



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

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Order Instituting Rulemaking to Continue)
Implementation and Administration of California)
Renewables Portfolio Standard Program.)
_____)

Rulemaking 08-08-009
(Filed August 21, 2008)

**SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) RESPONSE TO THE
AMENDED MOTION OF THE CITY OF CERRITOS FOR CERTAIN
DETERMINATIONS**

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Dated: December 20, 2010

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Pursuant to Rule 11.1(e) of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission” or “CPUC”), Southern California Edison Company (“SCE”) respectfully submits this response to the Amended Motion of the City of Cerritos (“Cerritos”) for Certain Determinations (“Amended Motion”) as to how the California Renewables Portfolio Standard (“RPS”) applies to Cerritos.

I.

INTRODUCTION AND BACKGROUND

On June 12, 2009, Cerritos filed Application (“A.”) 09-06-008, which requested that the Commission make a determination whether Assembly Bill (“AB”) 80 authorizes Cerritos to serve its customers on an opt-in (direct access) basis or an opt-out (community choice aggregation) basis, and modification of the AB 80 Agreement between Cerritos and SCE to remove the Initial Load Limit of 13.02 megawatts (“MW”).¹ SCE protested A.09-06-008 arguing, among other things, that the scope of the proceeding should consider whether Cerritos

¹ Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, A.09-06-008, at 1 (September 2, 2009).

should be subject to the same RPS program requirements as community choice aggregators (“CCAs”) and electric service providers (“ESPs”).²

In the September 2, 2009 Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge in A.09-06-008 (“Scoping Memo”), Commission President Peevey and Administrative Law Judge (“ALJ”) Yip-Kikugawa found that the issue of whether Cerritos should be subject to the same RPS requirements as CCAs and ESPs had already been resolved.³ They noted that the then effective AB 80 Agreement between Cerritos and SCE stated:

Future Requirements: Unless exempted therefrom, Cerritos shall be subject to any procurement rules and requirements that the CPUC or the legislature establishes relating to Community Choice Aggregators (“CCAs”) or load serving entities, including, but not limited to, reserve and resource adequacy requirements and renewable portfolio standard requirements.⁴

Additionally, they concluded:

Pub. Util. Code § 399.11 states that all load-serving entities are subject to the RPS and nothing in that code section or AB 80 exempts community aggregators from participating in the program. In D.05-11-025 and D.06-10-019, the Commission adopted the RPS rules applicable to CCAs and electric service providers (ESPs). Since these decisions do not provide any exemptions for Cerritos, it is subject to the RPS requirements adopted therein.⁵

In short, in the Scoping Memo, Commission President Peevey and ALJ Yip-Kikugawa expressly held that Cerritos is subject to the Commission’s RPS rules applicable to CCAs and ESPs. Whether Cerritos should comply with the CCA or ESP rules was left to be determined in another proceeding.⁶ Cerritos was ordered to seek this determination in the RPS proceeding.⁷

The full Commission affirmed the Scoping Memo’s determinations regarding Cerritos’ RPS obligations in D.10-01-012.⁸ Accordingly, the Commission has already decided that

² *Id.* at 2.

³ *Id.*

⁴ *Id.* at 3.

⁵ *Id.* (emphasis added).

⁶ *Id.* at 3 n.2.

⁷ *Id.*

⁸ D.10-01-012 at 12 (“The Scoping Memo issued by the assigned Commissioner and ALJ determined that prior Commission decisions require Cerritos to be subject to the renewables portfolio standard (RPS) requirements and to participate in the RPS program. We affirm that determination in this decision.”).

