

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of Southern California Edison Company
(U 338-E) for Authority to, Among Other Things,
Increase Its Authorized Revenues For Electric Service in
2012, And to Reflect That Increase In Rates.

Application 10-11-015
(Filed November 23, 2010)

**PROTEST OF THE INDEPENDENT ENERGY PRODUCERS
ASSOCIATION**

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Date: December 29, 2010

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Pursuant to Rule 2.6 of the Commission's Rules of Practice and Procedure, the Independent Energy Producers Association (IEP) submits its protest of the application of Southern California Edison Company (SCE) filed on November 23, 2010. Notice of the filing of the application was published in the Commission's Daily Calendar on November 29, 2010.

SCE's application, among other things, asks for \$6.55 million per year for funding of the Project Development Division (PDD).¹ SCE further asks the Commission to terminate the Project Development Division Memorandum Account (PDDMA) and instead to allow recovery of the funding for the PDD in the broader revenue requirement for this General Rate Case (GRC).² IEP protests these elements of the application.

IEP has long opposed use of ratepayer funds to finance the development of utility-owned generation (UOG) projects. In the Commission's hybrid market structure, UOG projects are supposed to compete directly and fairly with projects offered by Independent Power

¹ Testimony accompanying A.10-11-015, Exh. SCE-02, Vol. 5, p. 9.

² Application, pp. 9-10; Testimony accompanying A.10-11-015, Exh. SCE-10, Vol. 1, pp. 40-41.

Producers (IPPs). If the development of UOG projects is subsidized by ratepayers while IPPs must bear their own costs of project development, the competition promised under the hybrid market structure will be skewed in favor of UOG projects. The nearly \$20 million total funding the application seeks for the PDD, for example, is roughly 4% of the total cost of a large, \$500 million generation project, a large enough margin to tilt a competitive solicitation toward a UOG proposal.

In past SCE GRCs, the Commission has responded to these concerns. In SCE's 2006 GRC application (A.04-12-014), for example, IEP objected to the use of ratepayer money to perform project development activities. The Commission had just issued Decision (D.) 04-12-048, which called for head-to-head competition between UOG and projects sponsored by IPPs, and IEP noted that SCE's proposal for a PDD conflicted with the Commission's policy goals. As IEP and other parties pointed out, there cannot be fair head-to-head competition between PPAs and utility-sponsored, turnkey, or buyout proposals if nonutility project sponsors are required to reflect their project development costs in their bids while utilities' corresponding costs are subsidized by ratepayers, outside of the bid evaluation process of the solicitation. Nonutility project sponsors can recover the costs of project development only through sales of electricity generated from the facility; there simply is no other source of revenue to offset these and other costs. For nonutility sponsors, the revenues from power sales must cover all the costs of developing, constructing, operating, and maintaining the power plant.

The Commission responded to these concerns in D.06-05-016 and declared:

. . . we find it necessary to subject SCE to the same cost recovery risks as faced by independent producers. Independent producers' development costs associated with unsuccessful projects are not

recoverable from ratepayers. It is a matter of fairness that SCE assume that same risk, if it chooses to participate.³

Three years later, in D.09-03-025, the Commission rejected SCE's request to add \$21 million of research, development, and demonstration costs to the PDD funding. The Commission was concerned about "the potential to create an uneven playing field for competitors" and concluded that "from a policy perspective, we feel it is important that the project development costs for proposed new projects should not be specifically included in rates."⁴ For similar reasons, the Commission rejected SCE's request, repeated in the current application, to recover the costs of the PDD through conventional ratemaking rather than through the PDDMA. Use of the PDDMA allows the Commission to track costs for activities that the PDD is authorized to pursue while excluding recovery of "costs associated with actual proposed projects."⁵

Despite this history and the concerns the Commission has expressed about the competitive implications of the PDD, SCE in this application asks to expand the PDD and again seeks to eliminate the PDDMA and to recover the costs of the PDD in the GRC revenue requirement. However, the Commission's original concerns about the PDD are still valid and may be more relevant today than when they were first voiced, because of the increased interest in UOG development among the utilities. If the competitive hybrid market structure sought by the Commission is to succeed, ratepayer subsidies of UOG projects must be kept to a minimum and made transparent. IEP continues to be concerned that the PDD could be used to force ratepayers to fund the initial development of utility-owned projects, despite the Commission's previous

³ D.06-05-016, p. 52.

