

PUBLIC UTILITIES COMMISSION

SAN FRANCISCO, CA 94102-3296



May 28, 2003

Advice Letter: 1686-E

Akbar Jazayeri
Director of Revenue and Tariffs
Southern California Edison Company
P O Box 800
Rosemead, CA 91770

JUN 03 2003

REVENUE & TARIFFS DEPT.

Reference: Request for resolution approving as reasonable master definitive agreement with Enron Wind LLC, ESI Sky River Ltd. Partnership, ESI VG Ltd. Partnership, et. al

Dear Mr. Jazayeri:

Advice Letter 1686-E is effective May 22, 2003 by Resolution E-3828. A copy of the advice letter is included herewith for your records.

Sincerely,

A handwritten signature in cursive script that reads "Paul Clanon".

Paul Clanon, Director
Energy Division

jjr

PUBLIC VERSION
REDACTED PURSUANT TO PUB. UTIL. CODE SECTION 583
AND GENERAL ORDER 66-C

February 14, 2003

ADVICE 1686-E
(U 338-E)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
ENERGY DIVISION

SUBJECT: REQUEST FOR RESOLUTION APPROVING AS REASONABLE MASTER DEFINITIVE AGREEMENT AMONG SOUTHERN CALIFORNIA EDISON COMPANY, ENRON WIND LLC, ESI SKY RIVER LIMITED PARTNERSHIP, ESI VG LIMITED PARTNERSHIP, ET AL. AND RELATED AMENDMENTS TO POWER PURCHASE AGREEMENTS BETWEEN SOUTHERN CALIFORNIA EDISON COMPANY AND CERTAIN SMALL POWER PRODUCTION FACILITIES (QFID NOS. 6004, 6039, 6040, 6041, 6042, 6043, 6044, 6065, 6066, 6067, 6102, 6103, 6104, 6105, 6106, 6107, 6108, 6111 & 6112)

Southern California Edison Company ("SCE") hereby transmits for filing a Master Definitive Agreement Among Southern California Edison Company, Enron Wind LLC, ESI Sky River Partnership, ESI VG Limited Partnership and PPA Sellers dated January 15, 2003 (the "MDA") and nineteen (19) related amendments to power purchase agreements ("PPAs") for certain wind technology small power production facilities (QFID Nos. 6004, 6039, 6040, 6041, 6042, 6043, 6044, 6065, 6066, 6067, 6102, 6103, 6104, 6105, 6106, 6107, 6108, 6111 & 6112) ("PPA Amendments").

1. PURPOSE

Pursuant to Decision (“D.”) 98-12-066, SCE seeks a Resolution by the California Public Utilities Commission (“Commission”) approving the MDA and PPA Amendments as reasonable. As demonstrated in Appendix A, provided concurrently with this Advice Letter as Attachment 5, the Commission’s approval of the MDA and the related PPA Amendments, and the contract restructurings provided for therein will:

- Result in substantial ratepayer savings when compared to the *status quo*.
- Facilitate the resolution of several ongoing disputes among the parties that have been raised in a number of forums, including the Securities and Exchange Commission (“SEC”), the Federal Energy Regulatory Commission (“FERC”), the United States Bankruptcy Court and the Los Angeles Superior Court. These disputes generally concern the issue of whether the subject wind energy projects, all of which are owned in whole or in part by affiliates of Enron Corp., have maintained their status as qualifying facilities (“QFs”) in selling their output to SCE under the PPAs.
- Remove substantial uncertainty concerning the viability of the projects themselves, thereby helping to sustain the existing renewable base in the state.
- Leave intact potential claims against Enron and others that are not directly related to the QF ownership issues resolved in the MDA, such as potential claims for manipulation of the natural gas and electricity markets.

SCE seeks a final and non-appealable Order, Decision or Resolution of the Commission approving the reasonableness of the MDA and the related PPA Amendments as soon as possible, but in any event, no later than June 14, 2003 (which date makes allowance for the 30 day period for applications for rehearing). As discussed in Appendix A (Attachment 5), the effectiveness of the MDA is conditioned on the Commission issuing a final order that has become non-appealable, meaning that the 30-day period for filing an application for rehearing from the Commission has elapsed without such an application having been filed.¹ As indicated in Confidential Attachment 4, the Office of Ratepayer Advocates (“ORA”) does not oppose this filing being processed in the most expeditious manner as a Restructuring Advice Letter Filing (“RALF”).²

¹ Filing of a timely application for rehearing is a jurisdictional requirement for further review of Commission decisions in the courts. Pub. Util. Code Section 1731(b).

² See, D.96-12-066, Attachment B.