Cerritos is subject to the RPS requirements applicable to CCAs and ESPs. The only question to be resolved in the RPS proceeding is whether Cerritos will comply with the RPS as a CCA or an ESP, not whether Cerritos is subject to the Commission's RPS rules for CCAs and ESPs at all. Furthermore, based on its determinations regarding Cerritos' RPS obligations, the Commission also found Cerritos' AB 80 Agreement with SCE should be amended, if necessary, to increase Cerritos' Initial Load Limit to reflect Cerritos' procurement obligations under the RPS program.²

Cerritos and SCE subsequently agreed to an Amended and Restated AB 80 Agreement that increases Cerritos' Load Limit to include Cerritos' obligations under the RPS.¹⁰ Indeed, Cerritos' Load Limit was increased by 27,500 megawatt-hours to allow Cerritos to meet its RPS requirements on the assumption that Cerritos would procure 20% of its retail sales from renewable energy sources in 2010.¹¹

Through the Amended and Restated AB 80 Agreement, Cerritos agreed that “[u]nless exempted therefrom, Cerritos is subject to procurement rules and requirements as determined by the CPUC for load serving entities, including, but not limited to, reserve and resource adequacy requirements and RPS requirements.”¹² Cerritos further agreed that “[c]onsistent with the September 2, 2009 Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge in A.09-06-008, Cerritos shall, by no later than thirty (30) calendar days of the Effective Date of this Restated Agreement, seek a determination in the CPUC's RPS proceeding on the RPS requirements applicable to Cerritos.”¹³ As explained above, the Scoping Memo already resolved that Cerritos is subject to the RPS requirements for CCAs and ESPs. The sole determination to be made in the RPS proceeding is whether Cerritos will be treated as a CCA or an ESP.

² *Id.* at 12-13.

¹⁰ *See* SCE Advice 2474-E, Appendix A, Amended and Restated Agreement to Implement Assembly Bill 80 at 2, 4 (filed May 19, 2010 and effective June 18, 2010).

¹¹ *Id.*, Appendix A at 4.

¹² *Id.*, Appendix A at 5.

¹³ *Id.*, Appendix A at 5-6.

On July 15, 2010, in compliance with the Scoping Memo and the Amended and Restated AB 80 Agreement, Cerritos filed a Motion for Certain Determinations (“Motion”) in this proceeding.¹⁴ In that Motion, Cerritos asked the Commission to issue a ruling making the following four determinations:

1. The Commission’s RPS rules applicable to ESPs shall apply to Cerritos’ community aggregation program;
2. Cerritos may avail itself of the same flexible compliance rules as are applicable to ESPs;
3. 2010 shall be the initial year in which the Commission’s RPS rules apply to Cerritos’ community aggregation program; and
4. Cerritos’ 2010 incremental procurement target obligation shall be deferred for three years in a manner similar to that which was previously applied to ESPs, CCAs, and the investor-owned utilities (“IOUs”).¹⁵

Cerritos’ Motion acknowledged that the Commission had already determined that it was subject to the Commission’s RPS rules for ESPs and CCAs, stating:

The Scoping Memo and D.10-01-012 determined, however, that, based on language in Cerritos’ agreement with SCE, Cerritos’ community aggregation program should now be subject to the RPS requirements applicable to Commission-jurisdictional entities (ESPs or CCAs). In light of this, Cerritos is willing to subject itself to the Commission’s RPS program.¹⁶

Cerritos also admitted that “with the expansion of the Load Limit in D.10-01-012, Cerritos has now contractually agreed to apply the Commission’s RPS requirements to Cerritos’

¹⁴ Motion of the City of Cerritos for Certain Determinations (“Motion”), R.08-08-009 (filed July 15, 2010).

¹⁵ *Id.* at 15 (emphasis added). On July 30, 2010, SCE filed a response to the Motion. Southern California Edison Company’s Response to the Motion of the City of Cerritos for Certain Determinations (“SCE Response”), R.08-08-009 (filed July 30, 2010). SCE did not take a position on whether or not the Commission should make the first three determinations requested by Cerritos. However, if the Commission finds that 2010 should be the initial year in which the Commission’s RPS rules apply to Cerritos, SCE argued that the Commission should not allow Cerritos to defer its entire 2010 RPS procurement target for three years. SCE maintains that position and incorporates the arguments in the SCE Response into this response to the Amended Motion by reference.

