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

Order Instituting Rulemaking To Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.

R. 12-03-014
(Filed March 22, 2012)

**COMMENTS OF THE NATURAL RESOURCES DEFENSE COUNCIL (NRDC),
CLEAN COALITION, AND COMMUNITY ENVIRONMENTAL COUNCIL
ON THE PROPOSED DECISION AUTHORIZING LONG-TERM
PROCUREMENT FOR LOCAL CAPACITY REQUIREMENTS**

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The Natural Resources Defense Council (NRDC), Clean Coalition (CC), and Community Environmental Council (SBCEC) respectfully submit these comments on the *Proposed Decision Authorizing Long-Term Procurement for Local Capacity Requirements* (PD) issued on December 21, 2012. These comments are filed and served pursuant to rules 14.3, 1.9, and 1.10 of the California Public Utilities Commission's (CPUC or Commission) Rules of Practice and Procedure. NRDC is a non-profit membership organization with a long-standing interest in minimizing the societal costs of the reliable energy services that a healthy California economy requires. The Clean Coalition is a California-based nonprofit organization whose mission is to accelerate the transition to local energy systems through innovative policies and programs that deliver cost-effective renewable energy, strengthen local economies, foster environmental sustainability, and enhance energy security. The Community Environmental Council is a member-supported environmental non-profit organization formed in Santa Barbara in 1970 and is the leading environmental organization in the Central Coast region of California.

These opening comments are provided in support of NRDC/CC/SBCEC's position that electricity billpayers and the environment will be well served to have the CPUC include all cost-effective energy efficiency savings in its need determinations, which will offset the need for the other costlier and more polluting supply-side resources. NRDC/CC/SBCEC recommend that the Commission adopt the Proposed Decision with the modifications discussed below and in Attachment A.

In summary, NRDC/CC/SBCEC’s comments and recommendations include:

- The Commission should account for all reasonably expected energy efficiency savings, as the top priority resource, before determining the need for additional resources.
 - NRDC/CC/SBCEC support the PD’s inclusion of “uncommitted” energy efficiency savings in determining the need for LCR procurement in the LA Basin.
 - NRDC/CC/SBCEC recommend that the Commission rely on the full amount of expected future energy efficiency in determining the maximum LCR procurement level, since the PD’s efficiency estimate is conservative and actual energy savings will likely be higher.
 - NRDC/CC/SBCEC urge the Commission to reject the PD’s arbitrary 50% reduction of energy efficiency savings in determining the maximum LCR procurement level, as there is zero evidence on the record to support such an action and it contravenes the Loading Order.
- NRDC/CC/SBCEC recommend that the CPUC eliminate the PD’s minimum procurement requirements, and its requirement for Southern California Edison (SCE) to procure “conventional gas-fired resources.”
- NRDC/CC/SBCEC recommend that the Commission eliminate the PD’s requirement for procurement in the Big Creek/Ventura local area because the need determination does not include an analytically-supportable amount of energy efficiency and SCE is not requesting any procurement authority at this time.

I. The Commission should account for all reasonably expected energy efficiency savings, as the top priority resource, before determining the need for additional resources.

A. NRDC/CC/SBCEC support the PD’s inclusion of “uncommitted” energy efficiency savings in determining the need for LCR procurement in the LA Basin.

The PD correctly relies on both “committed” and “uncommitted” energy efficiency savings in determining the need for new procurement.¹ This corrects an error in the California

¹ The California Energy Commission (CEC) puts energy efficiency savings into two categories, which it calls “committed” and “uncommitted,” both of which are reasonably expected to occur. (“[R]easonably expected to occur conservation programs have been split into two types: committed and uncommitted. . . . [C]onservation reasonably expected to occur includes both committed and uncommitted programs, . . .” CEC, *California Energy Demand 2010-2012 Adopted*, pp. 28, 237 (December 2009) [Hereinafter “CED 2009”].) “Committed” efficiency savings are generally from programs that have already been approved and funded by the CPUC, and savings from other policies such as codes and standards that have already been adopted. “Uncommitted” energy efficiency savings are likely to occur according to the CEC, but do not yet have funding approved. (“[U]ncommitted savings — savings from efficiency programs reasonably expected to occur but not yet implemented or funded . . .” *CED 2009* at 237.) “Uncommitted efficiency” contains all the energy efficiency savings that will come from future efficiency