⁴ D.09-03-025, p. 42, quoting D.06-05-016, p. 53.

⁵ D.09-03-025, p. 42.

determinations that UOG should bear the same risks, at least with respect to development costs, that IPPs bear. IEP protests this portion of SCE's application for the following reasons.

First, the reasons that led the Commission to strictly limit the permitted functions of the PDD and to create the PDDMA continue to be valid. If SCE is able to use the PDD to recover the costs of the development of UOG projects, then the competitive playing field will be skewed in favor of UOG. As the Commission has determined, SCE should face "the same cost recovery risks as faced by independent producers."

Second, the Commission considered and rejected SCE's request to eliminate the PDDMA in SCE's last GRC. SCE has not presented a compelling reason for the Commission to reverse a decision it affirmed only last year.

Third, the justification presented in SCE's testimony to support its proposal to reverse the Commission's adopted treatment of PDD costs is extraordinarily simplistic and demonstrably false. SCE claims that ratepayer funding of project development costs for UOG projects is not anticompetitive because "SCE's ratepayers, along with those of other companies and jurisdictions, fund the operations of independent power generators through power purchase contracts."⁶ This statement ignores several key differences between UOG and power purchase agreements (PPAs) with IPPs:

- Ratepayers are obligated to fund the construction and operation of UOG for the full useful life of the plant, typically 30 years, even if the technology becomes obsolete. By contrast, payments under PPAs terminate at the end of the contracts, which typically have terms of no more than 10 years for conventional technologies and 20 years for renewable technologies.

⁶ Testimony accompanying A.10-11-015, Exh. SCE-02, Vol. 5, p. 9.

- PPAs are typically structured on a pay-for-performance basis, meaning that ratepayers pay only for the energy actually produced and delivered by the IPP's facility. The IPP bears the risk of poor operation, outages, or technological obsolescence. By contrast, ratepayers bear the costs of poor operation, outages, technological obsolescence, or high maintenance costs for UOG projects.
- Ratepayers have no responsibility for the IPP's costs for failed projects. For example, unless the contracting parties have agreed otherwise, ratepayers have not paid and will not pay any of the IPP's costs for the 850 MW Calico Solar contracts that were terminated recently.⁷ By contrast, utilities will often seek (and often receive) rate recovery for abandoned UOG projects.

SCE also rather naively states that “third parties roll the cost of a failed project into their rate of return for future bids,”⁸ without recognizing that parties that hope to succeed in competitive solicitations have to keep their bids as low as possible. A bid that seeks to recover the costs of a failed project is likely to be higher than the competition's bid and consequently likely to result in another failed project, not in the recovery of the costs of the initial failed project.

Fair competition requires that competitors face comparable risks and that successful competitors are those that best manage those risks and costs, not those that are able to draw on ratepayer support to cover development costs. In IEP's view, the PDD continues to distort fair competition between UOG and IPP projects, and the elimination of the PDDMA

⁷ See SCE's request to withdraw Advice 2502-E, submitted on Dec. 23, 2010.

⁸ Testimony accompanying A.10-11-015, Exh. SCE-02, Vol. 5, p. 9.

would make it easier for SCE to mask this distortion. For these reasons, IEP protests this portion of SCE's application and respectfully requests the Commission to deny the requested funding of the PDD and to again reject SCE's proposal to recover the PDD's costs through GRC rates. IEP appreciates the Commission's consideration of these points.

Respectfully submitted this 29th day of December, 2010 at San Francisco,
California.

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CERTIFICATE OF SERVICE

I, Melinda LaJaunie, certify that I have on this 29th day of December 2010 caused a copy of the foregoing

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to be served on all known parties to A.10-11-015, and A.07-11-011 listed on the most recently updated service list available on the California Public Utilities Commission website, via email to those listed with email and via U.S. mail to those without email service. I also caused courtesy copies to be hand-delivered as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of December 2010 at San Francisco, California.

/s/ Melinda LaJaunie
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(Updated December 28, 2010)**

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