

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Establish Policies and  
Cost Recovery Mechanisms for Generation Procurement  
and Renewable Resource Development.

Rulemaking 01-10-024  
(Filed October 25, 2001)

**RESPONSE OF THE CALIFORNIA COGENERATION COUNCIL  
AND THE CALIFORNIA WIND ENERGY ASSOCIATION  
IN OPPOSITION TO SOUTHERN CALIFORNIA EDISON COMPANY'S  
PETITION FOR MODIFICATION OF DECISION 04-01-050**

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**I. INTRODUCTION AND SUMMARY**

Pursuant to Rule 47 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the California Cogeneration Council ("CCC") and the California Wind Energy Association ("CalWEA") submit this joint response in opposition to the Petition for Modification of Decision 04-01-050 filed by Southern California Edison Company ("Edison") ("Edison's Petition").<sup>1</sup> As explained below, Edison's Petition is without merit and should be denied.

Edison seeks modification of the portion of the Decision that requires the State's investor-owned utilities ("Utilities") to purchase energy and capacity for a period of five years under a Standard Offer 1 ("SO1") contract from any qualifying facility ("QF") that was in operation and under contract to provide power to a Utility at any point between January 1, 1998 and the effective date of Decision 04-01-050, and whose contract with the Utility has expired, or is due to expire before January 1, 2006.<sup>2</sup> In particular, Edison seeks to reduce the term of the five-year SO1 contracts required in the Decision to only four years for certain QFs, namely those QFs who elect to sign an SO1 contract for 2004

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<sup>1</sup> Decision 04-01-050 is also referred to herein as the "Decision" or the "January Decision."

<sup>2</sup> See Decision 04-01-050 at 157.

pursuant to the requirements specified in Decision 03-12-062, the short-term procurement decision that was issued last December in this proceeding (the “December Decision”).<sup>3</sup>

Edison first incorrectly assumes that the January Decision’s five-year SO1 requirement “was intended to supersede” the December Decision’s SO1 requirement for 2004.<sup>4</sup> Contrary to Edison’s position, nothing in the January Decision suggests that it was intended to “supersede” the December Decision. As explained below, the December Decision and the January Decision are properly viewed as companion decisions that provide for continued Utility procurement of QF power during two separate procurement periods. The December Decision adopts an SO1 contract requirement to ensure continued procurement of QF power during the short-term procurement period encompassed by calendar year 2004, whereas the January Decision adopts a separate and additional five-year SO1 contract requirement to ensure continued procurement from QFs during a longer-term procurement period, and particularly from QFs whose contracts expire after December 31, 2004. This is consistent with the fact that the 2003 procurement proceeding considered two separate procurement plans filed by each Utility – a short-term procurement plan filed for 2004, and a separate long-term procurement plan filed for the period commencing as of January 1, 2005. The two decisions therefore are properly read in conjunction, not in the alternative as Edison suggests.

Edison also seeks to justify its proposed modifications by asserting that it would be “anomalous” and “discriminatory” to allow some QFs to sign up for two separate SO1 contracts with a total cumulative term up to of six years, while other QFs are only eligible for a single five-year SO1 contract.<sup>5</sup> Contrary to Edison’s assertions, the January Decision does not result in inappropriate discrimination. Instead, as explained below, it is Edison who is proposing modifications to the Decision that would unfairly discriminate

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<sup>3</sup> The December Decision requires the Utilities to purchase energy and capacity through the end of 2004 under an SO1 contract from any QF that was in operation and under contract to provide power to a Utility at any point between January 1, 1998 and the effective date of Decision 03-12-062, and whose contract with the Utility has expired, or is due to expire before January 1, 2005. Decision 03-12-062 at 55.

<sup>4</sup> Edison’s Petition at 2.

<sup>5</sup> *Id.*

among different QFs. Edison's proposals would do this by creating an unfair distinction between QFs who have expiring short-term SO1 contracts on the one hand, and QFs who have expiring long-term standard offer contracts on the other hand. There is no reasonable basis for discriminating against QFs who signed a one-year SO1 contract in the manner that Edison suggests. The proper result, and the one that the Commission intended in the January Decision, is that *all* QFs whose existing contracts are due to expire before January 1, 2006 – whether those contracts are short-term SO1 contracts or 30-year standard offer contracts – are entitled to obtain a five-year SO1 contract.

