SOUTHERN CALIFORNIA
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April 27, 2006

DOCKET
05-DATA-1
DATE APR 27 2006
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VIA ELECTRONIC MAIL AND OVERNIGHT DELIVERY

Docket Office
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: Docket 05-DATA-1_SCE's Comments to the Commission's Proposed Changes to Regulations

Dear Docket Office:

Attached is an original and 19 copies of **Southern California Edison Company's Comments to the Commission's Proposed Changes to Regulations** in the above referenced proceeding that was served and submitted electronically for filing today, April 27, 2006. We request that a copy of this document be file-stamped and returned for our records. A self-addressed, envelope is enclosed for your convenience.

Please do not hesitate to contact me at (626) 302-6699, if you have any questions about this matter.

Sincerely,

Christine M. Sanchez
Project Analyst

cc: William V. Walsh

CS:cs:Letter4.doc

Enclosure(s)

STATE OF CALIFORNIA

Energy Resources Conservation
And Development Commission

In the Matter of:	)	
	)	Docket: 05-DATA-1
Proposed Adoption, Amendment, and Repeal of	)	
Regulations Governing the Commission's Data	)	
Collection System for the Energy Policy Report	)	
and Regulations Governing Disclosure of	)	
Commission Records	)	

SOUTHERN CALIFORNIA EDISON COMPANY'S COMMENTS TO THE COMMISSION'S PROPOSED CHANGES TO REGULATIONS

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Dated: **April 27, 2006**

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SOUTHERN CALIFORNIA EDISON COMPANY'S COMMENTS TO THE COMMISSION'S PROPOSED CHANGES TO REGULATIONS

I.

INTRODUCTION

Southern California Edison Company ("SCE"), on behalf of itself and its customers, submits these comments on the Proposed Adoption, Amendment, and Repeal of Regulations Governing the California Energy Commission's (the "Commission") Data Collection System for the Energy Policy Report and Regulations Governing Disclosure of Commission Records.

From the outset, SCE notes that the amount of time the Commission has allotted parties to respond to these proposed changes is unreasonable. The Commission provided notice of this Order Instituting Rulemaking ("OIR") on April 20, 2006 and expects comments by April 27, 2006. The Staff Proposed Changes to the Commission's Regulations on Data Collection and Related Matters ("Proposed Changes") are found in a detailed document over 70 pages long. These changes introduce potentially onerous, unnecessary and/or repetitive data collection requirements on SCE and other load serving entities ("LSEs"). In addition, the Commission's proposed changes include entirely new data collection requirements that should be discussed and

debated in more detail. Given the number of changes to the Commission's regulations and the importance of many of these changes, the Commission should not seek comments on these changes in such a quick and haphazard manner.[1] Furthermore, SCE would request that it and other LSEs be given a second opportunity to respond to the proposed regulations in a more complete and thorough manner.

It also appears that the proposed changes greatly increase the scope of information that LSEs are already required to submit to the Commission. The relevance of some of this information to the Commission in preparing its Integrated Energy Policy Report ("IEPR") appears dubious, at best. Moreover, the Commission is not simply requesting information that is already required to be reported to other federal and state agencies. In fact, in some instances the Commission goes far beyond what other agencies currently require. Given such new and burdensome requirements that are not only redundant, but more expansive, the Commission should reconsider many of the new reporting requirements identified below.

Finally, SCE has also included comments regarding proposed changes to the Commission's complaint and investigation and confidentiality regulations. As described in more detail below, SCE's recommendations will ensure that the Commission's proposed changes are consistent with current statutory law and provide for necessary due process protections.

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[1] Furthermore, the danger in adopting the proposed changes based on the expedited schedule set forth by the Commission is demonstrated by the following example. At the top of page 66 of the Proposed Changes there is a typo: the words "except as provided" are repeated twice. Although the typo reflects a relatively minor error, it demonstrates that mistakes do exist. Because the Commission is proposing such a large number of changes, the Commission should allow for review of these regulations by interested parties in detail. The current schedule set by the Commission does not allow for a sufficiently thorough review.

