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

Application of Southern California Edison (U338E)
for Approval of the Results of Its 2013 Local
Capacity Requirements Request for Offers for the
Moorpark Sub-Area.

Application 14-11-016
(Filed November 26, 2014)

**SIERRA CLUB OPENING COMMENTS ON PROPOSED DECISION
AND ALTERNATE PROPOSED DECISION**

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TABLE OF CONTENTS

| | |
|---|---|
| I. INTRODUCTION..... | 1 |
| II. DISCUSSION | 2 |
| A. The PD and APD Properly Defer Consideration of the Puente Contract. | 2 |
| B. The PD and APD Commit Factual Error in Stating “It is Unclear” Whether SCE Complied with Environmental Justice Procurement Requirements and Concluding that SCE “Substantially Satisfied the Procurement Requirements of D.13-02-015.” | 3 |
| C. A New RFO is Needed to Rectify Failures in the Initial RFO and Identify Alternative Procurement Options Consistent with California’s Environmental Justice and Climate Objectives. | 4 |
| D. The PD Properly Rejects the Ellwood Contract and Should Be Adopted in Lieu of the APD..... | 5 |
| III. CONCLUSION | 8 |
| APPENDIX A – Findings of Fact/Conclusions of Law | i |

**SIERRA CLUB OPENING COMMENTS ON PROPOSED DECISION
AND ALTERNATE PROPOSED DECISION**

Sierra Club respectfully submits the following comments on the January 11, 2016 Proposed Decision (“PD”) of Administrative Law Judge DeAngelis and the Alternate Proposed Decision (“APD”) of Commissioner Florio Approving, In Part, Results of Southern California Edison Company Local Capacity Requirements Request for Offers (“RFO”) for the Moorpark Sub-Area Pursuant to Decision 13-02-015. These comments are timely submitted pursuant to Rule 14.3(a) of the Commission’s Rules of Practice and Procedure.

I. INTRODUCTION

By any objective measure, the Moorpark RFO was a failure. To move California toward an equitable and resilient low-carbon future, Executive Order B-30-15 requires state agencies like the Commission to prioritize investments that “protect the state’s most vulnerable populations” and “both build climate preparedness and reduce greenhouse gases.”¹ Contrary to each of these objectives, the Moorpark Application would: 1) perpetuate environmental injustice by continuing to site polluting generation in a disadvantaged community; 2) undermine efforts at building climate resiliency due to the Puente project’s exposure to sea level rise and flooding; and 3) exacerbate greenhouse gas pollution by meeting almost the entirety of local capacity needs with fossil-fueled generation. The PD and APD properly recognize that due to the Commission’s independent obligation to ensure that proposed infrastructure investments are not subject to hazards that unreasonably compromise reliability and that environmental justice considerations are factored into utility procurement, consideration of the Puente contract should be deferred until the completion of environmental analysis by the California Energy Commission (“CEC”). However, given the overall shortcomings of the Moorpark RFO, the PD/APD should be revised to require that SCE issue a second RFO for the Moorpark area during the pendency of CEC review of Puente.

The lack of clean energy resources in the Moorpark Application is not a function of limited clean energy potential in the Moorpark area. It is a function of a flawed procurement process that did not afford the region the attention it deserved. SCE issued the much larger Western LA Basin RFO at the same time as Moorpark and admitted that as a result, “the market

¹ Exec. Order B-15-30.

was focusing their efforts on the Western LA Basin.”² A second Moorpark RFO that is now the focus of market attention will better identify resource solutions that help rectify historic environmental injustices, contribute to a more climate resilient and cleaner grid, distribute resources to areas like Goleta that may have unique reliability needs, and prepare the Commission to meet Moorpark area need in the event Puente is rejected or substantially modified by the CEC. While Puente could still be considered for contract approval should it survive CEC review, it would be in the context of a broader range of alternatives that further California’s climate objectives and that properly account for the required environmental justice considerations SCE overlooked in its initial resource solicitation.