## **II. DISCUSSION**

### **A. Decision 03-12-062 And Decision 04-01-050 Are Companion Decisions Addressing Procurement of QF Power During Two Separate Periods, And Must Be Read In Conjunction, Not In The Alternative.**

#### **1. The December Decision adopts an SO1 requirement to ensure continued procurement from QFs during the short-term procurement period encompassed by calendar year 2004.**

Decision 03-12-062 states, on its very first page, that (1) it is the first of two decisions to be issued in this phase of the procurement proceeding, (2) it only seeks to decide issues needing to be resolved prior to January 1, 2004, and (3) it adopts the “short-term procurement plans” under which the Utilities “will operate in 2004.”<sup>6</sup> The December Decision clarifies that all remaining issues, including those presented in the Utilities’ long-term procurement plans, were to be addressed in a future decision, which became Decision 04-01-050.<sup>7</sup>

In the section of the December Decision that addresses procurement from QFs, the Commission specified that “in today’s decision we only address procurement planning activities for the short term,” and confirmed that “we shall focus only on those QF-related issues that must be decided now in order to assure the continued availability

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<sup>6</sup> See Decision 03-12-062 at 2.

<sup>7</sup> *Id.*

of QF power during 2004.”<sup>8</sup> The December Decision further confirms that “for purposes of this Decision, we only need to specifically address the issue of existing QFs with contracts that have expired during 2003 or will expire during 2004,” explaining that “we shall be discussing the larger issues associated with longer-term procurement of QF power in our upcoming policy decision.”<sup>9</sup>

The Commission concluded in the December Decision that “we shall continue in 2004 the policies relating to QFs that we adopted for 2003 in our Interim Decision, D.02-08-071,” a reference to the one-year SO1 requirement that was adopted and put in place for 2003. The December Decision accordingly provides for procurement of QF power during the short-term procurement period by requiring the Utilities to purchase power from eligible QFs under an SO1 contract “until December 31, 2004.”<sup>10</sup>

**2. The January Decision adopts a separate and additional five-year SO1 requirement to ensure continued procurement from QFs during the period that follows the 2004 short-term procurement period.**

The January Decision confirms that the December Decision adopted short-term procurement plans for the Utilities, and that the Commission was now addressing the remaining issues that had not been addressed in the December Decision.<sup>11</sup> The Commission noted that “in D.03-12-062, we directed the IOUs to extend expiring or expired contracts with existing QFs for another year until December 31, 2004.”<sup>12</sup> As the Commission explained, “we did this in order to ensure the continued availability of QF power during 2004 through the use of SO1 contracts.”<sup>13</sup> The Commission clarified that the December Decision “only covers a very limited number of existing QFs,” and that

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<sup>8</sup> *Id.* at 50.

<sup>9</sup> *Id.* at 53. That “upcoming policy decision” was subsequently issued as Decision 04-01-050.

<sup>10</sup> *Id.* at 50 and 55.

<sup>11</sup> *See* Decision 04-01-050 at 2.

<sup>12</sup> Decision 04-01-050 at 134, 154.

<sup>13</sup> *Id.* at 134.

“the larger policy questions arising from the fact that many of the state’s QF facilities have contracts that will be expiring over the next several years remain to be addressed.”<sup>14</sup>

Accordingly, the January Decision specifically discusses the need to design a policy that addresses “QF contracts that expire *after* December 31, 2004, but prior to the completion of” the Commission’s review of QF pricing issues, which is expected to occur by the end of 2005.<sup>15</sup> The Commission concluded that because “the resolution of the key questions relating to how QFs will be paid on a going-forward basis must await completion of our review of the QF pricing methodology, we must continue to provide interim treatment, as we did in Decision 02-08-071 and D.03-12-062, for QF contracts expiring prior to the completion of that review.”<sup>16</sup> Given that the Commission already provided for “interim treatment” for QFs during 2004, the “interim treatment” adopted in the January Decision was intended to ensure procurement from QFs during the period that follows the 2004 short-term procurement period.

