

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

RECEIVED

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January 15, 1998

1215-E
Advice Letter: 1215-E-A**P. S. GOEDDEL**Mr. Peter S. Goeddel
Manager, Pricing and Tariffs
Southern California Edison Company
P.O. Box 800
Rosemead, CA 91770Subject: Supplement to the
Standard Form Nondis-
closure Agreement for
Flexible Pricing Options
Contracts

Dear Mr. Goeddel:

The Commission approved your Advice Letter (s) No.1215-E-A with an effective date of December 20, 1997, per Resolution E-3505 dated October 9, 1997. We are returning one copy of the Advice Letter(s) and associated tariffs with the effective dates of December ^{20 1997} 20, 1997 shown thereon for your records.

Sincerely,

A handwritten signature in black ink, appearing to read "K.P. Coughlan".

Kevin P. Coughlan, Chief, IMC Branch
Energy Division

October 19, 2007

ADVICE 1215-E
(U 338-E)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
ENERGY DIVISION

SUBJECT: **Standard Form Nondisclosure Agreement For Flexible Pricing
Options Contracts**

Southern California Edison Company (“Edison” or “Company”), an *Edison International* company, hereby transmits for filing Standard Form No. 41-346 which contains a standard non-disclosure agreement for contracts associated with the recently approved Flexible Pricing Options (“FPOs”).

PURPOSE

This Advice Letter is provided in compliance with Ordering Paragraph Nos. 11 and 12 of Decision No. 96-08-025 (“D.96-08-025”) issued in Phase 2B of Edison’s 1995 General Rate Case, which approved Edison’s FPOs. In that decision, the Commission ordered Edison to make available FPO contracts and related documentation for review by third parties who are neither Edison’s competitors, nor competitors of Edison’s customers, once those third parties submit to the terms of a Commission-approved standard form nondisclosure agreement. The purpose of this Advice Letter is to submit such a standard form nondisclosure agreement (Form No. 41-346) for Commission review and approval by resolution.

INFORMATION

In the reporting requirements section of D.96-08-025, the Commission identified the need for third parties to obtain information from Edison that is “essential to the review of a particular [FPO] contract” (D.96-08-025 at 84 (*mimeo*)), as an additional mechanism for ensuring Edison’s compliance with the terms of D.96-08-025:

[The] reporting requirements, coupled with our adopted ratemaking treatment, reduce the burdens of subsequent reasonableness reviews, as that review will merely verify the accuracy of the tracking and the

allocation of expenses to discount activities. *However, if it appears that Edison might not be in compliance with today's adopted decision, DRA, TURN, or any other party may bring the violation to our attention by complaint or appropriate motion.*

Id. at 84-85 (*mimeo*), emphasis supplied. However, the Commission also observed the highly confidential and sensitive nature of the content of the FPO contracts and related documentation (*Id.* at 83-84; *see also* D.95-10-033, *cited with approval in* D.96-08-025 at 84^{1/}), and instituted a number of safeguards to protect Edison and Edison's customers from being obligated to produce such commercially sensitive information to their respective competitors. *See, e.g.*, D.96-08-025 at 83-84.

In that regard, the Commission directed Edison to prepare a standard form non-disclosure agreement which must be signed before an FPO contract, or related information, can be inspected by a third party. The Commission directed that the standard form agreement be prepared in a manner which protects confidential customer information (*i.e.*, information which should not be disclosed to Edison's customers' competitors), as well as information that should not be disclosed to Edison's competitors. *See* D. 96-08-025, at 84.

Edison can identify requesting parties who are its competitors, and decline to produce sensitive information to those parties, in conformity with the Commission's directive. However, Edison is not qualified to determine which requesting third parties are competitors of its customers, and cannot without assistance be responsible for policing the disclosure *vel non* of its customers' commercially sensitive information. As a consequence, the non-disclosure agreement contained in Standard Form No. 41-346 undertakes to protect customer information by allowing *the affected Edison customer itself* to determine whether or not the third party seeking its confidential contract information is its competitor. If Edison's customer determines that the requesting third party *is* one of its competitors, Edison will be prevented from producing the requested information. At that point, the requesting third party may file a motion before the Law and Motion Docket of the Commission to obtain access to the disputed information. Edison shall comply with the decision of the Commission upon any such motion to produce or withhold the requested documentation.

This Advice Letter does not result in a rate increase, withdrawal of service, or more restrictive conditions.

^{1/} “[T]he need for [such] confidentiality is crucial [to both [the utility] and its customers. From the customer's perspective, sensitive competitive or proprietary information must be divulged . . . during negotiations. They are rightly concerned that unlimited public review of customer financial and facility operation data could provide enough information to competitors to diminish or eliminate the value of any discounts provided under the contract. According to [the utility], this is especially true in industries in which one company's competitors could easily deduce other competitive information disclosed pursuant to these agreements.” D.95-10-033 at 44 (*mimeo*).

This discussion demonstrates that the Commission has previously noted the potential for misuse of sensitive customer information. Such misuse can occur even when the information was originally disclosed for proper purposes. Based on the foregoing, Edison strongly believes that information properly disclosed to third parties under D.96-08-025 be restricted in use to the single purpose for which it was originally produced, namely, to ensure that Edison is in compliance with the Decision. This use restriction will strike the appropriate balance by meeting the Commission objective of allowing third party access while simultaneously protecting Edison and its customers from the danger of subsequent sale, disclosure, or other misuse of their proprietary information.

No cost information is required for this Advice Letter.

EFFECTIVE DATE

In compliance with Ordering Paragraph No. 12 of D.96-08-025, a Commission Resolution is required to approve the standard form non-disclosure agreement. Accordingly, Edison requests that this Advice Letter filing become effective by Commission Resolution no later than forty (40) days from the filing date which is February 26, 1997.

NOTICE

Anyone wishing to protest this Filing may do so by letter or telegram to the Energy Division Chief, CALIFORNIA PUBLIC UTILITIES COMMISSION, Room 3102, 505 Van Ness Avenue, San Francisco, California 94102, with a copy to Deputy Director - Energy, CALIFORNIA PUBLIC UTILITIES COMMISSION, Room 3211, at the same address. The protest must be received by the Commission no later than twenty (20) days after the date of this Filing. However, a copy shall also be mailed to the attention of the undersigned at SOUTHERN CALIFORNIA EDISON COMPANY, 2244 Walnut Grove Avenue, Rosemead, California 91770. There is no restriction on who may file a protest, but the protest shall set forth specifically the grounds upon which it is based.

In compliance with Section III, Paragraph G of General Order No. 96-A, copies of this Filing are being furnished to the parties on the attached list. Further, in accordance with Public Utilities Code Section 491, notice to the public is hereby given by filing and keeping open for public inspection at the Company's corporate headquarters the Advice Filing stating the changes to be made and the time when the changes will become effective.

JWI:jgm:

Enclosures

cc: CPUC, SF - Attn: Paul Clanon, Energy Division
CPUC, SF - Attn: Elena Schmid, ORA
CPUC, SF - Attn: Michael D. McNamara, ORA
CPUC, SF - Attn: Juanita Porter, Energy Division