The PD and APD differ regarding SCE’s attempt to circumvent established procurement rules prohibiting existing non-incremental resources from participating in new resource RFOs. Committing legal and factual error, the APD would approve SCE’s pairing of a bid for a *de minimis* amount of new energy storage with an extended contract for the existing and non-incremental 54 MW Ellwood peaker. The PD properly rejects such gamesmanship, finding that the Ellwood contract violates both Commission procurement rules for new resource RFOs and the Moorpark RFO’s own requirement that bids “be incremental (*i.e.* new capacity),”³ that purported reliability and cost benefits of the Ellwood contract have not been vetted, and that extending a contract for an existing fossil fuel facility without first providing an opportunity to identify clean energy alternatives frustrates state efforts to decrease reliance on fossil fuels. Moreover, SCE has contracted with Ellwood for the past ten years and there is no record evidence substantiating claims that Ellwood is at genuine risk of imminent retirement or that a contract beyond the five years permissible under SCE’s Bundled Procurement Plan is required to facilitate its refurbishment. Accordingly, the PD should be adopted and SCE required to conduct a second Moorpark RFO.

II. DISCUSSION

A. The PD and APD Properly Defer Consideration of the Puente Contract.

Sierra Club strongly supports the PD and APD’s determination to “hold the review of the NRG Puente Project for further consideration after the CEC completes its environmental

² Reporter’s Transcript Evidentiary Hearing (“Tr.”) 80:15-28 (SCE, Bryson).

³ Exh. SCE-1 p. 14.

review.”⁴ As the PD and APD recognize, the Commission has an independent obligation to ensure investments in electric infrastructure contribute to local reliability.⁵ Because the Puente Project’s coastal location poses reliability risks from flooding and sea-level rise, contract approval should not be considered until these risks are fully understood. The PD and APD also correctly find that “the Commission requires utilities to take environmental justice into consideration in procurement” and observe that because Oxnard is an environmentally disadvantaged community, simply replacing the retiring Mandalay once-through-cooling facility with Puente “potentially perpetuates the economic injustice issues connected with living near power plants built decades ago.”⁶ CEC review is therefore necessary to identify project alternatives that avoid the environmental injustice of continuing to locate polluting generation in a community disproportionality affected by environmental pollution and other hazards. Deferral of contract approval is well within Commission discretion, critical to ensuring full consideration of concerns squarely within the Commission’s statutory mandate, and should not be disturbed.

B. The PD and APD Commit Factual Error in Stating “It is Unclear” Whether SCE Complied with Environmental Justice Procurement Requirements and Concluding that SCE “Substantially Satisfied the Procurement Requirements of D.13-02-015.”

The PD and APD incorrectly state that “it is unclear” whether SCE took environmental justice into consideration in its RFO process.⁷ The record is clear that SCE did not. When asked whether “environmental justice issues were considered” in the selection process, SCE responded “environmental justice, no.”⁸ When asked whether an evaluation of brownfield versus greenfield development included a discussion of impacts to “low-income minority communities,” SCE stated “No, they did not.”⁹ When asked, in evaluating renewable energy projects, “was any preference given to projects that provide environmental and economic benefits to communities that may be afflicted with poverty or high unemployment, etc,” SCE replied “not specifically for those issues.”¹⁰ When asked whether SCE “communicated a need or preference for preferred

⁴ PD/APD p. 17 (APD includes the added words “*in abeyance* for further consideration”).

⁵ PD/APD p. 10 (citing to Pub. Util. Code § 451).

⁶ PD/APD pp. 15, 17.

⁷ PD/APD p. 17.

⁸ Tr. 39:16-20 (SCE, Singh).

⁹ Tr. 40:1-11 (SCE, Singh).

¹⁰ Tr. 40:12-26 (SCE, Singh).

resources to benefit Oxnard particularly,” SCE stated “No.”¹¹ The record therefore unequivocally supports the conclusion that SCE neither communicated environmental justice procurement requirements to bidders nor accounted for the environmental justice implications of its procurement decisions. SCE failed to comply with environmental justice procurement requirements, Moorpark RFO bidding and results were prejudiced by this material oversight, and the PD/APD err is concluding that SCE “substantially satisfied the procurement requirements of D.13-02-015.”¹²

C. A New RFO is Needed to Rectify Failures in the Initial RFO and Identify Alternative Procurement Options Consistent with California’s Environmental Justice and Climate Objectives.

As SCE has acknowledged, “[t]here are times when you do put together an RFO and you think you’ve got it right and it ends up that it doesn’t work.”¹³ The Moorpark RFO did not work; it was fundamentally compromised by SCE’s decision to concurrently solicit resources to meet the much larger local capacity needs in the Western LA Basin and failure to incorporate environmental justice considerations into its procurement process. Because the Moorpark RFO was overshadowed by the LA Basin RFO, resulting bids were not indicative of clean energy potential in the Moorpark area. A second RFO is needed to align Moorpark procurement with state environmental justice and climate policy objectives and ensure the environmental justice considerations neglected by SCE in the original RFO are properly accounted for.