II.

THE COMMISSION SHOULD NOT REDUCE THE AMOUNT OF DUE PROCESS PROTECTION AFFORDED TO LSES UNDER THE COMPLAINTS AND INVESTIGATIONS REGULATIONS

The Commission has proposed changes to its regulations regarding complaints and investigations that would shorten both the amount of time for the hearing process and the time to answer a complaint.[2] Reducing the amount of time associated with a hearing will reduce the ability of the parties involved to present a thorough and complete defense or a case-in-chief. Reducing the amount of time to answer a complaint will reduce a party's ability to assert a proper defense. SCE recommends that the Commission reconsider whether this reduction in due process rights is worth any purported benefit the Commission may obtain by limiting the hearing process. Any decision to reduce the amount of time for preparation of hearings (or to answer a complaint) will only hamper a party's ability to present its positions, and, therefore, should only be considered for compelling reasons.

Also, the Staff's Proposed Changes state in the preface to proposed Section 1235 that the changes "make it clear that no proposed decision is required." The proposed language of the regulation, however, does not support this statement in that it provides that the "committee or hearing officer shall make its recommendation to the full commission in the form of a written proposed decision . . ."[3] Regardless, SCE recommends that the Commission reconsider whether a proposed decision should be permissive. A proposed decision offers an additional layer of due process protection to parties involved in the complaint and investigation process: it allows an opportunity to address a decision of the Commission and to correct legal and factual errors before it becomes final. The opportunity to comment on a decision before it becomes final helps the Commission by attempting to ensure that its determinations are fully vetted, complete and

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[2] *See* Staff Proposed Changes at §§ 1233 & 1234.

[3] *See id.* at § 1235 (emphasis added).

error free. Accordingly, the Commission should not change its regulations requiring the issuance of proposed decisions.

III.

SCE'S COMMENTS ON THE COMMISSION'S PROPOSED CHANGES TO ITS DATA COLLECTION REGULATIONS

One of the major proposed changes to the Commission's data collection requirements is that the regulations now require all other LSEs to report to the Commission. SCE supports the expansion of the Commission's data-collection efforts to include these entities. Without the inclusion of all LSEs, the Commission will be unable to provide a complete and accurate IEPR.

A. Section 1304 Power Plant Reports

The proposed changes to Section 1304 include entirely new and onerous reporting obligations, which do not necessarily appear to provide relevant information to the Commission. Specifically, the proposed Section 1304 requires power plants to submit large amounts of environmental data. As a general policy, reporting of environmental data should be made consistent and no more stringent than data already reported to other agencies with jurisdiction over these matters. Power plants are already subject to numerous reporting regulations to both federal and state agencies with jurisdiction over environmental matters. It is illogical and unproductive to add an additional layer of duplicative and burdensome data collection requirements for unknown purposes. Therefore, SCE requests that the Commission reconsider its data collection requirement of environmental data, and, at a minimum, explain the rationale and purpose for the collection of any additional data that is not already required to be filed with other agencies.[4]

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[4] Furthermore, it is not clear why the Commission is recommending that reporting be performed for facilities as small as one megawatt ("MW"). SCE requests that the Commission explain the rationale for requiring such small power plants to submit large amounts of environmental data.

1. Section 1304(a)(3)(A) Environmental Information Related To Emissions

The Staff's proposed changes to Section 1304 add a new reporting requirement related to emissions from power plants. Specifically, the proposed regulation would require power plants to annually report emission factors and provide an inventory of pollution control devices. SCE recommends that in lieu of requiring power plants to submit information identified in the proposed regulation, the Commission should substitute this requirement for filings made under the Clean Air Act Title V Operating Permit Program and the Title IV Acid Deposition Control Program. These reporting requirements provide much of the same information that is being requested by the Commission, but will prevent power plants from incurring the cost of responding to a new and different reporting requirement.