In once again adopting “interim treatment” for QFs, the Commission took two actions in its January Decision. First, the Commission extended the period during which QFs with expiring contracts would be eligible for an additional SO1 contract, which builds upon the Commission’s prior decisions addressing QFs in this proceeding. In its Interim Decision issued in August 2002, the Commission provided for SO1 contracts to be available to QFs whose contracts were due to expire prior to January 1, 2004.<sup>17</sup> The December Decision extended the period of eligibility for an SO1 contract by one year, so that QFs whose contracts are set to expire prior to January 1, 2005 are able to obtain an SO1 contract for the duration of 2004.<sup>18</sup> The Commission’s statement in the January Decision that “we are hereby extending the determinations we made in D.03-12-062 with respect to existing QFs with expiring contracts for up to an additional year” is properly

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<sup>14</sup> *Id.* at 154.

<sup>15</sup> *Id.* at 156.

<sup>16</sup> *Id.* at 156-57.

<sup>17</sup> Decision 02-08-071 at 31-32.

<sup>18</sup> Decision 03-12-062 at 55.

interpreted as an extension of the window of eligibility for an SO1 contract, so that eligibility now extends to QFs whose contracts are due to expire before January 1, 2006.<sup>19</sup>

Second, rather than merely providing for an additional one-year SO1 contract for QFs whose contracts will expire before January 1, 2006, the Commission in its January Decision concluded that it was necessary to provide for an SO1 contract with a longer term. The Commission explained that in its prior two interim procurement decisions, “we only required utilities to enter interim SO1 contracts of one year in length.”<sup>20</sup> Explaining that it was persuaded “that a one-year SO1 contract is not sufficient to accomplish some of our goals,” the Commission concluded that merely providing for an additional one-year SO1 contract for 2005 was not enough.<sup>21</sup> As the Commission emphasized, “in particular, we wish to encourage existing QFs to continue providing power over the longer term to the utilities,” and “we also wish to encourage efficiency upgrades to existing facilities.”<sup>22</sup> The Commission found that “neither of these objectives will be met if we continue to offer only stopgap solutions in the form of one-year SO1 contracts.”<sup>23</sup> The Commission therefore opted to “require the utilities to sign SO1 contracts of five years in duration.”<sup>24</sup> The Commission found that adopting this five-year SO1 requirement, rather than merely adopting a one-year SO1 requirement for the third year in a row, was consistent with “the length of the utilities’ general authorization for contracting, with the exception of renewables contracts.”<sup>25</sup>

In adopting these requirements and in referring repeatedly to the December Decision, the January Decision does not once state that the requirements imposed for QF

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<sup>19</sup> Decision 04-01-050 at 157. Extending the availability of SO1 contracts until January 1, 2006 serves a dual purpose – it ensures continued QF procurement while the Commission completes its review of QF pricing issues, and it also allows the Commission to address the critical need to adopt a long-term policy for expiring QF contracts in the newly-opened procurement proceeding in R.04-04-003. *See* Decision 04-01-050 at 4; *see also* Order Instituting Rulemaking in R.04-04-003.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 157-58.

procurement during 2004 are no longer applicable, nor does it suggest that the five-year SO1 requirement was intended to supersede or modify the SO1 requirement adopted in the December Decision in any manner. The January Decision instead builds upon the Commission's prior two interim decisions on QF procurement, this time requiring a five-year SO1 contract instead of a third consecutive one-year SO1 contract.

The plain language of the Commission's decisions demonstrates that the December Decision and the January Decision address separate procurement periods, and as such are properly read in conjunction, not in the alternative. The proper interpretation, and the one that the Commission appears to have intended, is that a QF whose contract expires before or during 2004 would be eligible for an SO1 contract for the duration of 2004 pursuant to the requirements of Decision 03-12-062. That same QF also would be eligible for a subsequent five-year SO1 contract pursuant to the requirements of Decision 04-01-050.<sup>26</sup>

**B. Edison's Proposal Would Discriminate Among QFs By Creating An Unfair Distinction Between QFs With Expiring One-Year SO1 Contracts And QFs With Expiring Long-Term Standard Offer Contracts.**

Edison also seeks to justify its proposed modifications by asserting that it would be "anomalous" and "discriminatory" to allow some QFs to sign up for two separate SO1 contracts with a total cumulative term of six years, while other QFs are only eligible for a single five-year SO1 contract.<sup>27</sup> Contrary to Edison's assertions, the January Decision does not result in inappropriate discrimination. Instead, as explained below, it is Edison who is proposing modifications to the Decision that would unfairly discriminate among different QFs. Edison's proposals would do this by creating an unfair distinction between

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<sup>26</sup> Although Edison's Petition does not address this scenario, a QF whose contract expires *during* 2004 and who has not yet signed an SO1 contract pursuant to the December Decision has the option of electing to do one of two things under the two decisions. First, the QF could elect to sign an SO1 contract for the balance of 2004 pursuant to the December Decision, and also could elect to sign a separate five-year SO1 contract that would become effective as of January 1, 2005. Second, as an alternate approach, the same QF could elect to sign a five-year SO1 contract pursuant to the January Decision without signing a separate SO1 contract for the balance of 2004. The plain language of the two decisions gives the QF the option of choosing between these two approaches and allows the QF to elect to take one approach or the other in its discretion.