Independent System Operator's (ISO) primary modeling, which only accounted for "committed" energy efficiency savings. The PD finds 1,050 MW of LCR need in the LA Basin, based on the ISO's sensitivity analysis that properly included the CEC's estimate of uncommitted energy efficiency (in addition to the "committed" energy efficiency already included in the underlying demand forecast).²

As the PD recognizes, including uncommitted energy efficiency is required under the Energy Action Plan's Loading Order,³ which makes efficiency the state's top priority resource, and state law, which requires that any procurement need must be met first with energy efficiency.⁴ Furthermore, the Scoping Memo in this proceeding reinforced this requirement to use energy efficiency as a procurement resource.⁵ Since the ISO's recommendation was based on modeling that did not include uncommitted energy efficiency as required under the state's Loading Order, the PD relies instead on the ISO's sensitivity analysis that did account for uncommitted efficiency. We support the PD's reliance on this energy efficiency resource to displace the need for significant amounts of conventional generation in the LA Basin.

B. NRDC/CC/SBCEC recommend that the Commission rely on the full amount of expected future energy efficiency in determining the maximum LCR procurement level, since the PD's efficiency estimate is conservative and actual energy savings will likely be higher.

The Commission should use the full amount of uncommitted energy efficiency, as included in the ISO's sensitivity analysis, in setting the maximum level of LCR procurement because the CEC's estimate of uncommitted energy efficiency (which was used in the ISO's sensitivity analysis) is a conservative estimate of energy savings and actual savings are likely to

initiatives, for example, savings from efficiency programs, future building code improvements, and future state and federal appliance efficiency standards.

² PD at 63.

³ "As stated in EAP I and reiterated here, cost effective energy efficiency is the resource of first choice for meeting California's energy needs. Energy efficiency is the least cost, most reliable, and most environmentally-sensitive resource, and minimizes our contribution to climate change." CPUC/CEC, *Energy Action Plan II*, Implementation Roadmap for Energy Policies (October 2005). Available at: <http://docs.cpuc.ca.gov/published/REPORT/51604.htm>.

⁴ "The electrical corporation shall first meet its unmet resource needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible." Cal. Public Util. Code § 454.5(b)(9)(C).

⁵ "A major purpose of this proceeding is to maintain and ensure reliability in CPUC-jurisdictional areas in California over a long-term planning horizon. To accomplish this, it is important to consider the . . . increased energy efficiency and demand response resources, . . ." CPUC, *Scoping Memo And Ruling Of Assigned Commissioner And Administrative Law Judge*, R.12-03-014, p. 8 (May 2012).

be higher. While the ISO sensitivity analysis represented an improvement over the modeling that the ISO based its recommended procurement upon by including *some* uncommitted energy efficiency, it still undercounted energy efficiency significantly. Primarily, it undercounted energy efficiency because the CEC's estimate of uncommitted energy efficiency that it relied upon was incomplete at the time. The CEC itself stated that there were more energy efficiency savings that the CEC did not include.⁶ For example, the estimate of uncommitted energy efficiency used in ISO's sensitivity analysis excludes the following significant energy saving standards and programs:⁷

- California's 2011 Television Efficiency standard
- California's 2013 Title 20 Battery Charge standard
- Federal Commercial Refrigerator & Freezer standards
- Federal Electric Water Heaters standards
- Federal Clothes Washers standards
- Federal Small Motors standards
- Federal Vending Machines standards

All of these energy efficiency standards will provide savings in the LA Basin and Western LA sub-area. Therefore, the estimate of uncommitted energy efficiency used in the sensitivity analysis is overly-conservative and is the minimum amount that should be used in determining the upper end of LCR need in the LA Basin.

C. NRDC/CC/SBCEC urge the Commission to reject the PD's arbitrary 50% reduction of energy efficiency savings in determining the maximum LCR procurement level, as there is zero evidence on the record to support such an action and it contravenes the Loading Order.

While the PD correctly relies on uncommitted energy efficiency, it errs in its approach to setting the maximum LCR procurement level. The PD correctly states that it should include a reasonable amount of uncommitted energy efficiency in determining the maximum procurement

⁶ “[T]here are additional energy efficiency savings that may be accomplished through time across the entire range of delivery mechanisms that have not been addressed in this analysis. For example, the Energy Commission adopted television standards in late 2009, and the savings from such standards are not included within the scope of the state or federal standards evaluated in this project.” Exhibit NRDC-1 at 7, fn. 28.

