whichever is higher. We do not adopt the 50/50 sharing mechanism. Instead, we approve placing the project's capital costs into ratebase and using traditional ratemaking treatment for a cost-of-service, utility-owned generation plant.

If there are cost overruns that exceed either contingency allowance, Edison may pass the additional costs on to shareholders, or come to the Commission, on an expedited schedule, and request, if justified, a higher contingency allowance adjustment.

VIII. Other Outstanding Issues

A. Cost Recovery

By granting Edison a CPCN to acquire, develop, construct, own, and operate Mountainview as a utility-owned project, all cost recovery and rate-related aspects of Edison's activities associated with Mountainview will follow traditional utility ratemaking: straight-line depreciation of book investment, return on capital with a Commission-authorized rate of return and capital structure, a mark-up for tax liabilities, and recovery of operating expenses subject to a regulatory lag, incentives and expenditures for capital additions.

Also, by granting Edison a CPCN to acquire, develop, construct, own, and operate Mountainview as a utility-owned project, it will not be necessary for Edison to recover all costs of operating Mountainview, which it would pay pursuant to the FERC-jurisdictional PPA, through the Energy Resource Recovery Account (ERRA), or for the Commission to rule on various other Edison proposals for the review of various Mountainview costs in other Commission proceedings. Rather, Edison should only need to use the ERRA for Mountainview as a utility-owned facility to record fuel costs, as it already does for other Edison-owned generating stations, and the other Mountainview costs in question can be addressed, to the extent necessary as part of Edison's General Rate Case.

Moreover, by granting Edison a CPCN to acquire, develop, construct, own, and operate Mountainview as a utility-owned project, it is not necessary at this

time for the Commission to address decommissioning costs for Mountainview or to adopt an expedited Advice Letter process whereby the Commission can pre-approve capital addition/betterment projects and certain reclassification of charges, though we would consider such an Advice Letter process if Edison still wishes the Commission to consider it.

B. Recovery of Initial Capital Outlay

Edison will be able to fully recover its acquisition, construction, and financing costs, subject to various cost-control mechanisms, at a cost of capital authorized by this Commission, through a monthly capital recovery charge. The rate of return for capital recovery is established at the level set by the Commission in Edison's annual Cost of Capital proceeding.

TURN also suggests leveling the MVL's capital costs over the first ten years of operation in order to minimize the early-year rate impacts associated with traditional straight-line depreciation. While we share the concerns of TURN and other interveners over the costs to ratepayers during the first decade of the contract, the total cost of the Mountainview project, in proportion to the other costs that go into Edison's ratebase, is relatively insignificant and levelizing them would not have a significant impact on rates. We therefore do not adopt this leveling methodology.

Edison seeks to recover the financing costs for Mountainview by recording the allowance for funds used during construction (AFUDC) during project planning construction, and then recovering those amounts in rates over the life of the facility. IEP urges the Commission to deny Edison this recovery, but we do not see any justification for this opposition. It is reasonable to allow Edison recovery of the financing costs of the project and therefore, we will allow Edison to recoup the recorded AFUDC amounts.

C. Recovery of Operating Costs

The largest O&M cost for Mountainview is the Contractual Services Agreement (CSA) with the service provider for maintenance of the facility. Edison provided testimony that that contract was vigorously negotiated to provide maintenance for the facility at a fair and reasonable cost. Edison will be able to recover the CSA costs as well as insurance, property taxes, and interconnection costs, through traditional rate base methods. We find that the record supports Edison's proposal to recoup fixed and variable O&M charges through a monthly service charge, subject to true up for historic costs, at each next overhaul cycle, and we adopt the proposal.

D. Incentive Mechanisms

The proposed PPA has two incentive mechanisms built in: the heat rate incentive and the availability incentive mechanisms. The heat rate incentive is designed to motivate the owner to maintain the plant in a reasonable condition so that the heat rate does not unreasonably degrade and the plant functions at an efficient heat rate. The target full load heat rate for the Facility is 7,000 Btu/kWh HHV at a "new & clean" condition, and the heat rate should not exceed 7,210 Btu/kWh HHV.

