STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

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

December 23, 2003

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

Decision 03-12-059 is being mailed without the Concurrence of Commissioner Brown. The Concurrence will be mailed separately.

Very truly yours,

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

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Attachment

 Mailed 12/23/2003

Decision 03-12-059 December 18, 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 SOUTHERN CALIFORNIA EDISON COMPANY'S APPLICATION TO ACQUIRE MOUNTAINVIEW POWER COMPANY, LLC (MVL) EITHER AS A WHOLLY OWNED SUBSIDIARY AND TO ENTER INTO A POWER PURCHASE AGREEMENT WITH MVL FOR ELECTRICITY FROM THE MOUNTAINVIEW POWER PROJECT, OR AS A UTILITY-OWNED GENERATION FACILITY

TABLE OF CONTENTS

OPINION GRANTING SOUTHERN CALIFORNIA EDISON COMPANY'S APPLICATION TO ACQUIRE MOUNTAINVIEW POWER COMPANY, LLC (MVL) EITHER AS A WHOLLY OWNED SUBSIDIARY AND TO ENTER INTO A POWER PURCHASE AGREEMENT WITH MVL FOR ELECTRICITY FROM THE MOUNTAINVIEW POWER PROJECT, OR AS A UTILITY-OWNED GENERATION FACILITY

I. Summary

This opinion authorizes Southern California Edison Company (Edison) to acquire Mountainview 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 Power Project (Mountainview), subject to the conditions and modifications set forth herein, or as a utility-owned generation facility. Although the Commission approves Edison's application for a Federal Energy Regulatory Commission (FERC) jurisdictional Power Purchase Agreement (PPA), with modifications, that avenue requires that Edison seek FERC approval for the project before it can go forward. The option agreement Edison has to acquire Mountainview expires February 29, 2004, and there is a risk that Edison cannot obtain the necessary FERC approval in time to exercise the option, putting the opportunity in peril. If Edison chooses to proceed with the project as a utility-owned facility, this opinion issues Edison a certificate of public convenience and necessity (CPCN) now, allowing Edison to immediately exercise the option agreement obviating any risk that FERC approval will not be forthcoming within the option time.

While we authorize Edison to proceed with the proposed FERC jurisdictional PPA, we are desirous of having Mountainview owned and operated as a utility-owned project some time in the future. If legislation is enacted that secures cost recovery of a utility generation investment over the life

of the asset, Edison is directed to file an application, within 60 days of the effective date of the legislation, to terminate the PPA and put Mountainview in rate base. Then all costs for Mountainview will be recovered through Commission-jurisdictional rates. Edison will then have MVL agree to terminate the PPA, subject to FERC approval.

II. Proposed Decision/Alternate Proposed Decision

On November 18, 2003, the assigned Administrative Law Judge issued a proposed decision (PD) that granted Edison's application to acquire Mountainview pursuant to a FERC jurisdictional PPA, but expressed a preference that Edison pursue the project as a utility-owned generation facility. The PD further stated that if Edison did pursue that option, the Commission would issue a CPCN before the expiration of the option date of February 29, 2004.

On December 4, 2003, Commissioner Lynch issued an alternate PD that denied Edison's request to acquire Mountainview through a FERC jurisdictional PPA, and granted Edison a CPCN to acquire, develop, build, own, and operate Mountainview as a utility-owned project.

Comments to the PD were received from Edison, CEERT, ARem, CUE, CAC, EPUC, IEP, the Navajo Nation, Sequoia, ORA, TURN, the Silicon Valley

Manufacturing Group (SVMG),[1] and the California Small Business Association and California Small Business Roundtable (CSBRT/CSBA).[2]

Reply comments were received from the Navajo Nation, TURN, CAC/EPUC, Pacific Gas and Electric Company (PG&E) and Edison.

After reviewing and considering the comments and reply comments, modifications, amendments, and corrections were made to the PD.

III. Background

Edison filed an application on July 21, 2003, seeking Commission authorization to enter into a 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.

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[1] SVMG is not presently a party to the proceeding and did not file a motion to intervene as a party. SVMG will be added to the service list, and its comments were reviewed and considered.

[2] CSBRT/CSBA is not presently a party to the proceeding, but did include a request to intervene and be placed on the service list. The motion to intervene is denied, but CSBRT/CSBA will be added to the service list and its comments were reviewed and considered.

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 and 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).

If acquired by Edison, 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.

Edison proposes entering into a PPA with MVL. 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 under the federal Filed Rate Doctrine (FRD).

Because the option agreement has such an abbreviated term, Edison presented this generation opportunity to the Commission without requesting a CPCN and without engaging in a competitive bidding process. Numerous intervenors raised concerns that without the “market test” that a Request for Proposal (RFP) provides, the Commission would not have sufficient cost information to rule on the application. Parties were requested to brief whether a 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)[3] and the Energy

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[3] 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.

Producers and Users Coalition (EPUC);[4] Sequoia Generating Company (Sequoia); and Edison.

While the arguments in favor of conducting an RFP were strong, because of the expedited schedule dictated by the short-term option date, the Commission did not require Edison to conduct an RFP for Mountainview. 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

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

Manufacturers & Technology Association (CMTA); CLECA; CCC; CAC and EPUC; IEP; and ORA.

Commissioner Peevey 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, 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.

IV. 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 unredacted 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 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 dictated by the expiration date of February 29, 2004 for the option agreement. 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.

IEP was never given un-redacted copies of Edison's application, testimony, or work papers. However, 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.

IEP's motion is denied.

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.

As of the date of this decision, the Commission is unsure whether the motion of TNHC was accepted for filing due to deficiencies in the document submitted to the Commission's docket office. However, to resolve the issue of whether TNHC may intervene as a party, with full rights of a party including the right to file an appeal, on the date the matter is submitted, we will address the motion as if it was accepted for filing.

The motion of TNHC is denied. As Edison said in its response, to begin with their proposed entry is "woefully late," coming after hearings are concluded, evidence is fully briefed, and the matter is submitted. TNHC presents no explanation for the late entry. Second, 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.

Finding Edison's arguments against allowing TNHC entry to the proceeding compelling, motion is denied.

V. Summary of 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.[5] In support of the application, Edison requests that the Commission make the following findings:

[5] Since Edison filed its application on July 21, 2003, Moody's, Fitch and Standard and 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.

- The PPA is reasonable.
- 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.

If instead of pursuing the FERC jurisdictional PPA, Edison proceeds with a CPCN to own Mountainview, the following issues will no longer be relevant:

Findings required under Secion 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, this decision gives Edison the CPCN it needs to move forward to exercise the option agreement to acquire, develop, construct, own, and operate Mountainview without the uncertainty of seeking FERC approval 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.

TURN finds 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 supports Edison's application so long as the Commission adopts the limitations, modifications, and conditions advanced by TURN.

In sum, TURN's proposed changes or conditions are designed to minimize the risk and maximize the economic and reliability benefits to Edison ratepayers. In particular, TURN argues that the risks related to future direct access loads, possible unilateral petitions for rate changes at FERC, and fixed cost responsibility (amounts, recovery schedule, future investments) need to be minimized.

ORA characterizes 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 is that the Commission is being asked to delegate its ratemaking responsibilities to FERC. ORA argues this ceding of jurisdiction is unlawful, is bad policy, and puts California ratepayer protection at risk. To remove these impediments, ORA urges the Commission to direct Edison to finance, construct, and operate Mountainview as a pure utility project. If the Commission does not do that, ORA objects to any waiver of the Affiliate Transaction Rules (ATR), and questions the need and cost-effectiveness of the project.

The Navajo Nation's primary focus in this proceeding is the future of the Mohave Generating Station (Mohave). The Navajo Nation urges 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 asset after 2005.

IEP opposes the application primarily because it represents 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 is concerned that the proposal does not comport with the ATRs, the required PUHCA findings cannot be made, and it was not aired in the Procurement OIR (R.01-10-024). As an alternative to rejecting the application, IEP suggests 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 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."[6]

EPUC urges 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 argues that the PPA is not in the public interest from a ratepayer perspective.