¹⁶ Motion at 5 (emphasis added).

community aggregation program.”¹⁷ At the time it filed the Motion, Cerritos requested that the Commission’s RPS rules applicable to ESPs be applied to Cerritos.¹⁸

Now, in direct conflict with the Commission’s prior determination that Cerritos is subject to the Commission’s RPS requirements for CCAs and ESPs and in violation of the direction in the Scoping Memo and its obligations under the Amended and Restated AB 80 Agreement, Cerritos has filed the Amended Motion reversing its prior position and arguing that Cerritos should be exempted from the Commission’s RPS rules altogether. Instead, Cerritos asserts that its community aggregation program should be subject to the RPS requirements for “local publicly owned electric utilities,” whose RPS compliance is not regulated by the Commission.¹⁹

Cerritos’ Amended Motion should be rejected. The Commission has already determined that Cerritos should be subject to the Commission’s RPS rules for CCAs or ESPs. Cerritos’ attempt to modify that decision and exempt itself from the Commission’s RPS requirements through a motion in this proceeding is inappropriate and without justification. Furthermore, Cerritos’ request to be treated like a local publicly owned electric utility is both inconsistent with Cerritos’ obligations under the Amended and Restated AB 80 Agreement and contradictory to the statutory definition of a local publicly owned electric utility.

II.

THE COMMISSION HAS ALREADY DETERMINED THAT CERRITOS IS SUBJECT TO THE COMMISSION’S RPS REQUIREMENTS FOR CCAS AND ESPS

As discussed above, in the Scoping Memo, as affirmed by D.10-01-012, the Commission held that Cerritos is subject to the Commission’s RPS requirements for CCAs and ESPs.²⁰ The only question left open for the RPS proceeding is whether Cerritos should comply with the Commission’s RPS rules as a CCA or an ESP, not whether Cerritos is subject to the Commission’s RPS requirements at all or whether Cerritos is a local publicly owned electric

¹⁷ *Id.* at 8 (emphasis added).

¹⁸ *Id.* at 15.

¹⁹ Amended Motion at 1.

²⁰ Scoping Memo at 2-3; D.10-01-012 at 12.

utility.²¹ Cerritos admitted as much, stating: “The Scoping Memo and D.10-01-012 determined, however, that, based on language in Cerritos’ agreement with SCE, Cerritos’ community aggregation program should now be subject to the RPS requirements applicable to Commission-jurisdictional entities (ESPs or CCAs).”²²

Cerritos’ attempt to modify D.10-01-012 through a motion in the RPS proceeding is inappropriate, and should be rejected. If Cerritos wants to modify D.10-01-012, it must file a petition for modification of that decision in accordance with the Commission’s rules.²³

Moreover, Cerritos offers no justification for changing the Commission’s prior determination that it is subject to the Commission’s RPS rules for CCAs and ESPs. Cerritos’ only basis for deciding that the Commission’s RPS requirements no longer apply to Cerritos is that “the regulatory landscape has undergone certain changes with respect to RPS rules for small load-serving entities.”²⁴ Cerritos cites the California Air Resources Board’s (“CARB’s”) decision to exempt certain small entities from its Renewable Electricity Standard (“RES”) regulation.²⁵ As Cerritos’ original Motion explained, this same exemption was included in CARB’s proposed RES regulation at the time Cerritos filed that Motion.²⁶ Additionally, CARB’s exemption of small entities under the RES is irrelevant to whether Cerritos is subject to the Commission’s RPS rules because the State’s RPS law has no such exemption for small entities.

Cerritos also refers to the proposed decisions in the Commission’s RPS proceeding which would subject ESPs to the same usage limit on tradable renewable energy credits and requirement to file RPS procurement plans as are applicable to the IOUs.²⁷ Although those decisions are not final, SCE supports the equal treatment of IOUs and other load-serving entities.

²¹ Scoping Memo at 3 n.2; D.10-01-012 at 12.

²² Motion at 5.

²³ See CPUC Rule of Practice and Procedure 16.4.

²⁴ Amended Motion at 3.

²⁵ *Id.* at 5-6.