This RALF requests the Commission to adopt a resolution at the earliest possible time:

- (1) Approving the MDA as reasonable in all respects;
- (2) Finding that the PPA Amendments entered into concurrently with and pursuant to the MDA are likewise reasonable in all respects; and
- (3) Providing that all payments made pursuant to the MDA and the PPA Amendments are fully recoverable in SCE's retail rates subject only to review by the Commission with respect to the reasonableness of SCE's administration of the PPAs, as amended.

2. PROJECT OWNERSHIP

As defined in the MDA, the PPA Sellers under the PPAs and the PPA Amendments are Cabazon Power Partners LLC, Enron Wind Systems, LLC, Zond Wind Systems Partners Ltd., Series 85-A, Zond Wind Systems Partners Ltd., Series 85-B, Sky River Partnership, Victory Garden Phase IV Partnership, ZWHC LLC and Painted Hills Wind Developers.

Each of the PPA Sellers is a party to a PPA with SCE that provides for the sale to SCE of electric energy and capacity from wind-powered electric generating projects. Each PPA Seller and the wind energy project facility (as identified above by QFID number) producing power under the related PPA are hereinafter sometimes referred to jointly as a "Project" and, collectively, with the Projects associated with the other PPA Sellers as the "Projects."

Enron Wind LLC is an affiliate of Enron Corp. and is referred to hereinafter as "Enron." ESI Sky River Partnership and ESI VG Partnership are affiliates of FPL Energy and are referred to hereinafter, collectively, as "FPL." FPL and/or Enron, directly or indirectly, through their respective affiliates, have an interest in each of the Projects.

3. PROJECT DESCRIPTION

SCE's power purchases from the Projects are made in accordance with the terms and conditions of the PPAs, which were entered into under the mandatory purchase requirements of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), FERC's regulations implementing PURPA (18 C.F.R. § 292.101 *et seq.* (2002)), and decisions and orders of the Commission implementing PURPA in California. These PPAs account for approximately 252 MW of installed electric wind generating capacity. The PPAs are based on Commission-approved standard offer forms and

all provide for 30-year terms. Entered into between June 22, 1984 and April 16, 1985, the PPAs will expire during the years 2014 through 2021. Energy deliveries by the Projects during 2002 collectively totaled approximately 575 GWh, representing about 26 percent of total energy deliveries from facilities employing wind technology under contract with SCE and about 5 percent of total deliveries to SCE during that period from all renewable resources. Pertinent details concerning each Project are provided concurrently herewith in Confidential Appendix B, Attachments 6A-6S (on CD ROM).

4. RATEPAYER BENEFIT

ORA has described the ratepayer benefits achieved by the MDA and related PPA Amendments as “clearly substantial” and “major economic concessions.” Confidential Attachment 4, at 2. Indeed, the MDA and related PPA Amendments represent the single largest instance of ratepayer benefit achieved through a one-time price adjustment to small power production facility contracts that SCE has ever presented to the Commission for approval.

5. OTHER BENEFITS

In addition to securing substantial economic benefits for ratepayers, the Commission’s issuance of a resolution pursuant to this RALF approving the MDA and related PPA Amendments will promote certainty in the contractual relationships between SCE and the PPA Sellers. Over the last two years, SCE and the PPA Sellers have been parties to litigation and regulatory proceedings in the Superior Court, the United States Bankruptcy Court, the SEC and FERC concerning, among other things, whether the projects are in compliance with the ownership restrictions of the Public Utility Regulatory Policies Act of 1978 (“PURPA”) as set forth in FERC’s implementing regulations. *See*, 18 C.F.R. § 292.206.

The MDA and PPA Amendments provide that, in consideration of the economic benefits described above, SCE will release claims based on the projects’ asserted failure to comply with ownership restrictions for small power production facilities under PURPA and will waive certain requirements with respect to the projects going forward. For all other purposes, however, SCE will continue to treat the projects as wind generation qualifying facilities (“QFs”) within the meaning of PURPA, and the projects and associated PPAs will continue to be administered in accordance with Commission decisions related to rates and other issues insofar as those decisions apply to QF projects generally. SCE’s release removes a significant cloud over these Projects and will allow the Projects to continue to operate at historic levels without the expense and distraction of ongoing litigation and regulatory proceedings and

litigation matters. In this regard, the MDA and PPA Amendments are consistent with State policies and legislation encouraging the maintenance and development of renewable resources such as the Projects. As recognized by ORA, “[i]n evaluating the settlement outcome . . . , weight [should be given] to the continuity of operations of these renewable resources.” Confidential Attachment 4, at 2.

SCE’s release does not extend to claims beyond those specifically identified in the release provisions of the MDA, such as claims against Enron and its affiliates for manipulation of the electricity and natural gas markets.