CAC also asks the Commission to reject the application. Specifically, CAC argues that the proposed special transactional structure: (1) is a violation of 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 advises rejection of Edison's application. Primarily, CCC is 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,

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

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 that could undermine the development of coherent long-term procurement policies and discourage independent power producers from investing in building generation in California. In the alternative, if the Commission is inclined to approve the application, CCC recommends 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 supports the application because it is convinced that the additional generation is needed for reliability beginning in 2006, the plant is cost-effective for ratepayers, and there is no need for a market test. CUE opines 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.

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.

VI. 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 development on the record during the evidentiary hearing on this issue.

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 argues that investors require the certainty that the FRD provides.

Following up on this idea, we find it reasonable that if legislation is enacted that secures cost recovery of the Mountainview investment over the life of the asset, Edison shall file an application, within 60 days of the effective date of the legislation, proposing to terminate the PPA and put the facility in rate base under our jurisdiction.

To address the concerns of many intervenors, Edison states that under its proposal both this Commission and FERC have review and oversight, sequentially. This application is before this Commission first, then, if we give our approval, it goes on to FERC. Although many intervenors are critical of FERC's actions during the energy crisis, Edison reminds us that concerned market-based contracts—this PPA is a cost-based contract.

Edison attempts to allay the fears of the naysayers by arguing that the PPA is consistent with the concept of cost-based rates and provides the Commission with adequate review to ensure that those costs are reasonable. As the Commission reviews the application it has an opportunity to thoroughly examine and approve the PPA's pricing terms and all the costs Edison ratepayers are required to pay, including all cost control mechanisms that limit or preclude future costs and expenses.

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. That is why the Commission is urging Edison to proceed with the CPCN to own and operate Mountainview as a utility generation facility.

TURN has many concerns about the FERC jurisdiction and regulation, and proposes modifications that make the transaction more palatable for ratepayers. To begin, TURN wants to ensure that if FERC requires any changes to the PPA as a condition of approval, Edison is required to come back to this Commission to see if the modifications meet with our approval. Edison is agreeable to this suggestion and stipulates to seek the approval of this Commission if FERC proposes any modifications that have potential rate impacts.

Next, TURN wants Section 16.01, that allows for the buyer and seller to unilaterally make an application to FERC for a change in rates, changed. TURN fears that this provision could allow MVL to seek changes in the PPA at FERC—changes that could harm ratepayers. TURN characterizes this provision as a waiver of the *Mobile-Sierra* doctrine,[7] the doctrine that specifies that when a utility and its customer have contracted for a particular rate and FERC has allowed it to become effective, (1) the utility cannot unilaterally modify the

[7] *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *F.P.C. v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956).

contract using a Section 205 filing; and (2) FERC cannot modify the contract under Section 206 using the just and reasonable standard. TURN is troubled that the PPA explicitly preserves unilateral rights, exempting changes from a public interest review, and allowing the more lenient just and reasonable standard.

Interestingly, TURN was not the only intervenor to focus on Section 16.01. IEP, EPUC, the Navajo Nation, and CAC also recommended amending this section to remove the *Mobile-Sierra* waiver allowing unilateral action on the part of Edison or MVL to change terms of the PPA .

ORA's primary focus on the jurisdictional issue is that the Commission cannot lawfully delegate its own ratemaking responsibilities and jurisdiction to FERC because the California Constitution, and the California Legislature confer ratemaking jurisdiction and authority on the Commission.[8] ORA cautions the Commission that if it does cede its authority it will be for the full 30-year term of the PPA, and during that time all FERC approved costs, including capital additions, will be passed through to ratepayers. While FERC may provide assuages of cost collection for investors, ORA opines that this Commission provides superior proven California ratepayer protection to FERC and prefers that this Commission keep this control so that if a situations develop under the PPA that are harmful to ratepayers, the Commission will still have jurisdiction to address them. ORA urges the Commission to direct Edison to pursue and develop Mountainview as a pure utility project.

The Navajo Nation's first point is that Edison has not made a compelling argument that ownership of Mountainview through MVL is preferable to

[8] Article 12, Section 3 of the California Constitution, Pub. Util. Code § 451.

straightforward Edison ownership. The Navajo Nation is concerned that under the PPA, unlike where utilities own large generation projects, MVL's direct capital and operating and maintenance costs will be recovered entirely through the PPA, then Edison will recover those costs from its customers through ratemaking procedures by this Commission. The Commission will not have regulatory oversight to require justification of the operating and maintenance costs in regular rate case proceedings. The Navajo Nation is skeptical of Edison's claims that the Commission's continuing jurisdiction over Edison, but not over MVL, will suffice to ensure future ratepayer protections. From the perspective of the Navajo Nation, the Commission should focus on Mohave, a facility over which the Commission possesses full regulatory authority, making Mohave a much more desirable option.

IEP shares other parties' skepticism over the wisdom of having a 30-year contract outside this Commission's direct jurisdiction and prefers that Mountainview go forward as a utility owned facility. IEP does not view the PPA as a true, negotiated sales agreement because of the absence of the natural tensions that would exist between buyer and seller in a real bargained-for exchange. IEP also wonders how Edison can get the PPA through FERC within the February 29, 2004 timeframe.

EPUC and CAC urge the Commission to reject the application on the grounds that the proposal as structured by Edison does not allow the Commission to properly review Edison's market price acquisition of Mountainview and the FERC jurisdiction would deprive the Commission from insuring that rates charged by Mountainview are just and reasonable. For example, EPUC and CAC argue that the PPA is structured in a manner that "pre-approves" certain categories of costs, tying the Commission's hands in future reviews both by the contract terms and the filed rate doctrine.

Sequoia posits that the only choice before the Commission is whether the structure as Edison proposed is preferable to any other likely alternative. Sequoia suggests that if Edison does not go forward with this transaction, Mountainview most likely would be developed as a merchant facility and such sales would be subject to exclusive FERC jurisdiction. Sequoia raises the question whether the structure as proposed by Edison will give this Commission more oversight than a PPA entirely outside of the Commission's review.

AReM did not submit testimony, participate in cross-examination, or file post-hearing briefs, but did file a protest and a brief on the FERC jurisdiction issue. AReM's primary worry about the PPA as structured under FERC jurisdiction is the potential for stranded costs if certain contingencies occur. Agreeing that the regulatory environment is uncertain, ARem fears that if the suspension of direct access is lifted and a core/noncore structure is implemented for California's retail electric market, Edison would seek recovery of the stranded costs from its customers, both bundled and direct access. If Edison was prohibited from seeking the recovery of any stranded costs associated with the Mountainview PPA, especially from direct access customers, AReM is not against the proposal as framed by Edison.

CLECA filed a protest, submitted a brief on the FERC jurisdiction issue, and served direct testimony. CLECA does not automatically oppose the arrangement as presented by Edison just because it involves FERC's review of costs, but would prefer if Edison brought Mountainview to the Commission as a utility owned project subject to a CPCN application.

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 straight utility-owned generation project, and argue that there are "vexing weaknesses" with the PPA. However, based on what we know today about Edison's financial situation, even though they have received investment grade ratings from Moody's, Fitch and Standard and Poor's, we concluded the most expeditious way to build Mountainview is as proposed; nevertheless, we believe the historical, rate-based approach would be better and should be viewed by Edison as an appropriate alternative. Edison should continue to evaluate the circumstances surrounding its investment and if conditions improve and Edison would be willing to make Mountainview a directly owned plant we would view this with considerable favor. If Edison changed the financing/ownership mechanism for Mountainview from a FERC jurisdictional PPA to a directly-owned utility plant, we would include Mountainview in rate-base and would adopt a new construction cost cap that approximates the cost limit proposed currently by Edison.

And, as discussed earlier, if legislation is enacted to secure cost recovery of a utility generation investment over the life of the asset, Edison is to file an application, within 60 days of the effective date of the legislation, seeking authorization to terminate the PPA and put Mountainview in rate base under Commission jurisdiction.

If Edison does proceed with the CPCN to acquire, develop, construct, own, and operate Mountainview as a utility-owned generation, it has all the authorization necessary to exercise the option agreement now, without any attendant risks and time delays associated with seeking FERC approval of the PPA.

