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March 30, 2000

**ADVICE 1445-E**  
**(U 338-E)**

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
ENERGY DIVISION

**SUBJECT:**     **Deviation to Rule 15, Distribution Line Extension Contract  
for the National Guard**

Southern California Edison Company (SCE) hereby submits for filing the following changes to its tariff schedules. The revised tariff sheets are listed on Attachment A and are attached hereto.

**PURPOSE**

This advice filing establishes a deviation from Form No. 16-330, Contract for Extension of Electric Distribution Line, Rule 15 (Form 16-330). Specifically, Section 3.12, Indemnification, of the contract has been replaced with an alternate provision entitled "Reimbursement" specific to the California National Guard. SCE's List of Contracts and Deviations is revised to reflect this deviation.

**BACKGROUND**

The California National Guard has requested that SCE install a line extension to provide electric power to its military facility located in Los Angeles. SCE's Rule 15 and Form No. 16-330 governs line extensions installed by SCE. Section 3.12 of Form 16-330 contains an indemnification provision (the "Indemnification Provision") that provides:

"Applicant shall, at its own costs, defend, indemnify, and hold harmless SCE, its officers, agents, employees, assigns, and successor in interest from and against any and all liability, damages, losses, claims, demands, actions, causes of action, costs including attorney's fees and expenses, or any of them, resulting from the death or injury to any person or damages to any property caused by Applicant or its

contractor and employees, officers or agents of either Applicant or its contractor, or any of them, and arising out of the performance or nonperformance of their obligations under this Contract.”

The National Guard and SCE have had a series of discussions regarding the Indemnification Provision. The National Guard has represented to SCE that it cannot legally agree to the language included in the Indemnification Provision. In particular, the National Guard, the Department of General Services and legal counsel for both of these entities have represented to SCE that state agencies, such as the National Guard, can only agree to indemnify a third party, such as SCE, if they have specific statutory authorization from the State legislature, and that no such authorization has been given for utility contracts. SCE has asked for further clarification of the basis for the National Guard’s position. The parties have not been able to reach a final agreement as to the National Guard’s ability to agree to the Indemnification Provision. In the absence of such an agreement, the parties do not believe it would be prudent to enter into the contract containing the Indemnification Provision, because the result would be that parties would knowingly have no “meeting of the minds” as to the legal effect of the Indemnification Provision. Further, the National Guard has represented to SCE that there are exigent circumstances that require that the line extension be completed as soon as possible.

General Order (G.O.) 96-A, Section X(B), Governmental Agencies, states:

“Notwithstanding the provisions contained in subsection A hereof, a public utility of a class specified herein, except telecommunications utilities may, if it so desires, furnish service at free or reduced rates or under conditions otherwise departing from its filed tariff schedules to the United States and to its departments and to the State of California and its political subdivisions and municipal corporations, including the departments thereof, and to public fairs and celebrations. The utility shall promptly advise the Commission thereof by Advice Letter and, where a contract has been entered into, submit four copies of such contract and Advice Letter for filing.”

This provision of G.O. 96-A authorizes SCE to deviate from its form contracts with a State agency and then to advise the Commission of such deviation by the filing of an advice letter. This provision also authorizes the Commission to open a proceeding to review the contract deviation if it deems it necessary. Therefore, based on representations from the National Guard, the Department of General Services, and their legal counsel that the National Guard cannot legally enter into the Indemnification Provision and that there is an exigent need for completion of the line extension, SCE and the National Guard have agreed to substitute the Indemnification Provision with alternate language (the “Alternate Indemnification

Provision"). The Alternate Indemnification Provision is set forth as Section 3.12 entitled *Reimbursement* of Form 16-330 attached to this advice letter as well as a redline version to show the changes made to the agreement. SCE has agreed to the Alternate Indemnification Provision for this particular instance because it has concluded that such alternate provision does not significantly affect or alter SCE's substantive rights under the Indemnification Provision or deprive SCE from the basic purpose of the Indemnification provision – *i.e.*, to allow SCE to recover from the National Guard the costs incurred from any claims made against SCE due to the National Guard in its performance or non-performance of the Electric Distribution Line Agreement. The Alternate Indemnification Provision essentially allows the National Guard to reimburse SCE for its costs for such claims rather than defend SCE from such claims. Both parties agree that this language is legally effective.

SCE and the National Guard also have agreed that the National Guard/State of California will not request that the Alternative Indemnification Provision or any language other than the standard Indemnification Provision be substituted for the Indemnification Provision in any other SCE form contract unless and until SCE and the National Guard reach further agreement as to the State's inability to enter into the Indemnification Provision.

No cost information is required for this advice filing.

This advice filing will not increase any rate or charge, cause the withdrawal of service, or conflict with any other schedule or rule. No resolution is required for the approval of this filing.

### **EFFECTIVE DATE**

The changes requested in this advice filing will become effective on the 40<sup>th</sup> calendar day after the date filed, which is May 9, 2000.

### **NOTICE**

Anyone wishing to protest this advice filing may do so by letter or facsimile and received by SCE no later than 20 days after the date of this advice filing. Protests should be mailed to:

IMC Program Manager  
Energy Division  
California Public Utilities Commission  
505 Van Ness Avenue, Room 4002  
San Francisco, California 94102  
Facsimile: (415) 703-2200

Copies should also be sent to the attention of the Director, Energy Division, Room 4004 (same address above), and Donald A. Fellows, Manager of Revenue and Tariffs, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770, Facsimile (626) 302-4829. There are no restrictions on who may file a protest, but the protest shall set forth specifically the grounds upon which it is based and shall be submitted expeditiously.

In accordance with Section III, Paragraph G, of General Order No. 96-A, SCE is mailing copies of this advice filing to the interested parties shown on the attached service list. Address change requests to the attached service list should be directed to Emelyn Lawler at (626) 302-3985.

Further, in accordance with Public Utilities Code Section 491, notice to the public is hereby given by filing and keeping the advice filing open for public inspection at SCE's corporate headquarters.

**Southern California Edison Company**

Donald A. Fellows, Jr.

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Enclosures