

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking to Consider
Refinements to and Further Development of the
Commission's Resource Adequacy Requirements
Program.

Rulemaking 05-12-013

**REPLY OF THE MOVING PARTIES TO SOUTHERN CALIFORNIA EDISON
RESPONSE TO THE DECEMBER 1, 2009 JOINT MOTION
TO VACATE PORTIONS OF THE AUGUST 15, 2006 ASSIGNED COMMISSIONER'S
RULING AND FOR FURTHER RELIEF**

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December 29, 2009

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OF THE STATE OF CALIFORNIA**

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**REPLY OF THE MOVING PARTIES TO SOUTHERN CALIFORNIA
EDISON RESPONSE TO THE DECEMBER 1, 2009 JOINT MOTION
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ASSIGNED COMMISSIONER'S RULING AND FOR FURTHER RELIEF**

Pursuant to Rule 11.1(f) of California Public Utilities Commission (Commission) Rules of Practice and Procedure and the permission granted by Administrative Law Judge Mark Wetzell on December 16, 2009,¹ the City of Oxnard (City), The Utility Reform Network (TURN), and the Alliance for Retail Energy Markets (AReM),² hereinafter "Moving Parties," file this reply to the December 16, 2009, Response of Southern California Edison (Edison) to the December 1, 2009, *Joint Motion to Vacate Portions of the August 15, 2006 Assigned Commissioner's Ruling and For Further Relief* (Joint Motion).

I. INTRODUCTION

Edison's Response to the Joint Motion seeks to divert the Commission's attention away from the substantive issues addressed in the Joint Motion, and attempts to lobby its position regarding separate matters between the utility and one of the Moving Parties. The Commission should reject these tactics and grant the Joint Motion to initiate a review of the substance of the current need for the peaker plant proposed for Oxnard.

¹ In an email dated December 16, 2009, ALJ Wetzell granted the request for permission to file a Reply to the Edison Response, made by Counsel for the City of Oxnard, setting December 29, 2009, as the due date for the Reply.

² AReM is a California non-profit mutual benefit corporation formed by electric service providers that are active in California's direct access market. The positions taken in this filing represent the views of AReM but not necessarily those of individual members of AReM or the affiliates of its members with respect to the issues addressed herein.

II. THE JOINT MOTION IS TIMELY

Edison's argument that the Joint Motion is untimely is incorrect. According to Edison, the "Commission should regard the Motion as a petition to modify a final Commission decision," which therefore should have been filed by August 15, 2007, according to Rule 16.4(d), which is one year from the date of the ACR. (Edison Response, p. 4) While Edison correctly notes that Rule 16.4(d) requires a motion for modification of a Commission decision to be filed within one year unless the moving party shows good cause for doing so after that time, what Edison chooses to ignore is the fact that an ACR is not a Commission decision, and therefore Rule 16.4(d) does not apply. As noted in the Joint Motion, an ACR does not have the effect of a Commission order unless it is confirmed by the full Commission.³ (Joint Motion, p. 8) The circumstances described in the ACR and the mitigating factors set forth in Resolution E-4031 (Joint Motion, p. 9) are the only grounds upon which the Commission found it reasonable to allow Edison to proceed with the development of a limited amount of utility-owned resources outside of a competitive procurement process.⁴ Edison's response does not even attempt to counter the Joint Motion on these critical points.

No Commission action has been taken to confirm the ACR as it pertains to the development of a peaker plant that fails to meet the criteria in the ACR that the plant must become operational by summer 2007. Therefore, there is no Commission decision to address. Edison's arguments to the contrary are without merit, and the notion that the motion should be deemed a petition to modify a non-existent decision simply makes no sense.

Likewise, Edison's claims against the City regarding the issuance of "ministerial permits" are without merit and irrelevant in the context of the matters set forth in the Joint Motion.

III. THE MOTION IS MERITORIOUS AND ITS APPROVAL WOULD NOT SET POOR POLICY PRECEDENT

Nothing in the Joint Motion seeks to establish a procedure to continuously reassess the need for new generation. To the contrary, the Joint Motion asks the Commission to apply its regular process for assessing the need for new generation where current conditions do not

³ D.02-01-035 (in A.00-10-012, *et al.*), p. 6.

⁴ *Resolution E-4031*.

warrant any deviation from that regular process. Indeed, Edison's claim that granting the relief requested in the Joint Motion will create a "rolling-needs-evaluation" is a red-herring that is intentionally raised to obfuscate the real matters at issue herein. The ACR dealt with a special and unique circumstance that even the Commission acknowledged was outside of the norm.

"allowing SCE to request authority to record revenue requirements associated with the peaker plants via an advice letter is not standard Commission practice. *The advice letter process is an informal procedure.* A revenue requirement request, should, under normal circumstances, be filed under an application process with its more formal procedures. However, given that the peaker units were not forecasted in the 2006 GRC, **begin accruing operational expenses by summer 2007**, and that an application process may take a year or longer, there are sufficient mitigation circumstances for SCE's request."⁵ (emphasis added)

The relief sought in the Joint Motion does not set a far reaching public policy precedent. Rather it addresses a single unique set of circumstances and the policy message would not have precedential impact on procurement undertaken under normal, Commission sanctioned channels.

IV. CONCLUSION

Despite Edison's attempts to divert the Commission away from the substantive matters set forth in the Joint Motion by maligning the City, as noted in the Joint Motion, the authority the ACR conveyed to SCE to construct peaker plants was limited to the conditions set forth in that ruling – namely, constructing up to 250 MW of generation *before the end of the 2007 summer season*, or at a minimum, a time reasonably close thereafter. The ACR was never affirmed by the full Commission, as required by law, nor will the fifth peaker be completed until mid-2010 at the earliest⁶ and, thus, there is no basis for an argument that the facility meets the limited conditions specified in the ACR. Nothing in Edison's Response to the Joint Motion contravenes (or even addresses this point), and accordingly, the Response fails to raise any reasons or grounds upon which the Joint Motion should not be granted.

⁵ Resolution E-4031, p. 6.

⁶ See Letter from Bruce Foster of SCE to Commission President Michael Peevey, dated September 24, 2009, p. 1.

For the reasons set forth in the Joint Motion, the Moving Parties respectfully request that the Commission vacate those portions of the ACR addressed therein as they pertain to pursuit of the fifth peaker.

DATED: December 29, 2009

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rule of Practice and Procedure, I have this day served a true copy of the **REPLY OF THE MOVING PARTIES TO SOUTHERN CALIFORNIA EDISON RESPONSE TO THE DECEMBER 1, 2009 JOINT MOTION TO VACATE PORTIONS OF THE AUGUST 15, 2006 ASSIGNED COMMISSIONER'S RULING AND FOR FURTHER RELIEF** on all parties on the Service List for R.05-12-013, on the Commission's website December 18, 2009, by electronic mail, and by U.S. mail with first class postage prepaid on those Appearances that did not provide an electronic mail addresses.

Executed at San Jose, California this 29th day of December, 2009.



Katie McCarthy