⁷ Exhibit NRDC-1 at 7.

level.⁸ However, the PD goes on to use a patently unreasonable amount of energy efficiency: it arbitrarily slashes the energy savings in half.⁹ The PD provides zero reasoning behind this reduction, only citing TURN's opening brief. And TURN's opening brief provides no analytic support for this 50% figure, just arguing that energy efficiency is uncertain.¹⁰ (However, as we have demonstrated throughout this proceeding,¹¹ every factor in the need determination has uncertainty associated with it—yet we do not slash every factor by 50%. For example, the exact amount of economic growth in the LA Basin is very uncertain—yet the modeling appropriately relies on the best estimate available not an arbitrary reduction.) Moreover, as we discussed above, the PD's estimate of energy efficiency from the ISO's sensitivity analysis is already conservative and actual savings will likely be higher, not lower. The PD's use of only half the energy efficiency savings in setting the maximum procurement level is completely arbitrary, contrary to the Loading Order, and the Commission should reject that unsupported and indefensible proposal.

Even if the Commission plans to provide a “cushion” for higher procurement levels than the 1,050 MW of identified need, similar to the ISO's modeling of a range of potential need, then it should use the full amount of uncommitted energy efficiency. The ISO's sensitivity analysis included the full amount of uncommitted energy efficiency, which resulted in an LCR need in the LA Basin of 1,042 MW.¹² Then, because some locations for generation were less effective at meeting the LCR need in the LA Basin, ISO also provided a higher range estimate for LCR need.¹³ ISO stated that if generation were sited in locations that differ from current OTC generation sites, the LCR need would be higher. ISO specifically stated that the higher end of the range of need was *due to the effectiveness of the location* of new generation—not due to uncertainty surrounding energy efficiency.¹⁴ Therefore, the Commission cannot credibly claim that a higher level of procurement is needed due to uncertainty over energy efficiency. The only

⁸ PD at 64.

⁹ “TURN's suggestion of assuming 50% achievement [of energy efficiency] is reasonable.” *Id.*

¹⁰ TURN, *Opening Brief*, p. XX

¹¹ NRDC, *Opening Brief of the Natural Resources Defense Council*, R.12-03-014, pp. 5-6 (September 2012).

¹² Exhibit ISO-2, at 3, Table 2.

¹³ Exhibit ISO-2 (Sparks) at Table 2.

¹⁴ “The lower end of the repowered former OTC range value corresponds to the amount of generation that would be needed if it were located at existing OTC sites that are the most effective at mitigating the identified transmission constraint. The higher end of the OTC range value corresponds to the amount of generation inside the sub21 area that would be needed if it were located at existing OTC sites that are the least effective at mitigating the identified transmission constraint.” Exhibit ISO-1 (Sparks) at 6.

evidence on the record that would support the idea of a “cushion” for a potentially higher level of procurement like the PD proposes shows that it was *not* due to energy efficiency, but rather, the location of generation. If the Commission decides to authorize a range of procurement levels, it should rely on sound evidence for any increased need — not invent a need by arbitrarily reducing energy efficiency.

II. NRDC/CC/SBCEC recommend that the CPUC eliminate the PD’s minimum procurement requirements, and its requirement for SCE to procure “conventional gas-fired resources.”

The PD would diverge from past Commission practice by requiring SCE to both procure a minimum amount of new resources, and requiring a minimum amount from “conventional gas-fired resources.”¹⁵ Both of these requirements should be eliminated, and the Commission should focus instead on limiting the *maximum* amount of procurement SCE is authorized to undertake.

Prior Commission LTPP decisions rightly focused on setting *upper* limits in authorizing utilities to procure new resources.¹⁶ These upper limits provide important guideposts for the Commission’s decision making when it considers subsequent utility applications to procure power from individual resources or contracts. An upper limit helps ensure that the utilities do not over-invest in new infrastructure that could have serious cost and environmental implications. In contrast, the purpose of the minimum procurement requirement proposed in the PD is unclear. Moreover, it could have detrimental cost and environmental impacts if SCE determines that fewer resources are needed but it is still required to procure unnecessary resources. Since the PD’s procurement authorizations are for need identified in 2021, there are many variables that could change in the intervening years that might render the PD’s minimum procurement requirement too high.