²⁶ Motion at 10-11.

²⁷ Amended Motion at 7.

California law requires the Commission to treat ESPs and IOUs the same with respect to the State's RPS requirements.²⁸ The fact that the Commission has proposed to comply with this legal mandate by equalizing certain RPS rules between ESPs and IOUs is not a justification for exempting Cerritos from the Commission's RPS requirements.

III.

CERRITOS' REQUEST TO BE TREATED AS A LOCAL PUBLICLY OWNED ELECTRIC UTILITY IS INCONSISTENT WITH ITS OBLIGATIONS UNDER THE AMENDED AND RESTATED AB 80 AGREEMENT

As Cerritos itself admitted, "with the expansion of the Load Limit in D.10-01-012, Cerritos has now contractually agreed to apply the Commission's RPS requirements to Cerritos' community aggregation program."²⁹ Further, as part of the Amended and Restated AB 80 Agreement, Cerritos agreed that, "[c]onsistent with the September 2, 2009 Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge in A.09-06-008, Cerritos shall, by no later than thirty (30) calendar days of the Effective Date of this Restated Agreement, seek a determination in the CPUC's RPS proceeding on the RPS requirements applicable to Cerritos."³⁰ Cerritos acknowledges that the "Scoping Memo directed Cerritos to seek a determination in this proceeding as to which RPS rules (those applicable to ESPs or those applicable to CCAs) should apply to Cerritos."³¹ Accordingly, Cerritos' request that it be exempted from the Commission's RPS rules and treated like a local publicly owned electric utility is clearly inconsistent with its obligation under the Amended and Restated AB 80 Agreement to seek a determination on the RPS requirements applicable to Cerritos "[c]onsistent with the September 2, 2009 Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge in A.09-06-008."

²⁸ See Cal. Pub. Util. Code §§ 365.1(c)(1), 380(e), 399.12(g)(3).

²⁹ Motion at 8.

³⁰ SCE Advice 2374-E, Appendix A, Amended and Restated Agreement to Implement Assembly Bill 80 at 5-6 (filed May 19, 2010 and effective June 18, 2010).

³¹ Amended Motion at 3 (emphasis added).

Having gained an increase in its Load Limit and an Amended and Restated AB 80 Agreement premised on its compliance with the Commission’s RPS rules, Cerritos should not now be exempted from such rules and treated like a local publicly owned electric utility.

IV.

CERRITOS IS NOT A LOCAL PUBLICLY OWNED ELECTRIC UTILITY

Cerritos’ request to be treated like a local publicly owned electric utility should also be denied because Cerritos does not meet the statutory definition of a local publicly owned electric utility. While Cerritos in Ordinance 861 established an “electric utility” to provide service in the City of Cerritos as approved by city council resolution, including the “planning, development, production, purchase, transmission, distribution and sale of electricity and the acquisition, operation and maintenance of all related facilities,”³² Cerritos is not serving customers as a local publicly owned electric utility. Rather, Cerritos is serving customers as a community aggregator pursuant to AB 80 (codified at Public Utilities Code Section 366.1). A community aggregator provides electric procurement service through direct transactions with end-use customers.³³ SCE continues to provide transmission and distribution service to Cerritos’ procurement service customers.

Cerritos does not meet the definition of a “local publicly owned electric utility” in Section 224.3 of the Public Utilities Code. A local publicly owned electric utility under Section 224.3 is a municipality or municipal corporation operating as a:

1. Public utility furnishing electric service as provided in Section 10001. Cerritos is not furnishing electricity because Cerritos does not provide local distribution service.
2. Municipal utility district furnishing electric service formed pursuant to Division 6 (commencing with Section 11501). An electricity district under Division 6 furnishes electricity to more than 100,000 customers.³⁴ Cerritos’ electric utility is not furnishing

³² See Cerritos Municipal Code § 13.10.020(a).

³³ See Cal. Pub. Util. Code § 366.1; *see also* D.10-01-012.