A second RFO will most certainly result in additional preferred resource procurement options for the Moorpark area. As SCE opined, “If we were to launch another RFO for preferred resources, I would expect to receive offers.”¹⁴ The minimal amount of preferred resources bid into the initial Moorpark RFO was in large part due to SCE’s decision to time the Moorpark RFO with the much larger Western LA Basin RFO. In comparison with the 215-290 MW of any resource sought in the Moorpark RFO, the LA Basin was close to ten times the size, seeking 1,800 to 2,500 MW of resources of which at least 600 MW had to be preferred resources and energy storage. As SCE acknowledged, given its much larger total procurement and preferred

¹¹ Tr.151:18-26 (SCE, Bryson).

¹² PD p. 27 (Conclusion of Law 7); APD p. 27 (Conclusion of Law 6)

¹³ Tr. 143:27 – 144:1 (SCE, Bryson).

¹⁴ Tr. 144:23-25 (SCE, Bryson).

resource minimums, “the market was focusing their efforts on the Western LA Basin.”¹⁵ While SCE has asserted the Moorpark climate zone and smaller customer base are more challenging for preferred resource deployment,¹⁶ resources like in-front-of-meter (“IFOM”) energy storage, of which 100 MW were procured for the LA Basin and far more were shown to be cost-effective in SCE’s modelling, are not affected by these potential procurement challenges. Moreover, given that SCE has gained significant additional experience in preferred resource and all-source solicitations since the original Moorpark RFO was issued and that storage continues to decline in cost, it is reasonable to expect a smoother RFO process with a more viable and robust set of offers.

The barriers to ensuring the benefits of the state’s clean energy transition are shared by all Californians are often complex and can seem insurmountable. This case offers a rare opportunity for the Commission to take advantage of a clear and straightforward solution. Requiring a new RFO that will now be the focus of market attention and where SCE complies with its obligation to communicate and act on environmental justice procurement requirements will help move Oxnard past a legacy of disproportionate impacts from environmental pollution and further California’s overall efforts to reduce greenhouse gases and increase the State’s preparedness in the face of foreseeable climate impacts. In its recent LA Basin Decision, the Commission declined to require SCE to issue a second RFO despite falling close to 30 percent short of its minimum preferred resource procurement requirements.¹⁷ With fundamental issues of equity at stake and a procurement process compromised by the LA Basin solicitation and the failure to account for environmental justice, now is the time for the Commission to require SCE to hold a subsequent RFO to identify additional resource solutions for the Moorpark area.

D. The PD Properly Rejects the Ellwood Contract and Should Be Adopted in Lieu of the APD.

The PD properly rejects the Ellwood contract as inconsistent with the procurement authorization in D.13-02-015, premised on unvetted assumptions of need and cost, and prematurely foreclosing consideration of clean energy options that move California “toward

¹⁵ Tr. 80:15-28 (SCE, Bryson).

¹⁶ Tr. 80:24-28 (SCE, Bryson).

¹⁷ D.15-11-041 p. 37.

decreased reliance on gas-fired generation consistent with the State’s loading order.”¹⁸ The APD would turn a blind eye to these multiple fatal defects and instead approve Ellwood based on SCE’s unsupported claims of need and NRG’s naked assertion that Ellwood would retire absent a long-term contract. The APD should be rejected and the PD approved.

The APD commits legal error in stating that “nothing precludes SCE from seeking to procure an existing resource through a single application that also includes the RFO results.”¹⁹ In fact, the recent Decision Modifying Long-Term Procurement Planning Rules expressly prohibits the practice of contracting with existing non-incremental resources as part of a new generation RFO.²⁰ In D.14-02-040, the Commission determined that it would only allow “incremental capacity of existing plants or repowered plants to participate in long-term RFOs.”²¹ In defining “incremental capacity,” the Commission accepted “SCE’s recommendation that the definition should be ‘capacity incremental to what was assumed in the underlying need authorization.’ In other words, these are net additions.”²² Consistent with this requirement, the Moorpark RFO required that any project bidding into the RFO “must be incremental (*i.e.*, new capacity).”²³