The availability incentive mechanism is designed to encourage efficient operation of the plant for the entire expected operating life of the plant.

Although we are not approving the PPA mechanism, we find the heat rate and availability incentive mechanisms to be in the public interest as they encourage Edison, as the owner of Mountainview, to produce efficient power at the lowest heat rate possible. Ultimately, this translates into lower rates for ratepayers, and, thus, we adopt these two incentive mechanisms. The incentive payments will be shared 50/50 between ratepayers and shareholders.

E. Financing

Edison's application requests that the Commission confirm that Edison may use existing debt financing and equity. We do confirm that Edison may use existing debt financing and equity at the utility level, as authorized in D.98-02-104 and D.00-10-063. We find that this financing mechanism, using existing cash on hand and/or through the issuance of new securities, is the most cost-effective for customers and is preferable to project-level financing.

We also find that this Commission will set the rate of return for Mountainview through Edison's annual Cost of Capital proceeding.

IX. Comments on Proposed Decision

The draft decision of Commissioner Lynch in this matter was mailed to the parties on December 4, 2003, in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure. Comments are due on December 11 and reply comments are due on December 15. Comments on any potential changes in the ratemaking treatment, any particular cost recovery mechanisms, or other related issues derived from approving a CPCN rather than a PPA are welcomed.

X. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Carol Brown is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Mountainview presents Edison with the opportunity to acquire a new, state-of-the-art combined cycle gas turbine generating station with an expected net electrical output of 1,054 MW with a low target heat rate of 7,100 Btu/kWh.

2. Edison has entered into an option agreement with MVL, Mountainview's current owner, for the right to acquire MVL in its entirety, as a wholly-owned subsidiary of Edison.

3. MVL has already received a license for the project from CEC, and the environmental review done by CEC as the lead agency for the license exempts this Commission from conducting further environmental review under CEQA.

4. When acquired by Edison, MVL will complete construction of the facility pursuant to construction contracts already in place and turn the facility over to Edison, to be operated by Edison as a utility-owned generating asset.

5. The output of Mountainview will be dedicated to Edison customers at cost-based rates.

6. Edison proposed entering into a PPA with MVL that would give Edison the responsibility for gas procurement, hedging, and plant dispatch.

7. The PPA would be subject to exclusive FERC jurisdiction.

8. The PPA is not in the public interest from a ratepayer perspective.

9. By denying the PPA, and authorizing Edison to move forward with the project as a utility-owned generation facility, vexing questions raised by the parties relating both to FERC jurisdiction and to the applicability of the Commission's affiliate rules will no longer be before the Commission.

10. By authorizing Edison to go forward with the project as a direct utility-owned project under the historic, rate-based approach will maximize the advantages of the project to customers and ratepayers.

11. The record developed in this proceeding provides a substantial evidentiary basis for the issuance of a CPCN for Mountainview.

12. No further finding of need, or further environmental review under CEQA is required for the Commission to grant a CPCN for Mountainview.

13. The CEC's environmental analysis fully satisfies the environmental assessment requirement that must be met in order for this Commission to issue a CPCN for the Mountainview project.

14. Edison has established a need for Mountainview to meet its immediate need for dispatchable peaking and intermediate capacity and its long-term need for baseload resources.

15. Edison has established that Mountainview is a cost-effective resource to meet its short-term and long-term resource needs because of its attractive purchase price, state-of the-art low heat rate of 7,100 Btu/kWh, environmental benefits, and location in its load center.

16. Acquisition of Mountainview is consistent with the Energy Action Plan drafted by the CPUC, CEC, and CPA.

17. Although Edison established a need for Mountainview, in order to not over-burden ratepayers in the early years of the contract, we adopt TURN's proposal that all customers currently ineligible for direct access be obligated to pay for stranded costs for the first 10 years of Mountainview's life.

18. The Mountainview project is in the public interest.

19. The issuance of a CPCN for Mountainview will benefit consumers.

20. The total projected costs for Mountainview should be capped at the total project costs estimates presented by Edison, plus a contingency equal to either 5% of the total project cost estimates presented by Edison, or 50% of the costs projected to be subject to uncertainty, whichever is higher.