³⁴ See Cal. Pub. Util. Code § 11509.

electricity because it does not provide local distribution service, and it does not serve more than 100,000 customers.³⁵

3. Public utility district furnishing electric services formed pursuant to the Public Utility District Act set forth in Division 7 (commencing with Section 15501). A public utility district may be incorporated and managed in an unincorporated territory.³⁶ Cerritos' electric utility is not incorporated and managed in an unincorporated territory. Moreover, Cerritos' electric utility is not furnishing electricity because it does not provide local distribution service.
4. An irrigation district furnishing electric services pursuant to the Irrigation District Law set forth in Division 11 (commencing with Section 20500) of the Water Code. Cerritos' electric utility is not an irrigation district.
5. A joint powers authority that includes one or more of these agencies and that owns generation or transmission facilities, or furnishes electric services over its own or its member's electric distribution system. Cerritos' electric utility is not such a joint powers authority.

The basic requirement of a local publicly owned electric utility as defined in Section 224.3 is that it “furnish” electric service. Cerritos' electric utility cannot “furnish” electric service without providing local distribution service. While Ordinance 861 may contemplate the acquisition of distribution facilities in the future, Cerritos' electric utility does not currently provide local distribution service to its community aggregation customers. As such, Cerritos cannot comply with numerous statutory obligations of local publicly owned electric utilities, including Public Utilities Code Section 385, which requires each local publicly owned electric utility to “establish a nonbypassable, usage based charge on local distribution service” to fund

³⁵ Moreover, Cerritos alone is not authorized to form a municipal utility district under Division 6. *See* Cal. Pub. Util. Code § 11561 (authorizing any public agency together with unincorporated territory, or two or more public agencies, with or without unincorporated territory, to organize and incorporate as a municipal utility district). A public agency includes a city, county water district, county sanitation district, or sanitary district. *See* Cal. Pub. Util. Code § 11504.

³⁶ *See* Cal. Pub. Util. Code § 15701.

cost-effective energy efficiency and renewables investments, low-income energy efficiency services, and other public purpose programs.³⁷ Cerritos cannot comply with the requirements of Section 385 because it does not provide local distribution service.

Since Cerritos does not meet the statutory definition of a local publicly owned electric utility, it should not be treated as one for purposes of the RPS program.

V.

CONCLUSION

For all of the foregoing reasons, the Commission should deny Cerritos' Amended Motion. In accordance with the Scoping Memo and D.10-01-012, Cerritos should be subject to the Commission's RPS rules for CCAs or ESPs. As SCE explained in the prior SCE Response, the Commission should also deny Cerritos' request that it be allowed to defer its entire 2010 RPS procurement target for three years.

Respectfully submitted,

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Dated: December 20, 2010

³⁷ See also Cal. Pub. Util. Code § 386 (imposing duties on all local publicly owned electric utilities for low-income programs).

VERIFICATION

I am a Manager in the Renewable and Alternative Power Department of Southern California Edison Company and am authorized to make this verification on its behalf. I am informed and believe that the matters stated in the foregoing pleading are true.

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

Executed this **20th day of December, 2010**, at Rosemead, California.

/s/ Laura Genao

By: Laura Genao

SOUTHERN CALIFORNIA EDISON COMPANY

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CERTIFICATE OF SERVICE

1 I hereby certify that, pursuant to the California Public Utilities Commission's Rules of
2 Practice and Procedure, I have this day served a true copy of the **SOUTHERN CALIFORNIA**
3 **EDISON COMPANY'S (U 338-E) RESPONSE TO THE AMENDED MOTION OF THE**
4 **CITY OF CERRITOS FOR CERTAIN DETERMINATIONS** on all parties identified on the
5 attached service list(s). Service was effected by one or more means indicated below:

6 Transmitting the copies via e-mail to all parties who have provided an e-mail address. First
7 class mail will be used if electronic service cannot be effectuated.

8 Executed this **20th day of December, 2010**, at Rosemead, California.

/s/ Melissa Schary

By: Melissa Schary

Project Analyst

SOUTHERN CALIFORNIA EDISON COMPANY

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