Here, there is no dispute that the Ellwood peaker was assumed to be operational in the underlying Moorpark local capacity need analysis. The proposed Ellwood contract does not contemplate offering additional capacity from the Ellwood peaker, but merely a continuation of the existing MW of capacity that were already assumed. As the PD properly finds, because Ellwood “does not fall within the definition of incremental resource and, under the terms of the Commission’s prior decisions, the 54 MW contract to refurbish the Ellwood facility does not count toward the LCR procurement authorization required in D.13-02-015,” the contract “should be denied.”²⁴ By its own terms, SCE’s Moorpark Application is to meet the LCR need identified in D.13-02-015. SCE’s attempt to use a 0.5 MW energy storage offer to bootstrap an extended contract for an existing non-incremental fossil-fueled facility flies in the face of Commission procurement rules and should not be approved.

¹⁸ PD pp. 21-22.

¹⁹ APD pp. 22-23.

²⁰ D.14-02-040.

²¹ D.14-02-040 p. 28.

²² D.14-02-040 P. 28.

²³ Exh. SCE-1 p. 14.

²⁴ PD pp. 19-20.

Commission procurement rules exist for a reason. They help ensure substantial evidence is developed to support need, reliability and cost findings. As the PD notes, by violating those rules, “[n]one of the assertions regarding reliability or costs ... have been vetted.”²⁵ No Goleta-specific need finding has occurred and to the extent need exists, alternatives have not been considered. The APD cannot simply assume an extended contract with an existing peaker is the best procurement solution for the region. Indeed, as SCE’s vice president of energy procurement recently stated, “if the requirement is just, ‘Hey we’re just short energy or capacity,’ then yes, energy storage is going to be the solution before probably a peaker.”²⁶ The Ellwood peaker is a capacity resource which, due to high operating costs and air permit constraints, would barely run. Energy storage resources lack these significant operational constraints, can provide capacity, energy and ancillary services, and may offer superior grid value, especially as California continues to decarbonize and requires more resources that can shift load from periods of high renewable supply to periods of high energy demand. In yielding to SCE’s improperly procured contract, the APD precludes such a comparison.

In addition to the failure to support its conclusions on cost, the APD takes at face value the claim that Ellwood would retire absent a 10-year contract. As ORA has noted, SCE has contracted with Ellwood for the past ten years.²⁷ The record contains nothing beyond NRG and SCE’s bare assertions to support the claim that Ellwood would retire absent a 10-year contract or that a 10-year contract is required for NRG to refurbish Ellwood.²⁸ The Commission should not deviate from its procurement rules based on newfound and unvetted claims especially where, as here, an additional long-term fossil fuel commitment comes at the expense of procurement opportunities for the preferred resources needed to meet California’s decarbonization objectives.

To the extent there are specific resource needs in the Goleta region of the Moorpark area, this only further underscores the failings of the initial Moorpark RFO and the need for an additional solicitation. While SCE’s RFO indicated a preference for resources in Goleta, this need was not strongly emphasized. Rather than concentrate 96 percent of LCR resources in

²⁵ PD p. 21.

²⁶ Brian Eckhouse, BLOOMBERG, Batteries Gaining Favor Over Gas Plants in California (Dec. 22, 2015) (quoting Colin Cushnie), <http://www.bloomberg.com/news/articles/2015-12-22/batteries-gaining-favor-over-gas-peaker-plants-in-california>.

²⁷ ORA Opening Br. p 9 (citing Data Request Set A.14-11-016 LCR RFO Moorpark-ORA-001).

²⁸ Cross examination regarding the extent of SCE’s investigation into Ellwood retirement risk is available in the Confidential Evidentiary Hearing Transcript pp. 183-184.

Oxnard, a resource distribution that better focused on Goleta would function to meet both LCR and purported Goleta-area specific needs, potentially obviating the need and added cost of the Ellwood peaker. As SCE has conceded, load may decrease and the retirement of Ellwood would not result in the need for an equivalent additional amount of local capacity.²⁹ In addition, SCE's next energy storage procurement solicitation intends to target storage in local need areas such as Goleta. Targeted storage procurement offers a reliability solution that is consistent with the Loading Order and provides added ratepayer savings by also serving to meet SCE storage procurement requirements. At a time when California must rapidly transition its fleet from conventional to preferred resources, the Commission should not adopt the APD's unsubstantiated decision to lock-in additional fossil fuel commitments. The PD's well-reasoned rejection of the Ellwood contract on legal, evidentiary, and Loading Order concerns should be adopted.

