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

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

A.14-11-016  
(Filed November 26, 2014)

**THE CENTER FOR BIOLOGICAL DIVERSITY'S  
APPLICATION FOR REHEARING**

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Dated: June 30, 2016

## **INTRODUCTION**

Pursuant to Public Utilities Code sections 1731- 1736 and Rule 16.1 of the Rules of Practice and Procedure of the California Public Utilities Commission, the Center for Biological Diversity (“the Center”) applies for rehearing of Decision D.16-05-050 on A.14-11-016, Application of Southern California Edison Company for Approval of the Results of Its 2013 Local Capacity Requirements Request for Offers for the Moorpark Sub-Area. The procedure used to reach this decision was not in compliance with the law and the resulting decision is void for material, procedural and substantive error including failure to comply with the Public Utilities Code and the California Environmental Quality Act, California Public Resources Code section 21000 et seq., implemented by California Code of Regulations, title 14, section 15000 et seq. (“CEQA”).

Pursuant to Rule 16.2 and 14.5, the Center filed its protest on January 12, 2015 and the Center is a party to the proceeding and eligible to petition for rehearing. This application for rehearing is timely because it is filed and served within 30 days after the after the date the Commission mailed the decision, June 1, 2016.

Commission Rule of Practice 16.1(c) provides that “Applications for rehearing shall set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous.” Pursuant to Public Utilities Code section 1757, a decision is unlawful where: (1) The commission acted without, or in excess of, its powers or jurisdiction; (2) The commission has not proceeded in the manner required by law; (3) The decision of the commission is not supported by the findings; (4) The findings in the decision of the commission are not supported by substantial evidence in light of the whole record; (5) The order or decision of the commission was procured by fraud or was an abuse of discretion; (6) The order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution.

Here, the Commission has acted in excess of its powers or jurisdiction; has not proceeded in the manner required by law; and has abused its discretion. Furthermore, the decision is not supported by the findings and the findings are not supported by substantial evidence in light of the whole record.

## ARGUMENT

### I. THE APPROVAL IS IN VIOLATION OF THE STATUTORILY MANDATED PREFERRED RESOURCES LOADING ORDER

Pursuant to Public Utilities Code section 454.5, unmet energy needs must be met in a statutorily-defined preferred resources loading order<sup>1</sup>. The results of SCE's RFO do not comply with the preferred resources loading order and approval of the results of its RFO is in violation of California law as well as the Commission's mission to "serve[] the public interest by protecting consumers and ensuring the provision of safe, reliable utility service and infrastructure at reasonable rates, with a commitment to environmental enhancement and a healthy California economy."<sup>2</sup> The decision does not address preferred resources in any way; there are no findings of fact or conclusions of law regarding compliance with section 454.5 or the Commission's duties to comply with the preferred resources loading and to protect the environment.

The Commission explains its duty to comply with the loading order as follows:

The Commission also has a statutory mandate to implement procurement-related policies to protect the environment. Section 454.5(b)(9)(C) states that utilities must first meet their "unmet resource needs through all available energy efficiency and demand reduction resources that are cost-effective, reliable and feasible." Consistent with this code section, the Commission has held that all utility procurement must be consistent with the Commission's established Loading Order, or prioritization. . . In the 2008 Energy Action Plan Update at 20, the Commission further interpreted this directive to mean that the IOUs are obligated to follow the Loading Order on an ongoing basis. Once procurement targets are achieved for preferred resources, the IOUs are not relieved of their duty to follow the Loading Order. In D.07-12-052 at 12, the Commission stated that once demand response and energy efficiency targets are reached, "the utility is to procure renewable generation to the fullest extent possible." The obligation to procure resources according to the Loading Order is ongoing. (D.12-01-033 at 19.)<sup>3</sup>

As such, the Track 1 decision should have required compliance with the preferred

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<sup>1</sup> "The 'Loading Order' established that the state, in meeting its energy needs, would invest first in energy efficiency and demand-side resources, followed by renewable resources, and only then in clean conventional electricity supply." (Energy Action Plan 2008 Update at p. 1, <http://www.cpuc.ca.gov/PUC/energy/resources/Energy+Action+Plan/>.)

<sup>2</sup> CPUC Mission, Values, Vision, <http://www.cpuc.ca.gov/PUC/aboutus/pucmission.htm>.

