September 25, 1997

VIA FACSIMILE & U.S. MAIL

Bruce Kaneshiro, Project Manager
c/o Environmental Science Associates
225 Bush Street, Suite 1700
San Francisco, CA 94104

Re: Edison Divestiture Application (A.96-11-046)

Dear Mr. Kaneshiro:

[Begin E-1]
Southern California Edison Company is pleased to submit these comments on the Mitigated Negative Declaration ("MND") and the Initial Study ("IS") issued by the Commission on August 24, 1997, regarding Edison's application to sell twelve powerplants. As we have discussed with you, the mitigation measures identified in the MND are acceptable to Edison and Edison will modify its divestiture of the powerplants as described in those mitigation measures. (As discussed below, however, one of the mitigation measures has already been satisfied through a regulatory change and therefore no longer needs to be included). [End E-1] [Begin E-2]In submitting these comments, however, Edison wishes to emphasize that our agreement on mitigation measures does not constitute an agreement with the Commission's threshold legal conclusion, reflected in the IS and MND, that Edison's sale and transfer of the plants is a "project" subject to CEQA. Also, we wish to reiterate that our agreement with the MND in no way implies that we concur with or endorse all of the economic analysis or forecasts accompanying the IS, although we are pleased to note that the IS now correctly concludes that any prediction of increase in generation due to divestiture is too speculative to form the basis for requiring an EIR or mitigation measures addressing increased generation.
[End E-2]

[Begin E-3]
In considering and responding to comments received during this comment period and preparing its CEQA findings, we request that the Commission consider the information contained in our PEA and comments on the Draft Initial Study and we hereby incorporate those prior documents by reference.
[End E-3]

Finally, in these comments we also provide updated information regarding the lot-line adjustment applications at several facilities that were pending when the IS and MND were being prepared. This updated information does not alter or affect any of the conclusions in the IS or MND, but we provide it to you so that the public has the most complete information available regarding the divestiture.

[Begin E-4]

1. **MDAQMD Rule 1158 has been revised to apply to non-utilities.**

The MND includes a mitigation measure intended to ensure that the Cool Water Generating Station would continue to be subject to NOx emission limits in Mojave Desert Air Quality Management District ("MDAQMD") Rule 1158 even if that rule were not revised by the time of the sale of the plant to clearly apply to non-utilities. (MND at page 3.) The governing board of the MDAQMD adopted appropriate revisions to Rule 1158 on August 25, 1997, clarifying that the plant remains subject to the rule regardless of whether it is owned by a utility. (A copy of the revised rule is attached hereto as Attachment A.) Accordingly, this mitigation measure can and should be removed from the MND.

[End E-4]

[Begin E-5]

2. Because the Commission lacks legal discretion to completely prohibit the sale and transfer of the plants, such sale and transfer itself is not a "project" subject to CEQA.

As you know, it consistently has been Edison's position that the sale and transfer of ownership of the powerplants is not subject to CEQA, for several reasons. First, as discussed in the Proponent's Environmental Assessment ("PEA") filed with Edison's Divestiture Application, the sale and transfer of the facilities will not cause any direct, or reasonably foreseeable indirect, physical changes to the environment, and therefore does not meet the CEQA definition of "project." (Pub. Res. Code ' 21065) In addition, as also mentioned in the PEA, even if the divestiture of the plants were a "project" under CEQA, it would fall within the categorical exemption from CEQA for existing facilities. (14 C.C.R. ' 15301)
[End E-5]

[Begin E-6]
Moreover, in addition to the other bases for Edison's position, Edison has pointed out in response to the Commission's Draft Initial Study ("DIS") (specifically, the DIS's baseline scenario in which Edison is assumed to continue to own all of the plants permanently or indefinitely), that the Commission lacks legal discretion to completely prohibit the sale and transfer of the plants. (See, e.g. letter dated July 21, 1997, from Sumner J. Koch to Bruce Kaneshiro and Martha Sullivan [copy attached hereto as Attachment B] at pages 2-3.) Even if the plants were not sold and transferred via the pending divestiture application, Edison *and the Commission* still would be required by law to market-value the plants no later than the end of 2001 (Pub. Util. Code ' 367), and immediately thereafter the plants are no longer subject to Commission regulation and may be sold without Commission approval (Pub. Util. Code ' 377), as the IS acknowledges. (IS at page 3.4.) Via one route or another, then, Edison is clearly authorized by law to sell the plants, and the Commission, although it is authorized and obligated to ensure that a sale or alternative market-valuation process meets certain specified requirements, lacks discretion to completely bar the sale. The sale and transfer itself, not being subject to Commission discretionary authority, is not a project subject to CEQA.
[End E-6]

[Begin E-7]
Edison's agrees to the mitigation measures identified in the MND in the interest of advancing the divestiture proceeding without unnecessary delay, and such agreement does not constitute an

acknowledgment that the sale and transfer of the plants is subject to CEQA.
[End E-7]

[Begin E-8]

3. Edison's agreement with the MND does not imply agreement with all of the economic forecasts or analysis accompanying the IS.