III. CONCLUSION

For the reasons set forth above and in Sierra Club's Opening Brief, Sierra Club respectfully requests that the PD be adopted in lieu of the APD and be revised to require SCE to issue a new RFO for the Moorpark area.

Dated February 1, 2016

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/s/

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²⁹ Tr. 304:10 (SCE, Cushnie). Indeed, updated demand forecasts show significant declines in peak energy needs due to higher than previously assumed deployment of self-generation. See CEC, California Energy Demand 2016-2026, Revised Electricity Forecast Volume 1 (Jan. 2016) p.5, http://docketpublic.energy.ca.gov/PublicDocuments/15-IEPR-03/TN207439_20160115T152221_California_Energy_Demand_20162026_Revised_Electricity_Forecast.pdf.

APPENDIX A

SIERRA CLUB'S PROPOSED CHANGES TO PROPOSED DECISION³⁰

FINDINGS OF FACT

1. The results of the RFO, with the exception of the NRG Puente Project and the Ellwood contract, substantially comply with the procurement directives in D.13-02-015.

2. Additional information regarding fundamental issues, such as safety, reliability, and environmental justice, may be available on the NRG Puente Project after the review by the California Energy Commission.

3. In the absence of additional information, SCE has not established, by the preponderance of the evidence that the NRG Puente Project is safe, reliable and in the public interest.

4. SCE failed to comply with environmental justice procurement requirements in implementing the Moorpark RFO.

5. Because the Moorpark RFO was issued on the same timeline as the much larger LA Basin RFO, the Moorpark RFO was not the focus of market attention and RFO results are not indicative of clean energy potential in the Moorpark area.

6. The Ellwood contract was not entered into under the directives of D.13-02-015 and, therefore, the Commission is unable to establish that the contract is reasonable at this time.

7. Under the terms of the contracts, the energy storage contract with NRG California South, located at the site of Ellwood, is not available if the Commission refrains from approving Ellwood.

8. The terms and conditions of the six contracts for energy efficiency (totaling 6 MW of capacity) and the two contracts are for renewable distributed generation (totaling 5.66 MW of capacity) are reasonable and consistent with D.13-02-015.

9. The cost allocation and recovery proposals by SCE together with the April 17, 2015 Joint Memorandum of Understanding are reasonable.

³⁰ Sierra Club does not believe the APD should be adopted and only proposes changes to the PD.

CONCLUSIONS OF LAW

1. SCE failed to comply with environmental justice procurement requirements in implementing the Moorpark RFO.
2. With the exception of the NRG Puente Project and the Ellwood contract, Southern California Edison Company substantially complied with the procurement directives in Decision 13-02-015.
3. Further consideration is warranted of the 20-year contract for gas-fired generation (totaling 262 MW of capacity) with NRG for a new simple cycle peaking facility, the NRG Puente Project following the review by the California Energy Commission.
4. The ten-year agreement with NRG California South for the existing 54 MW Ellwood Generating Station (Ellwood) is not approved.
5. The energy storage contract with NRG California South (0.5 MW) is not approved.
6. Six contracts for energy efficiency (totaling 6 MW of capacity) are found reasonable and approved.
7. Two contracts for renewable distributed generation (totaling 5.66 MW of capacity) are found reasonable and approved.
8. ~~SCE has substantially satisfied the procurement requirements of D.13-02-015 and is relieved from the requirement to procure additional resources as part of the RFO required by D.13-02-015.~~ During the pendency of California Energy Commission review of the Puente Project, SCE shall issue a second RFO to solicit alternatives to meet need in the Moorpark area. SCE remains obligated to procure additional resources via any approved procurement mechanisms to meet the minimum amounts required under D.13-02-015.
9. Any payments to be made by SCE pursuant to the approved contracts are recoverable in full by SCE through the ERRA proceeding.
10. SCE is authorized to allocate the benefits and costs of the contracts entered into as a result of the LCR RFO to all benefitting customers in accordance with D.13-02-015 and D.14-03-004.
11. SCE's plan for the allocation of costs and benefits to all benefitting customers set forth in Chapter 9 of Exhibit SCE-1 is reasonable.

12. The April 17, 2015 motion regarding cost allocation is reasonable and granted.
13. SCE may establish the LCR Products Balancing Account, as needed.