In addition, the PD’s proposal to require some procurement specifically from “conventional gas-fired resources” should be eliminated. First, the phrase “conventional gas-fired resources” is not defined and could be problematic. If the utilities procure fossil-fueled resources, then the Commission should be seeking the most efficient and advanced resources possible that can meet the identified need (as well as the Commission’s other goals for

¹⁵ PD, OP 1.

¹⁶ See CPUC D.07-12-052, OPs 4-6, and D.04-12-048.

affordability, reliability, safety and environmental performance). In short, utilities should be seeking the best option available, not just the “conventional” option.

Second, the Commission should not prioritize natural gas-fired resources over other potential resources for at least 1,000 MW of procurement for the entire period through 2021. The PD notes that neither SCE nor ISO is seeking a requirement for gas-fired generation specifically, but rather that they are technology neutral and care about operating characteristics that are needed to maintain local reliability.¹⁷ The PD notes that gas-fired generation currently meets the ISO’s criteria and “it is possible that other resources will pass the ISO test as well in the future.”¹⁸ The Commission should not lock SCE customers into one fuel source (that carries significant risks, including environmental impacts and price volatility) for much of new procurement over the coming decade, and should leave open the door to alternative ways to provide the operating characteristics needed to maintain local reliability. Moreover, the requirement for procurement of natural gas-fired resources appears to contradict other portions of the PD that would:

- require any SCE Requests for Offers to contain “no provisions specifically or implicitly excluding any resource from the bidding process due to resource type,”¹⁹ and
- state that the CPUC will evaluate SCE applications “to ensure technological neutrality, so that no resource was arbitrarily or unfairly prevented from bidding in SCE’s solicitation process. To the extent that the availability, viability and effectiveness of resources higher in the Loading Order are comparable to fossil-fueled resources, we intend to ensure that SCE contracts with these preferred resources first.”²⁰

Therefore, the Commission should eliminate the PD’s proposal to require SCE to procurement a minimum amount of “conventional gas-fired resources.”

¹⁷ PD at 71-72.

¹⁸ PD at 72.

¹⁹ PD, OP 5e.

²⁰ PD at 77.

III. NRDC/CC/SBCEC recommend that the Commission eliminate the PD's requirement for procurement in the Big Creek/Ventura local area because the need determination does not include an analytically-supportable amount of energy efficiency and SCE is not requesting any procurement authority at this time.

NRDC/CC/SBCEC urge the Commission to eliminate the PD's authorization of 215 MW to 290 MW of procurement in the Moorpark sub-area of the Big Creek/Ventura local area.²¹ The ISO's forecast used as the basis for the authorization did not include any uncommitted energy efficiency, as the PD notes.²² But rather than relying on an analytically-supportable amount of energy efficiency to correct the ISO's omission, the PD instead relies on assumptions layered on top of assumptions on top of assumptions to derive the final authorization numbers, which are not supported by evidence in the record.

First, the PD uses the amount of energy efficiency and preferred resources that were used in the determination of need for the LA Basin.²³ Then, it assesses how this energy efficiency and other preferred resources reduced procurement otherwise needed, reducing the LA Basin need from roughly 2,400 MW to 1,000 MW, on the low end. Then it assumes the arbitrary 50% reduction in energy efficiency savings in the LA Basin (discussed above), yielding roughly 1,500 MW in the LA Basin. Then, it takes the ratio of these procurement levels in the LA Basin and applies them to ISO's estimate of procurement resources needed in the Big Creek/Ventura local area. This yields a range of 180 MW to 270 MW. Then, because there is a plant retiring that happens to be sized at 215 MW, the PD authorizes 215 MW as the low end of the range, rather than 180 MW. This method of arriving at a procurement target is analytically unsupportable and the Commission should reject it.

Moreover, Southern California Edison is not even requesting procurement authority for resources in the Big Creek/Ventura area, and instead recommended deferring authorization to the next LTPP cycle.²⁴ Therefore, the Commission should eliminate the PD's requirement for up to 270 MW of generation in SCE's territory and defer consideration of the need for new resources in the Big Creek/Ventura local area until this year's ISO study results are available.

²¹ PD at 124.

²² "Here, the ISO also did not include any values for uncommitted energy efficiency and uncommitted CHP." PD at 68.

²³ "Using the same ratio for the minimum and maximum authorized procurement in the LA basin leads to a minimum figure of 180 MW (1,000/2,400 * 435) and a maximum figure of 270 MW (1,500/2,400 * 435)." PD at 70.

²⁴ SCE sees no immediate need to consider procurement of resources in the Big Creek/Ventura area." Exhibit SCE-1 p. 10.