We expedited the CPCN review because Edison's application tendered all of the elements required for a CPCN -- need, cost-effectiveness, cost cap, and environmental review, and the record addressed each element. In addition, we are addressing the issue of Edison's procurement needs in both this decision and in R.01-10-024. Until Edison submits and receives approval of its long-term plan, Mountainview can be reviewed under a "no regrets" criteria. In this perspective, Mountainview could be added as a highly cost-effective option under Edison's April filed plan. Similarly, there is no necessity for the Commission to conduct a CEQA review. Since MVL already completed the AFC certification process before the CEC, and CEC conducted an environmental analysis of the project before issuing CEC Decision (00-AFC-2) certifying the power plant, this Commission is exempt from CEQA requirements, and no further CEQA review is necessary to grant the CPCN.

However, if Edison does proceed for authorization to proceed with the FERC jurisdictional PPA, we approve the transaction, subject to the amendments and conditions set forth below.

We are approving the PPA because the record supports the findings that Mountainview is in the public interest. Edison has established a need for the power 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 about 2010.

The economics of Mountainview make it a cost-effective resource to meet Edison's short-term and long-term resource needs. The attractive purchase price coupled with its state-of-the-art low heat rate, environmental benefits, and its location in Edison's load center justify authorizing the transaction now, irrespective of the year in which the state has a need for additional generating capacity.

Following the evidentiary hearing, Edison submitted an amended PPA[9] that proposed the following changes:

- Article I, adding definition of Environmental Costs, and revising definition of Capital Costs
- Section 6.03, revised to have seller responsible for environmental penalties
- Section 7.02, revised to have Edison solely responsible for all fuel costs
- Section 12.01, revised to reflect lower heat rate.

These proposed changes to the PPA are adopted.

In addition, the PD proposed adopting the following modifications, as suggested by TURN, many of which Edison agreed to and amended the terms of the PPA to reflect the changes:

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[9] Proposed Modifications to PPA, dated October 23, 2003, Exhibit 45.

- Any changes made by FERC to the PPA should be subject to subsequent CPUC review and approval prior to Edison accepting any modifications that have potential rate impacts.

- The PPA is changed to eliminate the explicit *Mobile-Sierra* waiver contained in Section 16.01. Edison amended Section 16.01 of the PPA to eliminate this waiver.

- Commission pre-approval is required in the event MVL seeks to make any capital expenditure referenced in Section 8.09 that exceeds $10 million unless emergency conditions require immediate action.

- The availability targets in the PPA that are tied to incentive payments, are increased by 2% for both summer and winter months.

- For the first ten years of the contract, all cost associated with the project will be the financial responsibility of all customers currently ineligible for direct access through a cost responsibility surcharge.

- There will be a cap of 5% of the total project cost estimates.

- Edison's request for rate recovery of its option payments to Sequoia if Mountainview is not approved or consummated is denied.

- Edison's proposed treatment of working capital is adopted.

VII. Affiliate Issues

The PPA as presented by Edison raises three affiliate transaction issues: application of the ATRs; application of the holding from D.93-03-021, referenced as the KRCC settlement, or the QF Settlement; and effect of the moratorium adopted in D.02-10-062.

From Edison's perspective, there are no affiliate issues. Succinctly put, Edison claims that the ATRs issued in D.97-12-088 should not apply because MVL will be a direct subsidiary of Edison, not Edison International (EIX). Furthermore, Edison claims that the ATRs were designed to restrict and define the terms on which electric utilities are permitted to engage in transactions with those of its affiliates that operate in competitive electricity markets. The ATRs were aimed at preventing ratepayer subsidies of the affiliates, thwarting self-dealing between a utility and its affiliate, and promoting a level playing field for the competitive market.

Edison alleges that since the MVL PPA requires MVL to sell all of its power to Edison, and MVL is prohibited from selling to third parties, the ATR protections are not applicable. MVL will be selling power exclusively to Edison at cost-based rates for the benefit of Edison ratepayers making MVL more like a regulated subsidiary, and not like an affiliate. If, for arguments sake, the Commission does find that the ATRs are applicable in this situation, Edison requests limited exemptions to the provisions that could apply.

Turn asserts that MVL, as a subsidiary of a subsidiary, is clearly an affiliate as defined in the ATRs. Since MVL will be a subsidiary of Edison, and Edison is a subsidiary of EIX, MVL is a subsidiary of EIX for purposes of the ATRs. TURN is not assuaged by the fact that the Commission would be able to review the books and records of MVL. TURN argues that there is a difference between review and regulation: the Commission does not have the power to regulate MVL. However, in order for the transaction to go forward, TURN asks that the Commission determine that technically the ATRs do apply, and grant a one-time waiver with the TURN proposed conditions.

ORA is even more adamant than TURN that the ATRs apply to Edison's proposed transaction and the proposal violates the ATRs. ORA fails to see any good arguments in favor of finding that the ATRs either do not apply, or if they do, that a waiver is appropriate. ORA is concerned that there is self-dealing between MVL and Edison and there could be numerous and potentially costly contract administration or other important issues that develop over a 30-year buyer/seller relationship.

The Navajo Nation views Edison's classification of MVL as a utility subsidiary, rather than a subsidiary of EIX, a violation of the core spirit of the ATRs and exposes ratepayers to affiliate abuse. The Navajo Nation reminds the Commission that in contrast to Mountainview, Mohave does not raise any affiliate issues, so Mohave should be the preferred option for Edison's resource needs.

IEP believes that the transaction as proposed by Edison should only be approved if all ATRs are followed.

ORA also urges the Commission to take a long look at KRCC decision, D.93-03-021,[10] a settlement involving Edison and KRCC and QF contracts that favored an Edison affiliate. Although the facts in Mountainview are different, ORA still argues that the KRCC decision is applicable. The decision holds that Edison will not purchase power from "any generating project in which SCE Corp

[10] D.93-03-021. The decision approved a settlement between ORA's predecessor, Division of Ratepayer Advocates, and Edison concerning contracts between Edison and certain QFs. As part of the settlement Edison agreed to not purchase power from "any generating project in which SCE Corp (now EIX), or any subsidiary of SCE Corp. has an ownership interest."

(now EIX) or an subsidiary of SCE Corp, has an ownership interest. . . ." (48 CPUC2d at 382, cited at Ex. 42, p. 3.)

IEP, CAC, and EPUC also interpret the KRCC settlement as precluding the PPA transaction because of the affiliation between Edison and MVL.

Edison responds that if the Commission decides that the KRCC settlement is applicable, that it is time that the Commission amended the decision to respond to "the dynamic and constantly evolving generation business"—a factor that was contemplated in the decision itself.

In October, 2002, in D.02-10-062, the Commission adopted a two-year ban on affiliate transactions, expiring January 1, 2005. Edison claims the moratorium does not apply to MVL since no purchase or physical flow of power will occur prior to the expiration of the moratorium. IEP does not agree with Edison's interpretation of the moratorium.

We find the affiliate transaction topic troubling. Again, if Edison pursues the Mountainview opportunity as a straight utility owned facility, the controversial affiliate issues disappear, including application of the ATRs, the KRCC settlement, and the moratorium established in D.02-10-062. However, if Edison pursues Mountainview as proposed, we find that MVL is not a regulated subsidiary exempt from the ATRs. Since money will flow directly from MVL to EIX, albeit through Edison, the relationship technically is an affiliate one.

ATR Rule I.A provides that an affiliate includes:

> Any company in which the utility, its controlling corporation, or any of the utility's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership. For purposes of these Rules, "substantial control" includes, but is not limited to, the possession, directly or indirectly and whether adding alone or in conjunction with

others, of the authority to direct or cause the direction of the management or policies of a company.

Edison will have substantial control and complete control over the operation of MVL, and likewise, EIX will have substantial control over MVL. Edison witness agreed that both Edison and EIX would have substantial financial interests in MVL. The conundrum facing us now is; how do we grant an exemption to Edison, without setting up a "slippery slope" for other utilities, or even Edison, to use again to circumvent the rules. As TURN suggested, we can grant a "one-time waiver." A one-time waiver of the ATRs will not substantially alter the substance of the application and will preserve the integrity and intent of the ATRs. In the interest of approving the Mountainview PPA, a decision that is supported by the record, we find that the ATRs do apply. However, we also find that it is in the public interest to grant a one-time waiver of the rules set forth below because the record supports the need for and the cost-effectiveness of Mountainview.