<sup>27</sup> Edison's Petition at 2.

QFs who have expiring short-term SO1 contracts on the one hand, and QFs who have expiring long-term standard offer contracts on the other hand.

The unfairness of Edison's proposed modifications are illustrated by the following example. Assume that QF Party A's long-term standard offer contract with a Utility expired in 2003. To facilitate its continued operations, assume that QF Party A obtained a short-term SO1 contract for 2004 pursuant to the requirements of the December Decision. Now assume that QF Party B has a 30-year standard offer contract with the Utility that is due to expire on December 31, 2005. Under Edison's proposed modifications to the January Decision, QF Party A, which has operated under a "stop gap" SO1 contract solution during 2004, would only be eligible for a four-year SO1 contract thereafter. In contrast, QF Party B, which will continue to operate under a long-term contract through the end of 2005, would be eligible for a five-year SO1 contract under the same Decision.

There is no reasonable basis for discriminating against QFs that signed one-year SO1 contracts in the manner that Edison suggests. In the January Decision, the Commission explicitly ordered the Utilities to offer a five-year SO1 contract to any eligible QF whose contract either already has expired, or is due to expire at any time before January 1, 2006, without limiting the availability or term of those contracts based on a QF's eligibility for one of the SO1 contracts that has been required in past decisions. The language chosen by the Commission demonstrates that its focus was on ensuring continued Utility procurement from existing QFs for at least five years beyond the expiration of all contracts that are due to expire prior to the end of 2005. As explicitly stated in Conclusion of Law No. 37, "Renewal of existing QF contracts should be required for *a minimum of five years*, using the SO1 contract structure at existing SRAC prices."<sup>28</sup> This language confirms the Commission's intent and purpose in requiring the Utilities to offer five-year SO1 contracts to *all* QFs meeting the eligibility requirements specified in the Decision. The proper result, and the one that the Commission intended, is that *all* QFs whose existing contracts are due to expire before January 1, 2006 –

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<sup>28</sup> See Decision 04-01-050 at 198 (emphasis added).

whether those contracts are short-term SO1 contracts or 30-year standard offer contracts  
– are entitled to obtain a five-year SO1 contract.

### **III. CONCLUSION**

For the reasons discussed above, the Commission should reject Edison's Petition.  
Counsel for the CCC is authorized to execute this response on behalf of CalWEA.

Respectfully submitted,



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Lisa Cottle

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April 15, 2004

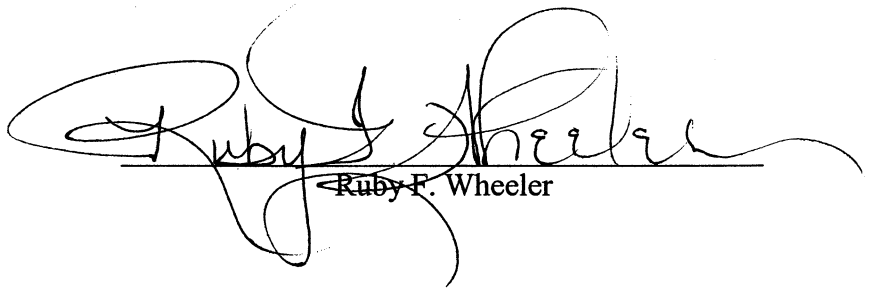
## Certificate of Service

I hereby certify that I have this day served a copy of the

***Response of the California Cogeneration Council and the California Wind Energy Association in Opposition to Southern California Edison Company's Petition for Modification of Decision 04-01-050***

On all known parties to R.01-10-024 by mailing a properly addressed copy by first-class mail with postage prepared to each party named in the official service list.

Executed on April 15, 2004, at San Francisco, California.



Ruby F. Wheeler