Finally, we note that the PD would not have needed to layer so many assumptions on top of one another to try to assess the need for resources in the Big Creek/Ventura area if ISO's model had included the full amount of energy efficiency. The Commission should ensure that it does not find itself in this same position of being asked to make a decision based on a deficient analysis of need in the future. Procurement cannot be authorized with assumptions of zero savings from future energy efficiency, since it contradicts the Loading Order and state law. The PD should make clear that the Commission will only consider results of procurement models that incorporate uncommitted energy efficiency going forward.

IV. Conclusion

NRDC/CC/SBCEC respectfully request that the Commission revise the Proposed Decision as recommended in these opening comments.

Respectfully submitted,

Dated: January 14, 2013

/s/

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Attachment A: Proposed Modifications to the PD

NRDC/CC/SBCEC recommend the following changes to the PD's Findings of Fact, Conclusions of Law, and Ordering Paragraphs. In addition, we recommend that the Commission make the additional modifications described in NRDC/CC/SBCEC's comments.

Findings of Fact

11. Each of the four RPS scenarios analyzed by the ISO contain only a small portion a ~~reasonable minimum level~~ of energy efficiency from CEC forecasts which can be used for the purposes of determining LCR needs for the LA basin local reliability area.

17. As required by statute, we fully expect to continue to fund all cost-effective energy efficiency into the foreseeable future.

18. The ISO Environmentally Constrained scenario sensitivity analysis includes a conservative ~~reasonable maximum~~ level of uncommitted energy efficiency for the LA basin local reliability area.

~~30. A minimum LCR procurement level is necessary to ensure reliability.~~

32. The ISO's Environmentally Constrained scenario sensitivity analysis includes a conservative estimate ~~the highest reasonable levels~~ of uncommitted energy efficiency and uncommitted CHP. This forecast shows an LCR need of 1,042 MW for the LA basin local area for effective sites.

~~34. It is reasonable to assume 50% of the CEC's forecast of uncommitted energy efficiency and CHP levels will exist in order to determine a maximum LCR procurement level for the LA basin local area.~~

35. In order to determine a maximum LCR procurement level for the LA basin local area ~~with 50% of the CEC's forecast of uncommitted energy efficiency and uncommitted CHP~~, it is reasonable to consider a figure approximately halfway between the Environmentally Constrained scenario and the Environmentally Constrained scenario sensitivity analysis.

43. There is ~~no an~~ immediate need to begin a procurement process to meet LCR needs ~~of between 215 and 290 MW~~ in the Moorpark sub-area.

Conclusions of Law

1. A significant difference between the ISO's reliability mission under § 345 and the Commission's reliability emphasis under § 380(c) is that the Commission must balance its reliability mandate with other statutory and policy considerations. Primarily, these considerations

are reasonableness of rates and customer bills under § 451 and § 454 and a commitment to a clean environment under Pub. Util. Code sections including § 399.11 (Renewables Portfolio Standard) and § 454.5(b)(9)(C) (Loading Order).

~~6. Adoption of an LCR need range which takes into account between 50% and 100% of uncommitted energy efficiency and uncommitted distributed generation resources, and allows for the potential of demand resources and energy storage resources which may meet ISO technical criteria for meeting LCR needs, is consistent with the applicable statutory and regulatory requirements for procurement of preferred resources, including the Loading Order.~~

7. SCE should be authorized to start the process to procure a ~~minimum of 1,050 MW~~ and a maximum of 1,500 MW in the West LA sub-area of the LA basin local reliability area. No more than 1,200 MW should be from conventional gas-fired sources up to 450 MW may be from preferred resources in addition to resources already authorized or required to be obtained via Commission decisions in energy efficiency, demand response, RPS and relevant dockets.

10. SCE should evaluate and provide recommendations on the need for new procurement in ~~be authorized to start the process to procure a minimum of 215 MW and a maximum of 290 MW in the Moorpark sub-area of the Big Creek/Ventura local reliability area~~ in the next LTPP proceeding.

Ordering Paragraphs

1a. ~~At least 1,000 MW, but~~ no more than 1,200 MW, of this capacity may ~~must~~ be from conventional gas-fired resources;

~~2. Southern California Edison Company is authorized to begin a process to procure between 215 and 290 Megawatts of electric capacity to meet local capacity requirements in the Moorpark sub-area of the Big Creek/Ventura local reliability area.~~