<sup>3</sup> Decision 14-03-004, March 13, 2014, 2.2 Statutory Requirements, Energy Action Plan and the Loading Order, p. Center for Biological Diversity's Application for Rehearing

resources loading order. While it failed to do so, the Commission also did not mandate that any of the resources for the Moorpark sub-area be of any certain character. In doing so, the Commission appears to have placed the responsibility on SCE to comply with the preferred resources loading order in the RFO. Despite the fact that SCE clearly failed to do so by approving a portfolio of overwhelming (over 96%) gas fired generation, the Decision is resoundingly silent on this failure. Without making any conclusions regarding SCE's contention, the decision states only, "SCE contends that it showed that it was not possible to procure the required minimum level of incremental capacity using only preferred resources." (D. 16-05-050 at p. 23.)

Whether or not the identified need could be filled with preferred resources is an issue of material fact for which the Commission did not address in any fashion, much less in such a way that complies with the Code. Pursuant to Public Utilities Code section 1705 decisions "shall contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision." The California Supreme Court has explained that such "[f]indings are essential to 'afford a rational basis for judicial review and assist the reviewing court to ascertain the principles relied upon by the commission and to determine whether it acted arbitrarily. . .'" (*California Manufacturers Assn. v. Pub.Util.Com.* (1979) 24 Cal.3d 251, 258-259.) The issue of the feasibility of and requirement for compliance with the preferred resources loading order was of central important to this proceeding. The Center entered compelling evidence regarding the availability of preferred resources to fill need in the Moorpark sub-area: "The Southern California Regional Energy Network has identified 200 MW of preferred resources available for the Moorpark sub-area that will eliminate any need for the procurement of gas fired generation. (A.14-11-016, Testimony of Bill Powers, P.E. at p. 24 and Exhibit 23.) SoCalREN, as administered by the County of Los Angeles, is funded by California utility ratepayers under the auspices of the California Public Utilities Commission. Such preferred resources can be solicited in an RFO based upon the successful Orange County preferred resources pilot program. (Ibid.) SCE has presented no evidence that preferred resources cannot be used to fill all 215-290 MW of need." (Center's Comments on The Proposed and Alternate

Proposed Decisions at p. 7.)

The Decisions is silent as to this evidence as well as all other evidence regarding availability and feasibility of preferred resources presented by the Center and other intervenors. Approval of the RFO results that failed to prioritize preferred resources was a violation of the Public Utilities Code and Commission policy. The total lack of any effort to make finding of fact or conclusions of law regarding this material fact is an additional failure and both these violations demand a rehearing based upon the commission not proceeding in the manner required by law, the decision not being supported by the findings, and the findings in the decision not being supported by substantial evidence in light of the whole record.

## **II. THE COMMISSION HAS ILLEGALLY APPROVED A PROJECT WITHOUT FIRST HAVING CONDUCTED ENVIRONMENTAL REVIEW AS REQUIRED BY CEQA**

Pursuant to the California Environmental Quality Act, Public Utilities Code and Regulations, and Public Resources Code, the Commission cannot make a discretionary decision on a project unless and until environmental review has been completed. D.16-05-050 was issued prior to the completion of environmental review of a project, the approval of a power purchase agreement for a fossil fuel burning power plant. While the Decision addressed the issue of sea level rise and environmental justice in some fashion, it totally failed to make any findings regarding the material issue of whether the decision to approval gas generation in lieu of preferred resources would result in a significant environmental impact. It also entirely failed to address its responsibility to conduct CEQA itself for power purchase agreements for gas fired generation, instead limiting its consideration as to whether it needed to stay the proceeding to wait for the California Energy Commission (“CEC”) to conduct its review on the issues of sea level rise and environmental justice. Whether the Commission needed to conduct CEQA review was a material issue in this proceeding subject to extensive legal briefing. In issuing D.16-05-050 with no findings of fact or conclusions of law regarding the Commission’s responsibility to conduct CEQA review and without conducting any such review, the Commission acted in excess of its powers and its jurisdiction; has not proceeded in the manner required by law; and has

abused its discretion. Because there was no environmental review conducted, the decision is not supported by the findings and the findings are not supported by substantial evidence in light of the whole record.