6. EFFECTIVE DATE; CPUC APPROVAL

The effectiveness of the waiver and release provisions of the MDA, like the economic terms, is conditioned on regulatory and bankruptcy court approvals, including timely CPUC Approval, as provided in the MDA, being obtained or waived. CPUC Approval must occur on or before June 14, 2003 (to allow for the 30-day period to seek rehearing to expire) in order for certain terms of the MDA to become effective. The requirements of the MDA pertaining to CPUC Approval and other regulatory and court approvals are found in Article 15 of the MDA, and are discussed in greater detail in Confidential Attachment 5 provided concurrently herewith as Appendix A.

7. ATTACHMENTS

An Index of Attachments to this RALF is provided concurrently herewith as Attachment 1.

As required by D.98-12-066, *mimeo*, Attachment B, ¶3j, true and correct copies of the MDA and PPA Amendments for each of the Projects are attached hereto as Confidential Attachments 2 and 3A-3S, respectively.

Confidential Attachment 4 is a true and correct copy of a letter from the ORA to SCE dated February 10, 2003, as required by D.96-12-028, *mimeo*, at 22, Conclusion of Law 9.

True and correct copies of the PPAs, related amendments thereto, Renewable Agreements and amendments thereto (as discussed in Appendix A) for each of the Projects, as required by D.98-12-066, *mimeo*, Attachment B, ¶3i, are provided concurrently herewith in Appendix B (on CD ROM) as Confidential Attachments 6A-6S. In addition, Confidential Attachments 6A-6S contain an identification of each QF, location of the QFs generating facility, a brief description of the generating

facility size, type of technology and other pertinent characteristics as required by D.98-12-066, *mimeo*, Attachment B, ¶3a. In addition, Confidential Attachments 6A-6S provide information concerning the ownership of the Projects as well as a detailed description of the historical operational performance of the Projects including historical production, as required by D.98-12-066, *mimeo*, Attachment B, ¶¶3b and 3c.

As required by D.98-12-066, *mimeo*, Attachment B, ¶¶3d-h, Appendix A, provided concurrently herewith as Confidential Attachment 5, provides a both summary and detailed discussion of the material terms of the MDA and the PPA Amendments, the relevant factual background pertaining to the Projects, a discussion of the procedural history and status of various litigation and regulatory proceedings arising from disputes among SCE, on the one hand, and Enron, FPL and the PPA Sellers, on the other, concerning the Projects, and an assessment of the ratepayer benefits associated with the MDA and PPA Amendments.

8. ORA STATEMENT OF SUPPORT OR NEUTRALITY

Pursuant to the procedure established in D.98-12-066, SCE has sought and obtained a statement of support or neutrality from the ORA. In response to this request, ORA's Senior Manager for Electricity Rates & Pricing Branch, Scott Cauchois provided a letter to SCE's Director of QF Resources, Lars E. Bergmann, dated February 10, 2003, which states, in pertinent part, that, "ORA has determined that this settlement provides past, present and future rate reductions relative to the status quo. ORA does not oppose this filing being processed in the most expeditious manner as a RALF." Confidential Attachment 4.

9. CONFIDENTIALITY

D.98-12-066, Attachment B, ¶4a-h provides that the publicly available version of a RALF may be redacted to delete certain types of information. Further, the MDA and the PPA Amendments require the parties thereto seek confidentiality treatment with respect to filings seeking regulatory approval of those agreements. Therefore, SCE has submitted for filing both public and non-public versions of the RALF and related attachments and appendices. In the public version of the RALF, portions of Confidential Attachments 2, 3A-3S, 4, 5 and 6A-6S are redacted in their entirety.

10. NOTICE

Anyone wishing to protest or respond to this RALF may do so by submitting such protest or response no later than twenty (20) days after the date that this RALF is

first reported in the Commission's Daily Calendar. The protest or response should be submitted to:

IMC Program Manager
Energy Division
c/o Jerry Royer
California Public Utilities Commission
505 Van Ness Avenue, Room 4002
San Francisco, California 94102
Facsimile: (415) 703-2200
e-mail: jjr@cpuc.ca.gov

with a copy to Director, Energy Division, Room 4004, California Public Utilities Commission at the same address. Concurrently, the protest or response shall be served on SCE by facsimile or e-mail as follows:

Akbar Jazayeri
Director of Revenue and Tariffs
c/o Emelyn Lawler
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, California 91770
Facsimile: (626) 302-4829
e-mail: emelyn.lawler@sce.com

with a copy to

James B. Woodruff
Senior Attorney
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, California 91770
Facsimile: (626) 302-1904
e-mail: james.woodruff@sce.com

and an additional copy to

Bruce C. Foster
Vice President
c/o Karyn Gansecki
Southern California Edison Company
601 Van Ness Avenue, Suite 2040
San Francisco, CA 94102
Facsimile: (415) 474-3080
e-mail: karyn.gansecki@sce.com

There are no restrictions on who may file a protest or response, but the protest or response shall set forth specifically the grounds upon which it is based and shall be submitted expeditiously. Pursuant to D.98-12-066, this RALF may be protested on one or more of the following grounds:

- a. SCE did not properly serve or give notice of the advice letter;
- b. The relief requested in the advice letter would violate statute or Commission order;
- c. The advice letter contains material errors, or it does not follow the Commission's approved methodology, if any; or
- d. The proposed restructuring is unjust, unreasonable, or discriminatory, provided, however, that this advice letter is not subject to protest on these grounds if such protest would require relitigating a prior order of

the Commission.