Edison's acceptance of the mitigation measures identified in the MND is not to be construed as agreement with all of the conclusions or rationale contained in the "System Economic Analysis" accompanying the IS (IS Attachment C). Edison's oral and written comments to the Commission on the DIS included extensive comments on the earlier version of this economic analysis, some of which remain applicable to the IS's revised economic analysis, and we will not repeat those comments here. We note however that the revised analysis, unlike the earlier version, cites the example of plants in the England/Wales market ("E/W") that are owned by entities owning no other generation as indicating a tendency for such singly-owned plants to operate at higher capacity factors than portfolio plants. This example is of little or no application to the California market, however, since the facts are so distinct. The singly-owned plants in E/W are new merchant plants that are relatively low-cost and infra-marginal units. In contrast the owners of the large portfolios typically own the older generation, built well before restructuring, which are more costly to operate. There is simply no reason to conclude from this example that a marginal plant, such as the plants included in this divestiture application, would be operated in the same manner as a new infra-marginal plant in E/W. Moreover, some of the new singly-owned plants in E/W are affiliated with distribution utilities and sell output to them under long-term contracts; the UDCs in California cannot enter into similar contracts for four years.
[End E-8]

[Begin E-9A]

4. Current status of lot line adjustment applications.

As you know, Edison has proposed to retain certain land at each of the plant sites, and at 11 of the 12 sites (all except Ellwood) that has entailed adjustment to the pre-existing lot lines. At the time the IS was issued Edison's lot line adjustment applications were still pending at three sites. Below is updated and corrected information regarding those sites.

Highgrove: The Highgrove lot line adjustment applied for by Edison has been approved. Because the IS mislabled the two Highgrove property maps (i.e., IS Figure 2.14(a), which is captioned "without lot line adjustment," actually shows the site *with* the lot line adjustment) the property will be divided as shown in Figure 2.14(a).

[End E-9A]

[Begin E-9B]

Huntington Beach: The map previously provided by Edison and included in the IS, which was intended to show the site *without* adjustment of the lot lines, was incorrect and a corrected version on that map is attached hereto as Attachment C-1. In addition, however, Edison now expects that its lot line adjustment application may be approved

prior to sale of the plant, and the corresponding map of the site *with* lot line adjustment is attached hereto at Attachment C-2.

[End E-9B]

[Begin E-9C]

Redondo: The Redondo lot line adjustment application remains pending at this time. Attached hereto as Attachment D is a slightly revised, corrected version of the map showing the site *without* the lot line adjustment. This map more accurately reflects the proposed divestiture transaction, because while Edison does not intend to sell the strip along the east edge of the site in the near future, it is being sold separately from the generating station and therefore is "retained" in the sense of not being included in the pending Divestiture Application. This separate sale is along existing lot lines and requires no lot line adjustment.

[End E-9C]

We appreciate the opportunity to provide these comments on the IS and MND.

Very Truly Yours,

/s/
Sumner J. Koch

Attachments

July 21, 1997

VIA FACSIMILE & U.S. MAIL

Bruce Kaneshiro and Martha Sullivan, Co-Project Managers
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Draft Initial Study on Edison Divestiture
Application, A.96-11-046

Dear Bruce and Martha:

This letter is to confirm and clarify Edison's position regarding the correct "baseline" that should be used in the Commission's CEQA analysis of our Divestiture Application - that is to say, the correct description of the conditions that would exist if Edison's pending application is not approved by the Commission. As you know, in our June 30th oral comments and our July 3rd written comments on the Draft Initial Study (DIS), as well as in our recent conversations with you, we have stated that the DIS's baseline, which rests on an assumption of continued Edison ownership of the twelve gas-fired generating facilities, is incorrect.

From our recent discussions we understand your concern to be that, without an unqualified commitment from Edison that even if our pending divestiture application is rejected we will nevertheless dispose of some or all of these facilities by other avenues, you may be required for purposes of a CEQA initial study to assume that Edison continues to own all of the facilities. Your concern seems to be that unless there is hard-and-fast "proof" to the contrary, such as a binding Edison commitment, CEQA possibly requires you to make the "environmentally worst-case" assumption.