Rule III.B	Affiliate Transactions
Rule III.E	Business Development and Customer Relations
Rule IV.B	Non-Customer Specific Non-Public Information
Rule V.C	Separation of Facilities and System
Rule V.D	Joint Purchases
Rule V.E	Corporate Support
Rule V.F	Corporate Identification and Advertising
Rule V.G.1	Sharing of Employees
Rule V.G.2	Movement of Employees
Rule V.H.5	Transfer of Goods and Services

Any transactions between MVL and unregulated affiliates will be treated as utility and affiliate transactions and covered by the ATRs. Since MVL's costs are mixed with the utility and MVL is under a cost-of-service system with a guaranteed rate of return, having MVL's transactions with affiliates subject to the

ATRs is in concert with the spirit and intent of the rules. Any MVL and unregulated affiliate transactions should be reported in the annual affiliate rules report required in compliance with R.92-08-008, and should be covered by the annual affiliate rules audit required by D.97-12-088, modified by D.98-08-035.

With regards to the KRCC settlement, we wish to distinguish the Mountainview project from those contemplated by D.93-03-021. One focus of KRCC was to prevent "sweetheart" deals between EIX and its unregulated affiliates, to the detriment of Edison ratepayers. Since MVL will be a wholly-owned subsidiary of Edison, although regulated by FERC rather than this Commission, MVL is not an unregulated affiliate similar to the QFs in KRCC. In addition, since MVL's output is subject to cost-of-service regulation there is not the same opportunity for abuse that existed in KRCC. We therefore find that the KRCC settlement and the prohibition set forth in D.93-03-021 is not applicable to the Edison/MVL transaction.

We also find the two-year moratorium against affiliate transactions adopted in D.02-10-062 applicable to Edison and MVL but grant a one-time waiver of the ban for purposes of the Mountainview transaction. We find that because the project is a cost-effective option for ratepayers to fill a resource need, and the project could not go forward under the dictates of the moratorium, it is in the public interest to grant this waiver. The limited waiver we grant here is not precedential.

Not surprising, the most adamant critics of the affiliate waivers were the energy producers who see themselves as direct competitors to MVL. IEP, CAC/EPUC, and the Navajo Nation are concerned that if Mountainview comes on line, the energy they produce and sell will not be needed by Edison. Specifically, in comments to the PD, IEP and CAC/EPUC argued that their constituents were prejudiced by the ATR waivers since the same opportunity would never be available to them. Edison is not offering 30-year contracts to any of these parties, putting them at a considerable competitive disadvantage. And the Navajo Nation fears the acquisition of Mountainview will unfairly prejudice the future of Mohave.

The Commission considered these arguments, and still believes that the consumer and ratepayer benefits of Mountainview support the limited waivers granted for this project. Even though the MVL/subsidiary structure is far removed from straight utility ownership, approving Mountainview is going in the general direction in which the Commission is moving in the procurement proceeding, which is towards a greater degree of electric utility re-integration.

VIII. Cost Effectiveness and Need

Edison claims that the addition of Mountainview is consistent with the needs identified in its Preferred long-term resource plan submitted in R.01-10-024; the capacity is necessary to preserve statewide reserve margins; and the power is needed no later than 2006. To assuage the concerns of competitors, including QFs and cogeneration producers, as well as Mohave, Edison forecasts the need will be there even if power is available from these other sources. Edison does not now own or have committed under contract sufficient generation to meet its customers' likely peak demands, now or in the future. 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 uncertainty 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 uncertainties, 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."[11] To address this concern, TURN proposes that the Commission condition the approval of Edison's application on the requirement that all customers currently ineligible for direct access will be obligated to pay for any stranded costs related to Mountainview for at least the first 10 years of its life.

ORA is concerned that Mountainview will be too costly to ratepayers since it will come on line before it is needed and will contribute to an oversupply of capacity.

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 since it was denied access to confidential materials. In addition, IEP feels that need and cost-

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

effectiveness are more properly addressed with the integrated planning process of the procurement rulemaking.

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 the Mountainview PPP 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, and under contracts that do not require Edison ratepayers to bear the risks associated with the PPA. 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 the facility is even more cost effective.

Many parties filing comments directed their attention to the subject of whether Edison had established the requisite "need" for Mountainview. In particular, IEP, CAC/EPUC, and the Navajo Nation again argue that the record does not support the need for Mountainview and they fear that the addition of 1,054 MW through an Edison subsidiary will obviate Edison's need, or desire, to use power from Mohave, QFs, or co-generation facilities.

On the other hand, CSBRT/CSBA urges the Commission to authorize the Mountainview purchase as it will help insure that there is an adequate supply of energy at a reasonable price for small businesses. As CSBRT/CSBA stated "black-outs, brown-outs and the constant threat of rate increases in our energy bills are not good for the business climate." SVMG is also in favor of more capacity, but questioned whether there was enough information that the need existed now for a plant the size of Mountainview.

CUE, on the other hand, supports the DD, and opines that the PD "undervalues" the usefulness of Mountainview since it does not account for the economic and environmental benefits of operating the plant to displace old, inefficient, more polluting plants in the South Coast Air Basin, even when the plant is not needed to keep the lights on.

After review and consideration of the comments, we still 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 CPA. Edison has forecast that considering its existing resource base of utility-owned generation, QF contracts, interutility 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, in Edison's service territory capacity satisfies this resource need. We make this finding independently of any finding concerning the future of Mohave, or QF contracts.

The intervenors were not all on board with Edison's forecast, especially for the years 2006 to 2008. Even TURN's analysis indicates that additional capacity will not be needed until 2008. TURN, however, did propose a condition for the approval of Edison's application that is designed to protect bundled ratepayers; all customers currently ineligible for direct access should be obligated to pay for stranded costs related to Mountainview for the first 10 years of its life.

We agree with TURN 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 currently ineligible for direct access will be obligated to pay for stranded costs related to Mountainview for 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 customers may take a pro rata share of Mountainview power under PPA pricing through an offtake agreement between Edison and the customer's Electric Service Provider (ESP).

In its comments, AReM challenged whether it is equitable to make direct access customers pay for any stranded costs when they would receive no benefit. In particular, AReM did not like the TURN proposal that the DD adopted "saddling" direct access customers with those stranded costs for the next 10 years. Instead, AReM recommended that Edison be at risk for any stranded costs, not direct access customers.

In its reply, TURN argued that the addition of Mountainview, which will serve the statewide market through least-cost dispatch, should directly benefit direct access customers, making it fair for all customers to be responsible for the costs.

IX. Cost Effectiveness

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. Mountainview also presents transmission-related locational benefits, gas related locational benefits, and cost savings from self-providing ancillary services.

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

Mountainview is compared to a new, equivalently sized combustion turbine (CT) facility, ratepayers still benefit from lower energy costs from the lower thermal heat rate of Mountainview.

Additionally, Edison points out that Mountainview 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 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 might be able to defer other major transmission grid expansion projects.

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. In addition, Mountainview will have access to all major western gas basins, can choose among pipelines, and will have access to 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.

In sum, Edison asserts that the proposed PPA will benefit consumers by securing the energy and capacity benefits of a substantial generation resource for Edison's customers at cost-based rates.

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's challenges whether the cost estimates reflect reality. The quoted price was premised on Edison exercising its option by November 30, 2003; Edison not using 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, entered into the record of this proceeding, and appended to the PPA as part of Edison's FERC filing.

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 its 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—this contravenes the Commission's policy that consideration of new resource addition 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. Under the PPA, Edison's ratepayers are responsible for paying the full cost of fuel to operate Mountainview, even if fuel is not delivered to Mountainview. Under an arrangement Edison is negotiating with SoCalGas, Edison will pay a 50% reservation charge, whether Edison uses the gas or not. 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 cost rise, coal-fired generation becomes more cost effective that 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.

In the PD, we agreed with TURN that Edison had not made a sufficient showing with respect to the amounts that would be recoverable from ratepayers under the PPA and adopted TURN's proposal to have Edison compile a summary of all cost categories and forecasted amounts that would be recoverable from ratepayers for Mountainview. In its reply comments, Edison provided those cost categories and forecasted amounts, and they are attached to this decision as Appendix B. The appendix shows a total plant in-service cost of $703 million. This equates to an installed cost of $667 $/kW, which is a very favorable price.