For example, existing Acid Rain units, and all new power plants greater than 25 MW in capacity are required to report SO_2, NOx, and CO_2 emissions pursuant to the requirements of 40 CFR Sections 75.10-75.19. These emissions reports are collected directly from each power plant's Continuous Emissions Monitor Systems as certified under 40 CFR Part 75, and the hourly, monthly, quarterly, and YTD annual SOx, NOx, and CO_2 emissions are reported quarterly via electronic data reports to the federal Environmental Protection Agency. In addition, all major power plants are required under Title V of the Clean Air Act to have federally enforceable Operating Permits (OP). These federal OPs stipulate reporting requirements for all New Source Review/Prevention of Significant Deterioration regulated air pollutants (i.e., SO_2, NOx, PM10, PM2.5, CO, and opacity). These reporting requirements are required by 40 CFR Part 60 (Appendix A) for opacity emissions, 40 CFR Part 75 (Sections 75.10 through 75.19) and 40 CFR Part 60, Appendices A and B for SOx, NOx, CO_2, CO and mercury emissions.

By substituting the reporting requirements found in the proposed regulations with the reporting requirements identified above, the Commission will achieve two goals: (1) the Commission will receive the type of emission data that it wishes to evaluate; and (2) power plants will not be subject to costly and unnecessarily duplicative new reporting requirement.

2. Section 1304(a)(3)(B) Environmental Information Related To Water Supply And Water/Wastewater Discharge.

The Staff's proposed changes to Section 1304 also create a new and burdensome reporting requirement related to water and waste water discharges by power plants. Again, SCE recommends that the Commission propose reporting requirements that are consistent with the monthly and yearly information which other regulatory agencies already require LSEs to provide. Given the onerous task of providing additional information under the proposed changes, SCE would request that the Commission identify the intent and value of any additional reporting requirements on water and waste water discharge before implementing such a requirement.

3. Section 1304(a)(3)(C) Environmental Information Related To Biological Resources.

The Staff's proposed changes to Section 1304(a)(3)(C) introduce new and oppressive reporting requirements related to biological resources located near power plants. For some of the requirements under this regulation the data simply do not exist or would be impossible or nearly impossible to produce. For example, the proposed regulation would require power plants that were constructed or expanded since 1966 to provide a description of wildlife and aquatic fish habitats affected by the construction or expansion.[5] However, it is not possible or realistic to go back in time, especially for older power plants, to try to recreate what the terrestrial wildlife and/or aquatic fish habitats may have been prior to plant construction or expansion. The proposed regulation also requires a description of habitats for federal endangered and California Special Status species that have been affected by the construction or expansion of power plants since 1966.[6] The logic behind this data collection requirement is not apparent, given that many

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[5] *See* Proposed Staff changes at § 1304(a)(3)(C)(1)a.
[6] *See id.* at § 1304(a)(3)(C)(1)b. & c.

species currently listed as threatened, endangered or as a Special Status Species may not have been so designated at the time the power plant was built or expanded and therefore no data would have been collected regarding the impact of the construction or expansion on those biota. Moreover, the federal Endangered Species Act was not enacted until 1973, and the state of California Endangered Species Act was not enacted until 1984. Thus, it is not possible to respond to the data requested for power plants built before these laws were enacted.

At a minimum, SCE would request that the Commission provide a reasoned explanation as to why the information requested under Section 1304(a)(3)(C)(1) is necessary. SCE also believes that the Commission should reconsider requiring such reporting requirements, given the problems identified above.

Furthermore, as to the reporting requirements identified under Section 1304(a)(3)(C)2. regarding the effects of power plant operations on wildlife, SCE recommends that power plants should not be required to provide any more information than what is required under a power plant's operating permits. In many cases, particularly for older power plants, measures or devices to protect wildlife are not required. Unless specifically required as part of a power plant's permit conditions and unless the power plant employs a biologist on site, it is unlikely that these types of data would or could be collected. Accordingly, SCE believes that the data requested should be consistent with the data required by the operating permits.