Edison strongly believes that this approach is incorrect and unfounded under CEQA for at least two reasons, which this letter will discuss in more detail below:

(1) Because the Commission lacks the discretion, under AB 1890, to completely bar the sale and transfer of these plants, the sale and transfer itself is not the "project" that is before the Commission for environmental review under CEQA. Rather, the Commission has discretionary authority only over the particular means and methods of divestiture or other valuation proposed by Edison, and accordingly the Commission's inquiry under CEQA is limited to assessing the potential environmental impacts, if any, only of those particular aspects of the application.

(2) Even assuming, for the sake of argument, that the Commission has the authority under CEQA to analyze the potential impacts of the sale itself, the analysis still must be based on reasonable assumptions. There is no basis whatsoever for assuming that Edison would retain ownership of all or most if its gas-fired generation in the baseline case, and there is every reason to assume the contrary.

1. **Edison May Transfer the Plants to New Owners as a Consequence of *Restructuring*, Mandated by AB 1890, and Not Only as a Consequence of This Divestiture**

Application: Therefore the Potential Impacts of Such Transfers Are Not Properly the Subject of this CEQA Inquiry.

Before addressing further your inquiry regarding Edison's divestiture intentions if the pending application is not approved, I want to reiterate our position that such intentions of Edison are fundamentally irrelevant to the inquiry that is properly before the Commission. While this point really goes to correctly defining the boundaries of the CEQA "project" that is before the Commission, rather than just the baseline, the point deserves discussion here since the DIS incorrectly frames the project in a way that leads it to misstate the baseline.

AB 1890, as you know, mandates that all of the subject facilities are to be market-valued no later than December 31, 2001 (Public Utilities Code Section 367(b)). AB 1890 further mandates that upon market-valuation the facilities cease to be subject to Commission regulatory authority (Section 377), including the Commission's authority under Section 851 over the sale of utility property. No later than the end of 2001, therefore, Edison will be free to sell and transfer the plants without any Commission review. (Indeed, under Section 377 Edison would need Commission approval to *retain* any of these plants within the distribution utility company.)

Because the Commission does not have authority to prevent Edison from selling and transferring ownership the plants, the actual sale and transfer itself is not the "project" that is before the Commission for environmental review. Accordingly any potential impacts from such sale and transfer are not appropriately the subject of this CEQA analysis. Assuming the Edison's divestiture proposal is subject to CEQA at all, it is subject to it only to the extent of the Commission's discretionary authority. The Commission may examine the potential environmental impacts of the various particular aspects of Edison's divestiture proposal that are before the commission for discretionary approval, but not of those aspects that do not require Commission approval.

(At most, it might be argued that the "project" subject to Commission review includes the first four years of divested operations, up until December 2001. Even according to the DIS's own analysis, which engages in numerous speculative and unreasonable assumptions to find impacts from divestiture, few if any impacts of divestiture are expected during this initial transition period.)

To illustrate, in the closely analogous case of *City of Ukiah v. County of Mendocino*, 196 Cal.App.3d 47 (1987), a company that already possessed vested rights to conduct gravel mining at a site sought approval of its mining reclamation plan, so that it could proceed with the mining. The court upheld the lead agency's determination that there were no potentially significant impacts, on the basis that the only matter presented for the agency's approval, and thus for environmental review, was the reclamation plan itself, and not the overall mining activities. Similarly, in *Black Property Owners Association v. City of Berkeley*, 22 Cal.App.4th 974 (1994), in which the lead agency was updating its City Housing Element, the court held that the city needed to assess the potential impacts only of the update itself. The court rejected the argument that the city had to undertake an EIR and analyze the impacts of related city ordinances and policies that were already in effect.

As these cases confirm, the scope of the Commission's authority under CEQA stems entirely from its underlying discretionary authority to grant or withhold approval of a project. The

Commission does not have authority to review the potential impacts of an action -- in this case, the actual sale and transfer of the powerplants -- that it is mandated by law to permit.

2. **Based on the Evidence Before the Commission, including Edison Filings, the Reasonable and Correct Baseline Assumption is That Edison Would Sell or Otherwise Dispose of its Gas-Fired Generation.**

Edison believes that the above point regarding the correct description of the CEQA "project" is completely dispositive of this question. However we also want to respond directly to your concern that, if the sale of the plants is properly the subject of the Commission's CEQA review, the correct baseline assumption for the Commission to make is that no divestiture of plants will occur. We believe that the Commission has before it ample commitment by Edison that we will dispose of these plants -- and, importantly, the Commission has no evidence to the contrary -- such that the DIS's baseline assumption of no plant divestiture is unreasonable and therefore incorrect under CEQA.