Accordingly, Mountainview is clearly cost-effective. It is an inexpensive new state-of-the-art high efficiency, low heat rate combined combustion facility that will produce energy efficiently, especially when it is compared with CT and other CCGTs. Ratepayers will be better off with Mountainview, than without it, which is the key finding we must make in order to conclude that Mountainview will be a cost-effective addition to California's generation resource portfolio. We do not need to address the merits of Mohave, and how it compares as a coal-burning facility to determine that Mountainview is cost effective.

CEERT filed comments to the PD that asked the Commission to make a finding that the MVL PPA purchase price not serve as the market price referent for purposes of the California Renewable Portfolio Standard (RPS) Program implementation. As we discussed earlier, one of the factors that made the Mountainview acquisition attractive was its discounted purchase price. We do find that the purchase price for the MVL PPA is unique and reflects capital costs below that of the market.

X. PUHCA Section 32(k) Findings

When Congress passed the Energy Policy Act of 1992, it amended the Public Utilities Holding Company Act (PUHCA) to create EWGs and to allow an EWG to sell power to its affiliated utility only if the State commission makes specific determinations in advance of the electric utility company entering into such a contract. Under Section 32(k) of PUHCA, the Commission must determine that it has sufficient regulatory authority, resources and access to books and records of the electric utility company (Edison) and that the transaction between the EWG (MVL) and its affiliated utility (Edison): (1) will benefit customers, (2) does not violate any state law, (3) would not provide the EWG any unfair competitive advantage, and (4) is in the public interest.

In its application, Edison stated that it would only go on and seek Federal Energy Regulatory Commission (FERC) approval of the PPA with MVL if the CPUC approves the framework of the transaction as proposed, explicitly finds that the PPA satisfies the PUHCA requirements, and the CPUC agrees to support Edison's filing of the PPA at the FERC under Section 205 of the Federal Power Act (FPA).

TURN recommends that the Commission only issue the PUHCA 32(k) findings sought by Edison if the conditions proposed by TURN are incorporated into the PPA.

ORA's position is that the Mountainview should only be approved as a utility owned project, then no PPA is necessary, and no PUHCA findings are required.

The Navajo Nation assert that the record does not support a finding by this Commission that Edison's PPA fulfills any of the PUHCA requirements. Specifically, there is inconclusive evidence as to the need for the generation; whether the PPA provides MVL with an unfair competitive advantage; and whether considering Mountainview before fully considering Mohave is in the public interest.

IEP does not believe that the Commission can make the required PUCHA findings because the transaction violates the ATRs and the project was not undertaken as part of the long-term procurement planning process. Of most concern to IEP is the fact from their perspective that the transaction provides MVL with an unfair competitive advantage. The PPA is a self-generated non-negotiated contract that contains terms that are more favorable than would likely follow from any solicitation process. IEP opines that Edison is unlikely to extend similar terms to any other non-affiliated entity. And IEP does not think Edison was straight forward with the Commission in the procurement rulemaking since Edison did not reveal the steps it was taking to procure Mountainview.

CAC and EPUC do not see that the record supports a finding by the Commission that the PPA complies with PUHCA Section 32(k).

Sequoia believes Edison made its case that the proposed PPA, as modified by Edison, justifies the specific findings required under Section 32(k) of PUHCA. In summary, the Commission has sufficient oversight, it will benefit consumers by providing needed and efficient capacity, the application complies with State law, since it is cost-of-service based it does not provide any unfair competitive advantage to MVL, and is in the public interest.

Again, as already discussed, the Commission would prefer to approve Mountainview as a straight utility-owned generation facility and then there would be no necessity for PUCHA findings. However, since we have found that Edison has met its burden of showing that there is a need for Mountainview and it is cost-effective, we will find that the PPA, as modified, satisfies the requirements of Section 32(k) of PUCHA.

XI. CPUC Regulatory Authority

Edison requests a finding from this Commission that it has sufficient regulatory authority, resources, and access to books and records of both Edison and MVL to warrant approval of the PPA. Specifically, Edison states that the CPUC already has complete access to Edison's books and records pursuant to Pub. Util. Code § 314(a). Since this section provides the Commission with the right to inspect the accounts, books, papers, and documents of any affiliate or subsidiary of an electric corporation on any transaction between the electric corporation and the affiliate/subsidiary on any matter that may adversely impact customers, the Commission will be able to conduct audits of the books and records of MVL just as freely and completely as it does for Edison. Edison opines that the Commission has one of the largest and most knowledgeable staffs in the nation and it is fully capable of reviewing the PPA. In addition, Section 9.04(c) of the PPA establishes in the Commission the right to inspect the books of both Edison and MVL with regard to the PPA.

Edison also states that requiring the Commission to audit MVL is not really an additional burden on staff since what ever Edison did to secure additional power would require the same amount of staff resource time.

A summary of the intervenors' position is that review does not equate to regulation, and Commission access to MVL's books is an empty power.

We find that the Commission does have sufficient regulatory authority, resources, and access to books and records of both Edison and MVL under Pub. Util. Code § 314(a) and the express language in Section 9.04(c) of the PPA to meet this requirement of PUHCA.

XII. The PPA Does Not Violate Any State Law

Edison contends that the PPA does not violate any state law or regulation. In particular, Edison asserts that MVL will fully comply with any non-utility laws, such as construction, taxes, business; environmental laws, since necessary environmental and CEC permits have been obtained; Pub. Util. Code provisions regarding generating assets,[12] and utility affiliate transaction laws and regulations.[13]

As discussed earlier, EPUC, CAC, and CCC argue that the PPA is inconsistent with state and federal laws mandating the encouragement of cogeneration technologies in California. Specifically, CCC alleges that the approval of Mountainview will allow Edison to violate the Public Utility Regulatory Policies Act of 1978 (PURPA) by not purchasing all energy and capacity that is made available by QFs. Instead the other energy producers fear Edison will meet all of its power needs from Mountainview and then existing industrial sites will be faced with shutting down electric generation and replacing it with fossil-fuel fired facilities.

We find that the PPA does not violate any state law or regulation.

While we understand the QFs' concerns about Edison's continuing need to purchase QF power if Mountainview is appraised, nothing in this decision is

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[12] Although Pub. Util. Code § 1001 usually requires a utility to obtain a CPCN, Edison claims one is not required in this case since Edison is "not beginning construction" of the facility, and the facility will not be owned by a public utility, instead it will be owned by MVL.

[13] Edison contends that the affiliate transaction rules do not apply to MVL, as it will be a direct subsidiary of Edison.

intended to foreclose or prejudice Edison's future obligation or choice to meet its resource needs from QFs.

Furthermore, we have determined that Edison is not required to obtain a CPCN under Pub. Util. Code § 1001; no further environmental studies are necessary under CEQA; and although the ATRs and two-year affiliate transaction moratorium apply, we granted a one-time waiver.

XIII. The PPA Does Not Confer Any Unfair Competitive Advantage

PUCHA requires that the CPUC find that the PPA does not provide any unfair competitive advantages to MVL as a result of its affiliation with Edison. Edison argues that the proposed transaction clearly does not give any unfair competitive advantages to MVL since (1) MVL does not currently compete in the wholesale market and is precluded by the PPA from selling energy to third parties; and (2) completion of the construction of the facility will proceed pursuant to construction contracts negotiated at arms' length between Sequoia and Intergen and the original equipment manufacturer and contractor that pre-existed any relationship between Edison and MVL. In addition, the PPA precludes MVL from exercising any control of the output of the facility and MVL will only receive compensation on a cost-of-service basis. Edison is adamant that there is no possibility of a competitive advantage for MVL.

Edison further argues that the absence of a RFP does not affect the Commission's ability to make the determination that MVL does not have a competitive advantage. There is no requirement in Section 32(k) of PUHCA that a competitive solicitation be conducted in order to avoid conferring an unfair competitive advantage of an affiliate.

EPUC and CAC disagree. They view the PPA as providing an unfair competitive advantage to MVL over other potential providers of power, impairing wholesale competition. In sum, MVL will make power sales to Edison, with no other competitor having the same opportunity; MVL is assured of future cost recovery for everything but the initial CRC; MVL may unilaterally go to FERC for changes in the agreement; and the preferential treatment to MVL may negatively affect the incentive for new merchant generators to invest in new facilities in the market.

In addition, EPUC and CAC are concerned that if the Commission finds that either the ATRs are not applicable, or that Edison is entitled to an exemption, that will further discriminate against other entities and give MVL an unfair competitive advantage. The only way to correct this is to provide the same treatment for all Edison affiliates so that they may participate in the market in a nondiscriminatory manner consistent with the treatment afforded MVL.