B. Section 1343 Energy End User Data: Survey Plans, Surveys, And Reports

SCE does not have any substantive comments regarding the changes in proposed Section 1343. However, SCE suggests a change that would better mirror the realties of a certain data collection requirement under this regulation. Specifically, Section 1343(d)(1)-(3) requires the submission of a Survey Methodology Report on July 1, 2003 for the residential customer sector, July 1, 2004 for the commercial building sector, and July 1, 2006 for the industrial customer sector, and every fourth year thereafter for each survey. For various reasons, the initial round of each of the three customer sector surveys has been (or will be) completed at least a year later

than the dates stated in the regulation. The result is that the next studies are being required to be completed only three or fewer years after the completion of the previous sector study. It is not economical or reasonable to require this extremely expensive data collection more frequently than every fourth year. Thus, SCE recommends that the Commission revise the due dates to be "on or before July 1 of the fourth year after the completion of the previous survey of that sector."

C. Section 1344 Load Metering Reports

At this time, SCE only has a few minor comments to the proposed changes to Section 1344. First, SCE would recommend that the Commission define "Retail" in subsection (a). If "Retail" only includes investor owned utility ("IOU") bundled load, SCE can provide hourly historical information by the March 15 deadline stated in the proposed Section 1344. However, if "Retail" includes bundled plus direct access ("DA") load, the regulations should allow for delays in reporting. DA data is typically available 2 months after the period of use. Therefore, DA data ending December 31, 2006, for example, would be available on or about March 1, 2007. However, the March 15 deadline in the proposed regulations would only provide a two-week grace period in the event systems or procedures related to load metering do not work. Thus, a small chance exists that the complete historical hourly retail data for the year would not be available until after the March 15 deadline. Accordingly, the Commission's regulations should allow for possible delays in the reporting of this information.

Second, the proposed Section 1344(c)(3) requires "samples used to develop hourly load estimates for each sector shall be designed to insure that estimates are accurate to within ±10 percent of the *monthly* sector load coincident with system peak . . ." Previously the regulation only required samples related to *annual* sector load. This new requirement means that additional sampling will have to be performed, which will require additional funds for metering and personnel. As the Commission Staff has not provided any basis for requiring additional samples, SCE is concerned with whether such additional expense is necessary and who will be required to bear it.

Third, in connection with the information requested in proposed Section 1344(c) related to transmission system load data, much of the transmission information requested in this section must be kept confidential. The Western Electricity Coordinating Council ("WECC") obligates SCE to keep this type of data confidential from non-WECC entities. Release of information regarding critical electrical infrastructure is subject to Federal Energy Regulatory Commission procedures, which require a review of the requestor and a verification of a legitimate business purpose. Thus, any data that is turned over to the Commission must be subject to a confidentiality provision and the regulations should recognize this federal requirement.

Finally, the Commission has requested comments regarding the definition of "subarea."[7] Currently, the California Independent System Operator ("CAISO"), in its Market Redesign and Technology Update ("MRTU"), is working toward defining "subareas." SCE recommends that the Commission delay defining "subarea" until after the MRTU has been completed or affirmatively state that its definition of "subarea" will be the same as the definition adopted by the CAISO.

D. Section 1346 Electricity Resource Adequacy

The proposed Section 1346 seeks to have LSEs submit, beginning in 2008, resource adequacy information for a period of four years forward. This proposed regulation completely ignores the current state of resource adequacy implementation at the California Public Utilities Commission ("CPUC"), the state entity with authority over resource adequacy policies.