21. If there are cost overruns that exceed either contingency allowance, Edison may pass the additional costs on to shareholders, or come to the Commission, on an expedited schedule, and request and justify a higher contingency allowance adjustment.

22. Once it is built and operational, Mountainview should be included in Edison's rate-base.

23. By granting Edison a CPCN to acquire, develop, construct, own, and operate Mountainview as a utility-owned project, all cost recovery and rate-related aspects of Edison's activities associated with Mountainview will follow traditional utility ratemaking.

24. By granting Edison a CPCN to acquire, develop, construct, own, and operate Mountainview as a utility-owned project, it will not be necessary for Edison to recover all costs of operating Mountainview, which it would pay pursuant to the FERC-jurisdictional PPA, through the ERRA, or for the Commission to rule on various other Edison proposals for the review of various Mountainview costs in other Commission proceedings.

25. By granting Edison a CPCN to acquire, develop, construct, own, and operate Mountainview as a utility-owned project, it is not necessary at this time for the Commission to address decommissioning costs for Mountainview or to adopt an expedited Advice Letter process whereby the Commission can pre-approve capital addition/betterment projects and certain reclassification of charges.

26. Edison should be allowed to recover AFUDC recorded during the remainder of project planning and construction.

27. It is reasonable to have Mountainview financed at the utility level, with Edison using existing debt financing and equity, and there is no anticipated cost-savings if financing was done at the project-level.

28. Edison has another application, A.02-05-046, pending before this Commission concerning the future disposition of the Mohave Generation Plant in Laughlin, Nevada.

29. Edison's recovery mechanism for O&M costs is reasonable and should be adopted.

30. Edison's incentive program for plant operation is reasonable and should be adopted.

Conclusions of Law

1. The FERC-jurisdictional PPA financing mechanism proposed by Edison will not benefit customers and is not in the public interest.

2. A certificate of public convenience and necessity is required for the Mountainview project.

3. A CEQA review by this Commission is not required in order for the Commission to issue a CPCN for the Mountainview project.

4. There is a need for the power from the Mountainview project.

5. The Mountainview project is cost-effective.

6. The total project costs for the Mountainview project are capped.

7. The issuance of a CPCN for the Mountainview project will benefit customers.

8. The issuance of a CPCN for the Mountainview project does not violate any state laws.

9. The issuance of a CPCN for the Mountainview project is in the public interest.

10. Financing for the acquisition of MVL and the funding of construction and operation of Mountainview at the utility level using existing debt financing is consistent with D.98-02-104 and D.00-10-063 and more advantageous than having the financing done at the project level.

11. Nothing done by the adoption of this decision concerning the acquisition of Mountainview prejudges the Commission's determination of the future of the Mohave Generating Plant in A.02-05-046.

O R D E R

IT IS ORDERED that:

1. The Southern California Edison Company's (Edison) application for approval of a Power Purchase Agreement (PPA) with Mountainview Power Company, LLC, to be filed with Federal Energy Regulatory Commission (FERC), is disapproved.

2. Edison is hereby granted a Certificate of Public Convenience and Necessity, authorizing it to acquire, develop, construct, own, and operate the power generation project currently owned by Mountainview Power Company, LLC.

3. All cost recovery and rate-related aspects of Edison's activities associated with the Mountainview project will follow traditional utility ratemaking.

4. The total projected costs for the Mountainview project is capped at the total project costs estimates presented by Edison, plus a contingency equal to either 5% of the total project cost estimates presented by Edison, or 50% of the costs projected to be subject to uncertainty, whichever is higher.

5. If there are cost overruns that exceed either contingency allowance, Edison may pass the additional costs on to shareholders, or come to the Commission, on an expedited schedule, and request, if justified, a higher contingency allowance adjustment.

6. Once it is built and operational, the Mountainview project shall be included in Edison's rate-base.

7. Edison is authorized to recover AFUDC recorded during the remainder of project planning and construction for the Mountainview project.

8. Edison is authorized to collect operation and maintenance fees and incentive payments for plant performance, as described herein.

9. The motions of IEP, TURN and TNHC are disposed of as discussed herein.

10. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.