11. SERVICE

D.98-12-066 provides that RALFs should be served on SCE's restructuring advice letter service list and any other third parties as specified by the Energy Division or other Commission order, or statute. However, D.03-01-034 closed the restructuring dockets effective January 16, 2003. Therefore, SCE is serving the public version of this RALF in accordance with Section III, Paragraph G, of General Order No. 96-A. SCE will serve additional parties as directed by the Energy Division. Address change requests should be directed to Emelyn Lawler at (626) 302-3985, facsimile (626) 302-4829, e-mail Emelyn.Lawler@sce.com.

Further, in accordance with Public Utilities Code Section 491, notice to the public is hereby given by filing and keeping the RALF open for public inspection at SCE's corporate headquarters at the address indicated above. To view this filing and other SCE advice letters filed with the Commission, log on to <http://www.sce.com/adviceletters>.

For questions, please contact James Woodruff at (626) 302-1924 or by electronic mail at james.woodruff@sce.com.

Southern California Edison Company

Akbar Jazayeri

cc: Steve Linsey (via electronic mail)
Scott Cauchois (via electronic mail)

ATTACHMENT 1
INDEX OF ATTACHMENTS

INDEX OF ATTACHMENTS

Attachment 1	Index of Attachments
Attachment 2	Master Definitive Agreement Among Southern California Edison Company, Enron Wind LLC, ESI Sky River Limited Partnership, ESI VG Limited Partnership and PPA Sellers dated January 15, 2003 [REDACTED IN PUBLIC VERSION]
Attachment 3A-3S	PPA Amendments For QFID Nos. 6004, 6039, 6040, 6041, 6042, 6043, 6044, 6065, 6066, 6067, 6102, 6103, 6104, 6105, 6106, 6107, 6108, 6111 & 6112 [REDACTED IN PUBLIC VERSION]
Attachment 4	ORA letter dated February 10, 2003 [REDACTED IN PUBLIC VERSION]
Attachment 5	Appendix A: Description of MDA and PPA Amendments; Discussion of Factual Background, Legal Issues, Matters in Dispute and Reasonableness Analysis [REDACTED IN PUBLIC VERISON]
Attachment 6A-6S	Appendix B (on CD-ROM): Ownership, Historic Delivery, Site Data and Supporting PPAs, PPA Amendments, Renewable Agreements and Amendments to Renewable Agreements for QFID Nos. 6004, 6039, 6040, 6041, 6042, 6043, 6044, 6065,6066, 6067, 6102, 6103, 6104, 6105, 6106, 6107, 6108, 6111 & 6112 [REDACTED IN PUBLIC VERSION]

CONFIDENTIAL ATTACHMENT 2

**Master Definitive Agreement Among Southern California Edison Company,
Enron Wind LLC, ESI Sky River Partnership, ESI VG Limited Partnership
and PPA Sellers Dated January 15, 2003**

CONFIDENTIAL ATTACHMENT 3A-3S

Amendments Dated January 15, 2003 To Power Purchase Agreements
For QFID Nos. **6004, 6039, 6040, 6041, 6042, 6043, 6044, 6065, 6066, 6067,**
6102, 6103, 6104, 6105, 6106, 6107, 6108, 6111 & 6112

CONFIDENTIAL ATTACHMENT 4

**Letter Dated February 10, 2003 From Office Of Ratepayer Advocates To
Southern California Edison Company**

CONFIDENTIAL ATTACHMENT 5

APPENDIX A

**ANALYSIS OF MATERIAL TERMS OF THE MASTER DEFINITIVE
AGREEMENT AND PPA AMENDMENTS, PERTINENT FACTUAL
BACKGROUND, REGULATORY PROCEEDINGS, LITIGATION,
RATEPAYER BENEFITS AND REASONABLENESS**

CONFIDENTIAL ATTACHMENT 6A-6S

APPENDIX B

(On CD-ROM)

**Ownership, Historic Delivery, Site Data And Supporting PPAs, PPA
Amendments, Renewable Agreements And Amendments To Renewable
Agreements For QFID Nos. 6004, 6039, 6040, 6041, 6042, 6043, 6044,
6065,6066, 6067, 6102, 6103, 6104, 6105, 6106, 6107, 6108, 6111 & 6112**