First, the Commission should be aware that the resource adequacy policies currently applicable to CPUC-jurisdictional LSEs only require those LSEs to have sufficient resources to cover their loads one year in advance.[8] Requiring submission of information on resource

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[7] *See* Staff Proposed Changes at 55.
[8] Decision No. 04-10-035.

adequacy beyond that period would prejudge the nature of any future resource adequacy requirement.[9]

Second, since the Commission is already involved in the CPUC's process of reviewing load forecast and other resource adequacy data submitted by CPUC-jurisdictional LSEs, it should recognize that current resource adequacy templates already require CPUC-jurisdictional LSEs to submit vast quantities of information regarding their loads and generation, on an hourly basis. Imposing additional requirements on CPUC-jurisdictional LSEs, in the form of additional or different resource adequacy templates, is unnecessary and may lead to conflicting data interpretations if the Commission and CPUC templates require reporting of different information.

Finally, if the Commission requires reporting of information that is markedly different than that required by the CPUC to demonstrate resource adequacy, it should at least allow the CPUC-jurisdictional LSEs to file the information by the close of the year on which it is due (i.e., December 31, 2008, in the first cycle). If current resource adequacy policies remain in place, requiring CPUC-jurisdictional LSEs to submit their resource adequacy data to the CEC by September 30, 2008, will conflict with the CPUC's current resource adequacy filing deadline, which is also September 30. Failure to file information with the CPUC by such date is cause for the imposition of penalties by the CPUC. Accordingly, the Commission should defer any action on long-term resource adequacy forecast requirements and instead raise its views in the CPUC's Phase 2 RA proceeding which will address the issue of long-term resource adequacy.

E. Section 1349 Electric Transmission System Plan and Corridor Information

Portions of the new data collection requirements for transmission system plans found in the proposed Section 1349 are overly broad. Specifically, under proposed Sections 1349(a)(1)(B) and 1349(a)(2)(C) the Commission requires the submittal of descriptions of

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[9] As the Commission is aware, the CPUC will be investigating changes to its current resource adequacy policies in Phase 2 of R.05-12-013. Among the possible changes is the adoption of a capacity market for California.

upgrades to include identification of maintenance or construction that could temporarily reduce transfer capabilities. However, when an upgrade to the transmission system is being planned, maintenance and construction plans are not finalized until the planned upgrades are finalized. Furthermore, until the facility outage studies related to maintenance and construction plans are developed, submitted, and approved by the CAISO, the studies are not performed. In general, these outage condition studies are performed close to the time of execution to better reflect system conditions for the duration of the outage, which could be many years after the project has been identified and reported to various agencies including the Commission. Therefore, the effects of these facility outages on reduced transfer capabilities are typically not known in advance of planned upgrades[10], thereby making the proposed data collection related to maintenance and construction plans impractical. SCE recommends that the Commission reconsider its data collection requirement of maintenance and construction plans in connection with planned upgrades.

In addition, proposed Sections 1349(a)(1)(A)2. and 1349(a)(2)(B)2., which require transmission system owners to provide descriptions of alternatives considered when developing a transmission expansion plan, should be clarified. SCE recommends that the regulation read so that description of alternatives should only have to be provided "where available" and only if related to the consideration of other transmission projects. In other words, the relevant language of Sections 1349(a)(1)(A)2. and 1349(a)(2)(B)2. should read "Descriptions of the transmission alternatives, where available, considered in developing the transmission expansion plan." SCE believes it would be a waste of time and resources to have to create alternatives in connection with projects where no practical or logical alternative exists.

Despite the recommendations listed above, SCE supports corridor development as part of the Commission's energy vision for the state and at a minimum will be able to respond to the general intent of the data collection requirements. SCE believes that federal, state, and local

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[10] On occasion, very complex construction outage sequences are studied and the impacts are known earlier in the process. However, very few projects require such construction sequencing.

agencies and utilities should work together to coordinate the designation of future energy infrastructure corridors and encourages the Commission to continue its cooperation with the U.S. Department of Energy in carrying out the requirements of the Energy Policy Act of 2005. SCE will gladly work with other entities in the state to develop a framework of principles, methods and processes for identifying needs and designating corridors.

IV.