The Commission is required to conduct environmental review of power purchase agreement applications independent of, but in coordination with the CEC thermal power plant licensing process. The Commission failed to conduct any environmental review prior to issuing D.16-05-050 even though the Commission took discretionary action solely within its exclusive jurisdiction including determining the type of generation it would permit, how much generation it would permit, and if and how the statutorily required preferred resources loading order would be complied with.

The decision of what kind of resources (non-renewable, fossil fuel burning, pollutant emitting or preferred resources) that the Commission will permit a utility to fill need with has monumental environmental impacts and is not one that any other state agency, including the California Energy Commission, addresses in any fashion. The CEC, in fact, routinely denies arguments that it considers need in its evaluation of proposed thermal power plants on the grounds that this is strictly within the purview of the Commission and similarly defers to the Commission determinations regarding preferred resources.

In D.16-05-050, the only discussion of this matter is a vague remark that “the CEC has clear jurisdiction to review the environmental impact of the NRG Puente Project” followed by a quote from the website of the CEC. (D.16-05-050 at p. 21.) First, while it is true that the CEC has clear jurisdiction to review the *site specific* impacts of the Puente Power Plant, it has no jurisdiction to review the impacts of needs determinations or power purchase agreements and specifically declines to do so:

The Energy Commission does not generally consider the level of need for a project. Rather, it reviews proposals submitted for environmental impacts and compliance with LORS. Other regulatory agencies and market forces then determine whether an approved project will go forward. Only if the market decides that it is likely that a project will be able to generate sufficient revenue from sales of its electricity to cover its costs of construction capital and operating expenses, (fuel, wages, etc.) will a project be built. As a practical matter in these times, that assurance comes in the form of a power purchase agreement (PPA). Without a PPA, a project is unlikely to be constructed. (CEC Carlsbad 2012 Final Decision at p. 9-5.)

Second, a statement on the CEC’s website does not excuse the Commission from its duties under CEQA. The CEC does not consider need because such consideration is strictly within the purview of the Commission.

The CEC also defers to the Commission on application of the preferred resources loading order. In the CEC’s Puente Power Plant Preliminary Staff Report, the staff offers some review of preferred resources and determines that energy efficiency<sup>4</sup>, demand response<sup>5</sup>, renewable generation<sup>6</sup>, and storage<sup>7</sup> could be utilized to meet LCR need in Moorpark subarea. Yet, the staff concludes that “On May 26, 2016, the CPUC approved SCE’s contract for a new 262-MW simple-cycle natural gas-fired peaking facility at the P3 site, In approving the contract, the CPUC has effectively found that preferred resources beyond those procured by SCE in response to its RFO could not feasibly and reliably be counted on to cost-effectively meet local reliability needs.” (CEC Puente Power Plant Preliminary Staff Assessment at p. 6-1.12.)

Because the Commission is the sole agency that exerts jurisdiction to make determination regarding needs and how that need is filled, it cannot defer environmental review of its decisions on these matters. Furthermore, the Puente Power Plant power purchase agreement (“PPA”) approved in D.16-05-050 will act as a catalyst for foreseeable future development and operation of a non-renewable, fossil fuel, antiquated power plant located on within an area of significant, exceptional biological resources one of two stretches of coastal sand dunes remaining in Ventura County.

The property is bordered on all sides by critical habitat for species protected as endangered under the Endangered Species Act – to the north, south, and east the Ventura Marsh

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<sup>4</sup> “Energy efficiency programs are thus capable of reducing the need for energy and capacity-related reliability services that conventional natural gas-fired generation such as the proposed P3 would provide.” (CEC Puente Power Plant Preliminary Staff Assessment at p. 6-1.11.)

<sup>5</sup> “DR has attributes that can partially meet some of the P3’s project objectives by: (1) contributing to or reducing the need for capacity-related reliability services . . . When such programs reduce loads in the Moorpark sub-area, they reduce local capacity requirements.” (*Ibid.*)

<sup>6</sup> “Utility-scale and distributed renewable generation can substitute for natural gas-fired generation as sources of energy. To the extent that these resources can be relied on to produce energy during periods of peak demand, they are also substitute sources of local capacity, thereby reducing the need to build and operate natural gas-fired generation and contributing to meeting LCR in the Moorpark sub-area.” (*Id.* at p. 6.1-12.)