As you know, even before the submittal of our divestiture application, Edison filed proposals at the Commission and at FERC to dispose of at least half of our gas-fired generation in order to assuage market-power concerns. Nothing to date causes Edison to retract or reconsider the commitments we stated in those filings; on the contrary, as you are aware, we have recently (May 1997) made a subsequent filing at FERC committing ourselves to certain market-power mitigation measures if the commencement of the competitive market precedes divestiture, and those measures further motivate us to dispose promptly of gas-fired generation. And finally, of course, it should be evident to everyone that Edison is pressing for the approval and completion as soon as reasonably possible of its pending divestiture proposal. Against this backdrop we find the DIS's baseline assumption that Edison would retain its gas-fired generation to be completely without basis.

The question of how Edison would proceed if our current proposal to sell the plants via auction is rejected, and we have to pursue other means of valuing of the plants, necessarily entails a high degree of speculation. Edison (like any other entity) cannot offer absolutely unqualified commitments about future hypothetical events -- especially about a hypothetical event the presupposes the failure of a planned course of action that many different parties have counted on. (A wide variety of stakeholders have emphasized that they prefer auction sales as the means of market-value generation, and any alternative means may be contentious and therefore especially unpredictable.) What Edison can confirm, and does confirm, is that based upon all the facts currently available to us we intend and expect to fully dispose of (i.e., to transfer to non-Edison ownership) all of our gas-fired generation capacity.

Obviously it is possible to engage in endless speculation and counterspeculation about what might occur in various conceivable circumstances. CEQA recognizes, however, that such speculation adds nothing to informed decisionmaking, and consequently does not require or even permit the environmental review to be based upon such speculation. All existing factual evidence before the Commission is that Edison intends to divest its gas-fired generation, and there is no basis for any assumption to the contrary. The DIS's baseline assumption of continued Edison ownership of the gas-fired plants is therefore incorrect under CEQA.

In this connection I also want to restate briefly a point that we explain at greater length in our

comments on the DIS, which is that even if Edison did retain all of the plants, it is clear that FERC would impose and enforce market-power mitigation measures that would effectively prevent Edison from exerting market power and would effectively cause the twelve commonly-owned plants to operate as if in competition with each other. The DIS's assumption that FERC would not fulfill its responsibility and authority is speculation ungrounded on any facts, and is not proper under CEQA.

Please do not hesitate to call us if you wish to discuss the foregoing points further, or if you have any other questions that we may be of assistance in answering.

Very Truly Yours,

/s/
Sumner J. Koch

cc: Paul Clanon
Ed O'Neill

E - SOUTHERN CALIFORNIA EDISON

E-1.

Comment noted.

E-2.

Comment noted.

E-3.

Edison's Proponent's Environmental Assessment (PEA) and all of Edison's comments throughout the process, as well as those submitted by other parties, are part of the record and, as such, will be considered by the CPUC in acting on the Mitigated Negative Declaration and Edison's application.

E-4.

The Initial Study was published on the same date as the amendment date for Rule 1158 (August 25, 1997), so the adoption of the amendment could not be known at the time of publication of the Initial Study. Because the Applicability clause (A)(2)(b) of Rule 1158 has been modified to apply to non-utility owners, Rule 1158 as amended August 25, 1997 (a copy provided in Edison's Attachment A) now fully complies with Air Quality mitigation measure 4.5.a.1.

E-5.

Comment noted.

E-6.

The CPUC considered Edison's July 21, 1997 letter in preparing the Initial Study, and the fact that Edison may be able, without CPUC approval, to sell the plants once they are market valued, is discussed on page 3.4 of the Initial Study.

E-7.

Comment noted.

E-8.

Comment noted.

E-9A.

For the Highgrove plant, the title of Figure 2.14a is revised as follows:

> Highgrove Generating Station Property Lines With ~~Without~~ Lot Line Adjustment

The last three sentences of the second paragraph on page 2.22 are revised as follows:

> Figure 2.14 shows the ~~approximate~~ existing boundary of the property being either retained or sold. ~~This figure reflects lot line adjustment application that is pending before the City of Grand Terrace.~~ Figure 2.14a shows Edison's proposed property divisions, which were recently approved by the City of Grand Terrace. ~~if the lot line adjustment is not approved before the auction.~~

E-9B.

For the Huntington Beach plant, Figure 2.16 (dated 08/13/97) should be replaced with Edison's Attachment C-1 and C-2 (accompanying its September 25 letter), showing property lines both without (06/01/97) and with lot line adjustments (09/09/97), respectively, as Edison expects the lot line adjustments may soon be approved.

Figure 2.16 is replaced with Edison's new figure Attachment C-1 and a new Figure 2.16a noted as (With Lot Line Adjustment) is added. The following text is added following the end of the second sentence on page 2.27:

> Figure 2.16a shows Edison's proposed lot line adjustment application that is pending before the City of Huntington Beach.

E-9C.

For the Redondo Generating Station, Figure 2.25a is replaced with Edison's Attachment D (accompanying its September 25, 1997 letter).