We find that the PPA does not provide MVL with any unfair competitive advantage because MVL does not compete in the competitive market and is prohibited from doing so for the 30-year term of the contract. Another important fact is under the PPA MVL only receives compensation on a cost-of-service basis, not market price. While we are aware of the arguments presented by the other market participants that the PPA is unfair to them, Mountainview will not supply all of Edison's resource needs; Edison will still need to purchase power from QFs and cogeneration facilities, and MVL will not be competing against those sources in the market place.

XIV. Public Interest and Benefit to Consumers

As we have discussed herein, Edison has established that it has a need for additional capacity. We agree that it is uncertain as to when Edison will need that entire 1,054 MW of capacity from Mountainview before approximately 2010. However, the project is available now, and we are asked to make a decision on the transaction now. We do not have the option of waiting until 2008 to authorize the construction of the facility so it can come on line in 2010.

Edison has established an immediate need for dispatchable peaking and intermediate capacity to mitigate forecasted near-term capacity shortfalls and ensure electric system reliability. What is not clear is how much of Mountainview's capacity Edison will need between 2006 and 2010. Edison has excess energy now, but many contracts with DWR and QFs will expire before 2010. This, along with Edison's projected load growth makes Mountainview an attractive option to fill Edison's resource needs for baseload capacity by 2010.

In addition, the record demonstrates that Mountainview is highly cost-effective. If the transaction is consummated before the expiration of the option agreement, February 29, 2004, the discounted purchase price of Mountainview makes it an appealing project. As has already been mentioned, Mountainview has a state-of-the-art low heat rate of 7,100 Btu/kWh, which is expected to make the facility a low cost and more environmentally beneficial option for the entire 30-year term of the PPA. When these factors are considered along with Mountainview's location in Edison's load center, the facility is an attractive, efficient, low-cost resource to meet Edison's projected needs. We make this determination without prejudicing Edison's choice to use other resources in its procurement portfolio to meet the full needs of its customers.

XV. Cost Recovery

Edison opines that the PPA should be approved because it provides reasonable cost recovery mechanisms, reasonable cost control mechanisms, adequate regulatory oversight, and provides numerous benefits for Edison ratepayers. Specifically, Edison claims that the PPA approximates key features of 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."

Edison urges the Commission to ignore intervenor concerns or criticisms that ask the Commission to compare the PPA to commercially negotiated contracts with merchant generators, cogenerators, or QF contracts because the PPA should be evaluated against a paradigm of traditional regulation. The 30-year term, certainty of cost recovery and ability to recover unforeseen capital expenditures makes the PPA more parallel to utility regulation.

XVI. Recovery of Initial Capital Outlay

Edison designed the Mountainview PPA to permit MVL full recovery of 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.

The PPA establishes a sharing mechanism, 50/50 between ratepayers and shareholders, if Edison exceeds the construction cost estimate limit, instead of subjecting the overage to a reasonableness review. IEP opposes this sharing mechanism, and instead suggests that the Commission deny Edison recovery of any costs above the current construction cost estimates. TURN proposes to reduce the projected capital cost limit by 50%. Edison responds to the IEP and TURN proposals by stating that if this was a CPCN proceeding, the cost estimates might even have a higher variability. Edison does not see any justification for modifying the contract to adjust the cost estimates—especially considering the abbreviated option period.

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.

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 5% of the total project cost estimates. We do not adopt the 50/50 sharing mechanism.

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.

TURN also suggests levelizing 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 TURN, and other intervenors concerns over the costs to ratepayers during the first decade of the contract, the total cost of the Mountainview project, in pro portion to the other costs that go into Edison's ratebase, is relatively insignificant and levelizing them would not have a significant impact on rates.

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 only justification for this suggestion. 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.

XVII. Recovery of Operating Costs

The PPA provides for certain categories of operating and maintenance (O&M) costs, costs over which Edison has no discretion or control, to be passed directly from MVL to Edison as "pre-authorized." The largest O&M cost is the Contractual Services Agreement 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. Other pre-authorized O&M costs are insurance, property taxes, and interconnection costs. As Edison argues, intervenors' concerns that by "pre-authorizing" these costs, MVL will lose any incentive for cost-control, are misplaced: MVL has no discretion or control over these costs. In point of fact, Edison feels that this ensures that MVL is indifferent to Edison's dispatch decisions.

The PPA also allows MVL to recover fixed and variable O&M charges through a monthly charge. The initial values for these charges were derived from forecasts of actual costs, subject to adjustment at each overhaul cycle, expected to be between three and four years in duration. As Edison's witness testified, the reset will be based on historic recorded O&M values.

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.

XVIII. Incentives

The PPA has two incentive mechanisms built in: the heat rate incentive and the availability incentive mechanisms. The heat rate incentive is designed to motivate MVL 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. Edison revised Section 12.01 of the PPA to specify that 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, section 12.03 of the PPA, is designed to encourage efficient operation of the plant for the entire expected operating life of the plant.

The PD was not clear as to whether we were adopting TURN's recommendation that the availability targets in the PPA that are tied to incentive payments be increased by 2% in both summer and winter months. TURN is concerned that the targets proposed by Edison in the PPA are too "lenient" in light of the Contractual Services Agreement (CSA) with General Electric that established certain relevant guarantees. We agree with TURN and its witness Marcus that the 2% increase is appropriate and insures that MVL is motivated to keep the unit serviceable to the greatest extent possible. Therefore, we find that the heat rate and availability incentives as described in the PPA should be subject to the changes proposed by TURN, and we adopt those recommendations.

XIX. Capital Additions and Betterments

Under Section 8.09 of the PPA, MVL is permitted, but not required, to seek Edison's approval for capital additions, such as betterments, compliance work, and facility refurbishments. Some parties argued that this provision could result in MVL passing runaway costs through to Edison ratepayers. Edison presented testimony that if MVL did work not approved by Edison, MVL would not be eligible for recovery under the monthly capital recovery charge or as a preauthorized charge. Although MVL could recover such expenditures through the O&M charge, MVL would have to write-off any such expenditures until the next overhaul cycle, in effect creating a regulatory lag disincentive for MVL to engage in such behavior.

Edison attempts to reassure critical intervenors and the Commission that this Commission still exerts oversight over Edison through its review of expenses in the ERRA. Edison also opines that if MVL sought advance approval of an expenditure from Edison, that Edison would have an incentive to then seek approval from this Commission prior to the expenditure to avoid disallowance in the ERRA. To address this issue, we find that the amendment proposed by TURN to require Edison to seek Commission pre-approval for any capital expenditure referenced in Section 8.09 that exceeds $10 million unless emergency conditions require immediate action, is in the public interest and we adopt that provision.

XX. Ratemaking Issues

Edison's application raises numerous ratemaking issues. To begin, Edison requests that the Commission allow it to recover the costs of operating Mountainview through the Energy Resource Recovery Account (ERRA). The ERRA is a Commission-approved balancing account in which Edison records fuel costs relating to Edison-owned generation stations, purchased power costs related to cogeneration and renewable contracts, existing interutility and bilateral contracts, and new procurement related costs that Edison began incurring on January 1, 2003 (D.02-10-062). Edison seeks authorization to recover through the ERRA the costs and incentives it will pay MVL for the operation of Mountainview. These costs include: (1) O&M costs; (2) capital costs; (3) availability incentives; and (4) heat rate incentives.

The PPA, as crafted by Edison, is a tolling agreement whereby Edison has the sole responsibility for gas procurement[14] and associated hedging. Edison wishes to recover these fuel costs through the ERRA.

In addition, Edison anticipates that MVL may want to contract with Edison for Edison to perform certain administrative functions. Edison proposes having revenues received by Edison from MVL recorded in a balancing account and subject to review in the ERRA.

Through the ERRA, Edison expects that the Commission can exercise expansive regulatory control over Edison's administration of the PPA by reviewing Edison's activities concerning URG expenses, contract administration, and least-cost dispatch operations. The Commission will review these expenses under a reasonableness review, subject to disallowances. The expenses reviewed by the Commission in the ERRA are not subject to FERC review.