SCE'S COMMENTS REGARDING THE COMMISSION'S PROPOSED CHANGES TO ITS REGULATIONS CONCERNING CONFIDENTIALITY

Generally, SCE supports the changes proposed by the Commission to its regulations regarding confidentiality. For example, SCE believes allowing hearings for confidentiality disputes is an important step in protecting the rights of a party submitting highly-sensitive information to the Commission. Some of the proposed changes, however, should be modified to comply with other California statutes and better reflect how confidential information should be treated. SCE's suggestions as to these types of changes are set forth below.

A. The Standard Proposed For Determinations Of Confidentiality Must Be Revised To Comply With The Requirements Of The Public Resources Code

The Staff's proposed changes to the Commission's regulations regarding the confidentiality of data (Sections 2501-2508) provides a standard in determining whether data submitted to the Commission should be maintained as confidential. Specifically, the proposed Section 2508, which describes a Commission hearing process for determining confidentiality of records, states in subsection (b) that the Commission's decision:

> [S]hall be based on whether the entity seeking to maintain the confidentiality of the record has met its burden of proof of demonstrating that confidentiality is warranted under the California Public Records Act.

In addition, the revisions to Section 2506 (regarding a petition for inspection or copying of confidential records) contains the same California Public Records Act ("PRA") test for the

Commission's Chief Counsel when determining whether to release records previously designated as confidential.[11] These proposed regulations, however, improperly limit the grounds upon which records must be deemed confidential, as specified by the Public Resources Code. Therefore, the Staff proposal must be modified to properly account for the confidentiality requirements set by statute.

Public Resources Code Section 25322 provides that the Commission "shall grant" a request for confidential designation of information not only when the information is exempt from disclosure under the PRA, but also when "[o]n the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information."[12] However, Sections 2506 and 2508 of the proposed regulations neither recognize nor account for this "public interest" test. The Commission cannot adopt Section 2506(b)(4) or Section 2508(b) unless these regulations are modified to require confidential treatment of data that satisfies the "public interest" test. SCE suggests the regulations be modified to state that data will be kept confidential if (1) confidentiality is warranted under the PRA, or (2) the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.

B. The Requirement to Hold a Hearing, and the Hearing Process, Should Be Clarified

It is clear from the Staff's Proposed Changes that the Staff intended to revise the Commission's regulations to make Commission hearings on the confidentiality of data mandatory when a party seeks review of a confidentiality decision by the Executive Director or Chief Counsel (and likely where a hearing is sought by the Commission's own motion or a motion by Staff). However, the regulation authorizing such a Commission hearing -- Section

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[11] *See* Staff Proposed Changes at § 2506(b)(4).

[12] Cal. Pub. Res. Code § 25322(a)(1)(C). Perhaps recognizing this additional statutory requirement, Section 2505(a)(3)(A) of the Commission's regulations provides that the Executive Director shall grant an application for confidential designation where the PRA "or other provision of law" authorizes the Commission to keep the record confidential.

2508 -- fails to make the hearing mandatory, and, therefore, should be revised. In addition, to afford parties appropriate due process and create a complete record for the Commission, Section 2508 should include specific guidelines regarding the scope of the hearings and the extent to which briefing will be permitted.

The Staff's intent to require hearings is evident in the Staff's preface to the revised confidentiality regulations: "[t]he changes would establish that . . . anytime the Commission addresses a confidentiality claim, it would determine whether the applicant had met its burden of proof to establish confidentiality under the PRA."[13] The only vehicle provided in the regulations for the Commission to make such a determination is provided through the Section 2508 hearing process. Moreover, the proposed revisions to the existing confidentiality regulations (Sections 2501-2507) repeatedly include a requirement that "the Commission shall conduct a proceeding pursuant to the provisions of Section 2508," when parties challenge the confidentiality rulings of the Executive Director or Chief Counsel.[14]

The text of Section 2508, as currently drafted, however, states only that "[o]n its own motion, a motion by Commission staff, or in response to a request pursuant to [Sections 2505, 2506, or 2507], the Commission may hold a hearing . . ."[15] In order to carry out the Staff's stated purpose of standardizing the Commission's determination of confidentiality claims, and to be consistent with the language of the other proposed regulations, Section 2508(a) should be revised to state that the Commission "shall" hold a hearing to determine confidentiality of records when the appropriate motions or requests for hearing are made.