IEP is concerned that there is uncertainty regarding what type of issues will be considered "contract administration," and suggests that this Commission clear up this issue before the PPA is approved. IEP agrees with Edison that use of the ERRA mechanism is a good and appropriate way to create cost recovery certainty for any of the utility's PPAs. However, IEP takes the concept one step further and suggests that the project go forward as a traditional utility project without the complexities of the PPA.

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[14] Following cross-examination on Section 7.02 of the PPA that contained language allowing MVL to pass on fuel costs, raising some concern that Section 7.02 might override Section 6.01 vesting Edison with the sole responsibility and authority for procuring fuel for Mountainview, Edison eliminated the final sentence in Section 7.02.

In addition to the ERRA proceeding, Edison proposes that other Mountainview costs be reviewed by the Commission in other proceedings. For example, Edison proposes that the working cash component of the capital recovery charge (CRC) be subtracted from Edison's consolidated working cash requirement as part of the utility's General Rate Case (GRC). In regards to Mountainview, the CRC, as set forth in the PPA, includes return on investment, return of investment, income taxes, and working cash.[15]

Turn's witness testified that this method leads to ratepayer indifference with respect to the PPA calculation, so TURN suggests that the Commission should codify the overall treatment of working cash in this decision.

Edison proposes that buyer overhead costs, including Edison's administrative and general and general plant costs, be included as part of Edison's GRC.

TURN also proposes that Edison be prohibited from collecting option payments made to Sequoia in the event that Mountainview does not receive regulatory approvals or fails to be pursued by Edison. TURN does not approve of having Edison in the position of assuming zero risk and transferring 100% of the risk to Edison ratepayers if the deal fails to be successfully completed.

IEP joins in this recommendation that Edison be precluded from recovering option payments—especially since IEP alleges that Edison attempted to circumvent the procurement process.

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[15] Edison proposes that in future GRC proceedings, working cash requirements will be calculated and forecasted by Edison on a consolidated basis.

With the exception of the option payment recovery proposal, we adopt all of the ratemaking provisions advanced by Edison. We find it is in the interest of the Edison ratepayers to have Edison recover the costs of operating Mountainview through the ERRA; the working cash component of the CRC through the GRC; and overhead costs through the GRC. Through these ERRA and GRC proceedings, which are fully litigated proceedings, we can exercise sufficient regulatory control over Edison's administration of the PPA.

However, we agree with intervenors that allowing Edison to recover the option payments is not in the best interest of the Edison ratepayers. More importantly, this issue should be moot following the Commission's approval of the PPA. When we approve the PPA, or if Edison converts the application to a request for a CPCN, and Mountainview is approved as a utility owned generation facility, the burden then rests squarely on Edison to exercise the option, and ratepayers should bear no risk.

XXI. Decommissioning Costs

Edison also asks the Commission to include decommissioning costs for Mountainview in Edison's GRC filing, to be updated, as necessary, in future GRC filings. Edison contends that it is appropriate for Edison customers to be responsible for both decommissioning costs of the Mountainview plant, as well as those of the retired plant at the San Bernardino site. Edison justifies this request on the grounds that Edison customers will receive the residual value of Mountainview upon the termination of the 30-year PPA.

ORA does not agree with Edison's decommissioning cost proposal—ORA wants ratepayers to be able to "opt-out" of decommissioning liability.

We will adopt Edison's proposal to include decommissioning costs in its GRC since that will give the Commission the opportunity to accept, revise, or reject the revenue requirement Edison submits. We find it reasonable for Edison to include a Mountainview site-specific decommissioning study in its 2006 GRC to be updated in future GRCs; the amount will be recovered from customers through generation base rates; and the Mountainview decommissioning obligation is to be treated for accounting and ratemaking purposes as a regulatory obligation on Edison's general ledger, to be collected from customers over the life of the project.

XXII. Expedited Advice Letter Process

Edison also requests that the commission adopt an expedited Advice Letter (AL) process whereby the Commission can pre-approve capital additions/betterments projects and certain reclassification of charges permitted under the PPA.

A. Capital Additions/Betterments

If MVL intends to undertake expenditures relating to capital additions or betterments and Edison intends to approve such expenditures, Edison may seek pre-approval at the Commission to include these costs as part of the CRC or the O&M charge. Pursuant to the PPA, qualifying expenditures must: (1) increase or improve the output or operating efficiency of Mountainview (Betterment Work); (2) result of change in law or regulation (Compliance Work); (3) enable the facility to maintain a consistent level of operating efficiency over the PPA term (facility refurbishment); or (4) result due to necessary major equipment repair or replacement work.

Edison proposes filing an AL before this Commission that includes a description of the expenditure, classification, estimated cost, and Edison's preferred approach for rate recovery. Edison proposes that the Commission issue a Final Resolution within 95 days of the AL filing, with protests due at

Day 20, Edison responses due Day 25, Energy Draft Resolution issued Day 55, Comments due Day 69, Reply comments due Day 74, Final Resolution due Day 95.

B. Reclassification of Charges

Section 8.08 of the PPA permits Edison and MVL to mutually agree to reclassify a charge identified in Section 7.02 or Section 7.03 of the PPA and expressly gives Edison the right to seek Commission pre-approval of that reclassification before it is implemented. If Edison and MVL decide to do this, Edison proposes to obtain Commission pre-approval through the expedited AL process.

Edison would file an AL that includes a description of the proposed reclassification, justification for the reclassification, and the dollar impact on the applicable charge categories on both a recorded and forecast basis. Edison proposes that the same procedural schedule as described for the capital/betterments expenditures be followed.

No party has submitted evidence opposing this procedure. We find it is reasonable as it saves after-the-fact reasonableness review under ERRA. We adopt the expedited AL process, including the 95-day procedural schedule, described above for Capital Additions/Betterment projects and certain reclassification of charges.

XXIII. Financing

Edison's application requests that the Commission confirm that Edison may use existing debt financing and equity.

Neither TURN nor ORA discussed financing issues in their post-hearing briefs. The Navajo Nation questions whether Edison's proposed PPA structure and guaranteed cost recovery under the Federal FRD are necessary to assure the financial community since an Edison witness conceded that the rating agencies would look at Edison's overall capitalization as opposed to the capitalization of an individual asset.

Again we reiterate: We would prefer that Edison pursue Mountainview through a CPCN as a utility owned project. However, if the PPA mechanism goes forward, 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. Edison's witness testified that MVL would not be able to achieve a lower cost of capital than Edison, so there would be no cost savings having MVL do the financing since the additional debt at the project level would be factored into Edison's overall capital structure and could result in damage to the utility's credit rating.[16]

We also find that this Commission will set the rate of return for Mountainview, not FERC, and we will be able to review MVL's separate internal financial statements and accounting.

We also find that it is reasonable for Edison to be permitted to provide guarantees on behalf of MVL pursuant to Pub. Util. Section 701.5.

XXIV. CPCN and CEQA Issues

Edison crafted its application for approval of Mountainview in a manner that it asserts does not require it to seek a CPCN for the project, and obviates the need for the Commission to conduct a review under the California

[16] Edison/Simpson, RT 1051: 3-11.

Environmental Quality Act (CEQA). Edison requests that the Commission make a finding verifying its assertions that neither a CPCN nor a CEQA review is necessary.

Section 1001 of the Pub. Util. Code states in pertinent part:

> No . . . electric corporation . . . shall begin the 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 public convenience and necessity require or will require such construction.

Edison argues that since it is not "beginning" construction of a facility, and MVL is not an electric corporation, a CPCN is not required. We agree, and find that unless Edison decides to purchase Mountainview as utility owned generation, a CPCN is not necessary.

Furthermore, a CEQA review is not required since the California Energy Commission (CEC) already conducted an environmental review as part of Mountainview's Application for Certification (APC). Mountainview completed its APC with the CEC and received a license from that Commission in March 2001. Edison asserts that its requested change in ownership of MVL from Sequoia to Edison, a purely financial transaction, does not result in a "substantial" change that would trigger further CEQA reviews. Edison urges the Commission to make a finding that the CEQA review conducted by CEC is sufficient and no further reviews are triggered by the current application.