Additionally, while proposed Section 2508 provides for confidentiality hearings, the procedures for such hearings are not specified. SCE urges the Staff to clarify, in proposed Section 2508, the procedures that will apply to these hearings, such as:

(1) the assignment of a "presiding" commissioner who would lead each hearing;

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[13] Staff Proposed Changes at 60 (emphasis added).
[14] *See, e.g.*, Staff Proposed Changes at §§ 2505(B), 2506(b)(5), and 2507 (e)(2) & (f)(2).
[15] Staff Proposed Changes at § 2508(a) (emphasis added).

(2) a prehearing conference in which the presiding commissioner meets with the parties to discuss the schedule and scope of the hearing (i.e. filing of testimony, presentation of witnesses, timing, etc.);

(3) whether the California Rules of Evidence will apply to the hearing;

(4) who will rule on the admissibility of evidence and any objections during the hearing; and

(5) the opportunity to submit post-hearing briefs.

Hearing procedures such as those listed above are needed to ensure that the Commission will have an adequate record upon which to reach its decisions, and to ensure that parties to these hearings are afforded due process.

C. The Regulations Should Provide Adequate Protection For Records Pending Judicial Review

The Public Resources Code provides that any party aggrieved by a Commission decision – including a decision regarding the confidentiality of records – has a period of 30 days from the date the Commission issues its decision to seek judicial review by petition for writ of administrative mandate.[16] However, the proposed regulations indicate that records sought to be designated as confidential will only be protected from public release for a period of 14 days following a Commission decision denying confidential treatment of the records.[17] This 14-day "hold" period fails to provide parties with the statutorily-required time to determine whether to exercise their appellate rights, without having to seek an agreement from the Commission to extend its protection of the records pending appeal or being forced to seek an emergency stay of the Commission's decision from the reviewing court.

By simply extending the "hold" period following a confidentiality decision, the Commission can avoid the inefficiencies that would result from forcing parties (including those

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[16] *See* Cal. Pub. Res. Code § 25901.

[17] *See* Staff Proposed Changes at § 2508(d); *see also* Staff Proposed Changes at § 2507(e)(2) & (f)(2).

that may ultimately elect not to petition for judicial review) to consume Commission resources, and potentially judicial resources, to protect the records pending judicial review. SCE therefore recommends that proposed Sections 2507(e)(2) and (f)(2), and proposed Section 2508 be revised to include a 45-day "hold" period in which records will not be available for inspection or copying after the Commission has denied a request for confidentiality.[18] The 45-day period (unlike the 14-day period) would enable parties to exercise their judicial review rights as provided by California law, and then seek temporary protection of the records pending the outcome of the writ proceeding. This modification is both reasonable and consistent with parties' rights under California law and thus should be adopted.

D. Section 2507 Disclosure of Confidential Records

The proposed changes to Section 2507, regarding the release of aggregated data, raise two concerns: (1) the regulation is not entirely clear as to the level of aggregation of information to be publicly released; and (2) the general "catch-all" provision, Section 2507(e)(2), allows the Commission to release data designated as confidential where it "has been masked or aggregated to the point necessary to protect confidentiality" – without providing any standards for when the data is adequately masked.

1. Specific Provisions Permitting the Release of Aggregated Data

In several places of the proposed Section 2507(e)(1)(A)1.-8., the Staff references aggregation at the "service area, planning area, or statewide level by major customer sector." The problem with these proposed changes is that the regulations appear to make a finer aggregation of the "service area" or "planning area" load, by dividing service and

[18] It should also be noted that proposed Sections 2507(e)(2) and 2507(f)(2) require a few additional editorial changes for clarity. Section 2507(f)(2) provides the 14-day period of confidentiality "After a petition has been denied." Since this protection is meant to apply to a Commission determination, the proposed regulation should be consistent with the language of proposed Section 2508 and instead read "If the Commission determines that a record is not entitled to confidentiality . . ." Section 2507(e)(2), on the other hand, does not state when the currently-provided 14-day period begins. It should likewise be modified to include the clause described above for Section 2507(f)(2).

planning area into major customer sectors. If it was the Commission's intention to divide only the statewide area by major customer sector, the language of the regulation should be clarified to indicate this intention. However, if the Staff intended to allow the public release of information at the service and planning area divided by major customer sector, the Commission should reconsider the public release of this type of information. Data aggregated at this level does not provide enough protection to LSEs' confidential, market-sensitive information and should be rejected because it may reveal insufficiently aggregated information with respect to some customer groups.

2. Section 2507(e)(2) Catch-All Provision

The general "catch-all" provision, Section 2507(e)(2), allows the Commission to release data designated as confidential where it "has been masked or aggregated to the point necessary to protect confidentiality." The proposed regulations do not provide any standards for judging whether the data has been suitably masked or aggregated and, in any event, Commission regulations do not lend themselves to addressing a wide range of data.

Fortunately, the CPUC has recently concluded a proceeding which addresses a wide range of the same type of planning data in depth and in exhaustive detail. The hearings were thorough, and the Commission was an active party to them. In the decision to emerge in May or June, the CPUC will determine the confidential status of the data set forth in an extensive matrix. It would make little sense for the CPUC to rule that certain data is confidential and the Commission to determine that it is public. Because it is of utmost importance to achieve consistency among public agencies in the protection of confidential, market-sensitive information, and because the CPUC has already undertaken the effort to identify confidential data, the Commission should align its position with that of the CPUC. The regulations should state that "the Commission

will not release data designated as confidential unless it has been determined by the Public Utilities Commission to be public data."

Additionally, certain levels of system information (monthly, daily, hourly) should be deemed *per se* confidential and should not be subject to the "catch-all" provision of the Commission's regulation. This would include planning area peak demand and energy forecasts at monthly, daily and hourly levels. It would also include system-level information that is divided further, into customer classes. The release of certain system-level data becomes even more problematic if the Commission interprets its regulations as allowing it to release aggregated data of all Energy Service Providers ("ESPs") and Community Choice Aggregators ("CCAs"), on a given IOU's system, separate from the system data. By subtracting the ESP/CCA load from the system data, a seller could determine the IOU's bundled customer peak demand, energy requirements, etc. at fine levels of aggregation. The Commission should consider the ramifications of enacting these regulations. SCE suggests that instead of enacting Section 2507, the Commission follow the CPUC's lead in deeming specific sets of aggregated data to be confidential.

V.

CONCLUSION

For the reasons discussed above, the Commission should reconsider some of the proposed changes to its regulations in accordance with the recommendation given above.

Respectfully submitted,

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April 27, 2006

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of the SOUTHERN CALIFORNIA EDISON COMPANY'S COMMENTS TO THE COMMISSION'S PROPOSED CHANGES TO REGULATIONS on all parties identified on the attached service list. Service was effected by one or more means indicated below:

- ☐ Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.
- ☐ Placing the copies in sealed envelopes and causing such envelopes to be delivered by hand or by overnight courier to the offices of the Commission or other addressee(s).
- ☐ Placing copies in properly addressed sealed envelopes and depositing such copies in the United States mail with first-class postage prepaid to all parties.
- ☐ Directing Prographics to place the copies in properly addressed sealed envelopes and to deposit such envelopes in the United States mail with first-class postage prepaid to all parties.

Executed this **27th day of April 2006**, at Rosemead, California.

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