The Navajo Nation views Edison's proposal as violating State law by circumventing the CPCN filing requirement that would involve a needs assessment and a comparison of Mountainview with all reasonable alternatives, including Mohave. The CEQA review performed by CEC for Mountainview investigated whether there were significant physical impacts that would result from the construction and operation of Mountainview; but there was no comparison of Mountainview with other projects. Also, construction has been stalled since March 2002. The Navajo Nation wonders if a nearly 20-month shutdown can have significant environmental impacts in and of itself.

While this Commission takes its responsibilities under CEQA seriously and is not reticent to perform environmental reviews, under the CEC licensing provisions, the CEC functioned as the lead agency under CEQA. This Commission has no independent responsibility to conduct further environmental reviews. We have determined that the CEC's AFC process exempts projects, in this case Mountainview, from the requirements of CEQA. We therefore find that no further CEQA review is triggered by Edison's application.

XXV. Comments on Proposed Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed on December 8, 2003, and reply comments were filed on December 15, 2003.

XXVI. 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 when the facility comes on line in 2006, MVL will commit the output exclusively to Edison.

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

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

7. The PPA will be subject to exclusive FERC jurisdiction and this is justified by the uncertainty of the regulatory climate and Edison's current financial situation.

8. We believe that it would be more advantageous to the ratepayers and customers of Edison to own Mountainview as a utility-owned facility under the historic, rate-based approach, but in today's financial and regulatory climate gave Edison the choice whether to proceed on Mountainview with the FERC jurisdictional PPA, or as a utility-owned facility.

9. If Edison does pursue direct ownership of Mountainview we can expedite the CPCN process since no further finding of need, or further environmental review under CEQA is required.

10. 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.

11. 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, irrespective of what year the entire output is needed.

12. Ratepayers will be better off with Mountainview than without it.

13. The MVL PPA purchase price is unique and reflects capital costs below that of the market.

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

15. The modifications to the PPA proposed by Edison for Article I, Sections 6.03, 7.02, and 12.01 as shown in Exhibit 45 are adopted.

16. The modifications proposed by TURN to the PPA that we found reasonable and adopted are set forth herein.

17. MVL is not a regulated subsidiary exempt from the ATRs.

18. It is in the public interest to grant a one-time waiver of the following ATR rules: III.B; III.E; IV.B; V.C; V.D; V.E; V.F; V.G.1; V.G.2; and V.H.5.

19. Any transactions between MVL and unregulated affiliates are covered by the ATRs, should be reported in the annual affiliate rules report, and should be covered by the annual affiliate rules audit.

20. The affiliate prohibitions set forth in D.93-03-021 are not applicable to the Edison/MVL transaction.

21. It is in the public interest to grant a one-time waiver of the two-year moratorium on affiliate transactions established in D.02-10-062 so this project can go forward.

22. 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 of Edison that are currently ineligible for direct

access be obligated to pay for stranded costs for the first 10 years of Mountainview's life.

23. The Commission has sufficient regulatory authority, resources, and access to books and records of Edison and MVL to meet the PUCHA requirement.

24. The Mountainview project is in the public interest, and if the PPA is the only viable vehicle to acquire the facility, the PPA is in the public interest.

25. The PPA does not violate any state law or regulation.

26. The PPA does not confer any unfair competitive advantage on MVL since MVL is prohibited from competing with other wholesale providers and cannot make third-party sales.

27. The PPA will benefit consumers.

28. MVL should be allowed to recover AFUDC in accordance with the terms of the Mountainview PPA Sections 7.01 and 8.02.

29. The capital recovery charge treatment set forth in the PPA is reasonable, except we have made adjustments, as set forth herein, to the contingency allowance for the uncertain costs, and approved an expedited procedure by which Edison may request, justify, and obtain approval of an upwards adjustment to the Capital Costs Limit.

30. It is reasonable to allow Edison to recover fixed and variable O&M charges through a monthly service charge, subject to true-up for historic costs, at each future overhaul cycle.

31. It is reasonable to adopt the heat rate and availability incentives as described in the PPA and subject to the changes proposed by TURN.

32. It is reasonable to adopt TURN's proposal to require Edison to seek Commission authorization for any capital expenditure referenced in Section 8.09 that exceeds $10 million.

33. It is reasonable for Edison to recover the costs of operating Mountainview through the ERRA; the working cash component of the CRC through the GRC; and overhead costs through the GRC.

34. It is reasonable to transfer ownership of the Mountainview assets to Edison at cost at the termination of the Mountainview PPA.

35. It is reasonable for Edison to include decommissioning estimates for the Mountainview assets in its GRC.

36. 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.

37. It is reasonable for Edison to provide guarantees on behalf of MVL in connection with the construction, operation, and maintenance of Mountainview.

38. It is appropriate that MVL maintain a capital structure and earn a Return on Equity equal to Edison's Commission-authorized ROE and capital structure.

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

Conclusions of Law

1. A certificate of public convenience and necessity is not required for the Mountainview project.

2. A CEQA review by this Commission is not required for the Mountainview project.

3. We have made the required findings under Section 32(k) of the Public Utility Holding Company Act to warrant approval of the PPA.

4. PPA Section 9.04(c) and Pub. Util. Code § 314(b) gives the Commission sufficient regulatory authority, resources, and access for books and records of Edison and MVL.

5. The transaction between Edison and MVL will benefit customers.

6. The transaction between Edison and MVL does not violate any state laws.

7. The transaction between Edison and MVL does not provide MVL with any unfair competitive advantage.

8. The transaction between Edison and MVL is in the public interest.

9. It is in the public interest to grant Edison a one-time waiver of the Affiliate Transaction Rules in regards to the MVL transaction.

10. It is in the public interest to allow Edison a one-time waiver of the two-year moratorium on affiliated procurement transactions.

11. The provisions of D.93-03-021 do not apply to transactions between Edison and wholly-owned subsidiaries of the regulated utility.

12. 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.

13. Edison may provide guarantees on behalf of MVL under Pub. Util. Code § 701.5.

14. It is reasonable for this Commission to support Edison's filing of the Mountainview PPA, as approved herein with modifications, at the FERC pursuant to Section 205 of the Federal Power Act.

15. 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.

16. Because the MVL PPA purchase price reflects capital costs significantly below that of any comparable new facility and is substantially below market price, it is not relevant to and cannot be adopted as the market price referent used in any solicitation conducted pursuant to the California Renewable Portfolio Standard (RPS) Program established by Senate Bill (SB) 1078.

O R D E R

IT IS ORDERED that:

1. This Commission will intervene at Federal Energy Regulatory Commission (FERC) in support of Southern California Edison Company's (Edison) filing of the Mountainview Power Company, LLC's (Mountainview) Power Purchase Agreement (PPA), as approved herein with modifications.

2. Edison may execute the Mountainview PPA upon receipt of a FERC decision approving the Mountainview PPA, without modification, or making a modification with no potential rate impacts. If FERC proposes any modifications, with potential rate impacts, Edison must seek the approval of this Commission prior to accepting any modifications that have potential rate impacts.

3. If Edison acquires MVL as a wholly-owned subsidiary and enters into a FERC jurisdictional PPA with MVL, and legislation is enacted that secures cost recovery of a utility generation investment over the life of the asset Edison is ordered to file an application, within 60 days of the effective date of the legislation, to terminate the PPA and put Mountainview in rate base under the jurisdiction of this Commission.

4. Edison may proceed to acquire Mountainview as a utility owned generation facility with no further CPCN or CEQA review required.

5. Edison is authorized to recover the costs of operating Mountainview through the Energy Recovery Resource Account.

6. Edison is authorized to recover the working cash components of the capital recovery charge in its next General Rate Case (GRC).

7. Edison is authorized to recover overhead costs through the GRC.

8. Edison is authorized to include decommissioning costs in its GRC.

9. Edison is authorized to make guarantees for MVL pursuant to Pub. Util. Code § 701.5.

10. Edison is authorized to use the expedited advice letter process as set forth in this decision for discretionary actions under the PPA.

11. Edison's Motion to recover options payments from ratepayers if the Mountainview transaction is not approved or consummated before the expiration of the option is denied.

12. This proceeding is closed.

This order is effective today.

Dated December 18, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

I will file a concurrence.

/s/ GEOFFREY F. BROWN
Commissioner

I reserve the right to file a concurrence.

/s/ CARL W. WOOD
Commissioner

I dissent.

/s/ LORETTA M. LYNCH
Commissioner

APPENDIX A
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(END OF APPENDIX A)

D0312059 Appendix B