<sup>7</sup> “However, energy storage can replace generation capacity by being charged during non-peak hours and discharged on peak, in lieu of dispatching natural gas-fired generation. If located in a transmission-constrained area, storage can replace generation capacity needed for local reliability in the Moorpark sub-area.” (*Ibid.*)

Milk-vetch (*Astragalus pycnostachyus* var. *lanosissimus*) and to the west the Western Snowy Plover (*Charadrius alexandrinus nivosus*). This is the only known natural population of the Ventura Marsh Milk-vetch remaining in the world.

The area is also documented habitat for many protected species including the endangered California Least tern (*Sterna antillarum browni*), endangered California Clapper rail (*Rallus longirostris obsoletus*), endangered Light-Footed Clapper rail (*Rallus longirostris levipes*), endangered Least Bell's vireo (*Vireo bellii pusillus*), endangered Southwestern Willow flycatcher (*Empidonax traillii extimus*), endangered Salt Marsh bird's-beak (*Cordylanthus maritimus ssp. maritimus*), threatened Coastal California gnatcatcher (*Polioptila californica californica*), threatened Yellow-Billed Cuckoo (*Coccyzus americanus*), and candidate Xantus's Murrelet (*Synthliboramphus hypoleucus*), and numerous other species protected under California law.

The approval of the PPA has the potential to cause a direct or reasonably foreseeable indirect physical change in the environment including changes to air quality, the climate, wildlife and wildlife habitat, and water resources. Commission approval will facilitate the development of Puente Power Plant using inefficient, out-dated technology that will exploit ocean water and impact wildlife, wildlife habitat, human health, and the climate. Such approval would also foreclose on opportunities to fill need with preferred resources including energy efficiency, demand response, energy storage, load shedding, transmission line upgrades, or renewable generation.

The PPA, approved by the Commission prior to the completion of the CEC environmental review and without the Commission having prepared as staged EIR, will likely be used, as is the stated policy of the CEC, as grounds to dismiss environmentally preferable alternatives and to override significant unmitigated environmental impacts.

Environmental review must be completed *prior to* the Commission taking action on this application. To this end, the Applicant applies for rehearing so that the Commission can undertake required CEQA review of this project prior to granting discretionary approval of an action with significant environmental impacts.

#### **A. CEQA Applies to the Approval of Power Purchase Agreements**

CEQA requires all “discretionary projects” proposed to be carried out or approved by a

public agency must receive environmental review. (Pub. Resources Code, § 21080, subd. (a).) Discretionary projects are those which require the exercise of judgment or deliberation. (Cal. Code Regs., tit. 14, § 15357; see also Cal. Code Regs., tit. 14, § 15369.) “Project” means any activity which has the potential to cause a direct or reasonably foreseeable indirect physical change in the environment either undertaken by a public agency or involving the issuance of a lease, permit, license, or other entitlement for use by a public agency. (Pub. Resources Code, § 21065; Cal. Code Regs., tit. 14, § 15378, subd. (a).)

### *1. Discretionary Approval*

The Commission, a public agency, exercised its judgment and deliberation in approving a project which must receive the Commission’s approval. Pursuant to Public Utility Code section 454.5, power purchase agreements by the regulated utilities require Commission approval. “The commission shall provide for expedited review and either approve or reject the individual contracts submitted by the electrical corporation to ensure compliance with its procurement plan. To the extent the Commission rejects a proposed contract pursuant to this criteria, the commission shall designate alternative procurement choices obtained in the procurement plan that will be recoverable for ratemaking purposes.” (Pub. Util. Code, § 454.5, subd. (c)(3).) Such approval is a discretionary action subject to environmental review.

The Commission’s approval of a power purchase agreement is a discretionary approval of a project. The term “project” is given a broad interpretation to accomplish the statutory goals of CEQA:

“ ‘Project’ is given a broad interpretation ... to maximize protection of the environment.” (*McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1143, 249 Cal.Rptr. 439, disapproved on another ground in *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 576, fn. 6, 38 Cal.Rptr.2d 139, 888 P.2d 1268.) “Project” refers to “*the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment....*” (Cal.Code Regs., tit. 14, § 15378, subd. (a), italics added.) “The term ‘project’ refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term ‘project’ does not mean each separate governmental approval.” (Cal.Code Regs., tit. 14, § 15378, subd. (c).) (*Riverwatch v. Olivenhain Mun. Water Dist.* (2009) 170 Cal.App.4th 1186, 1203.)

The Supreme Court of California has dictated that CEQA must be interpreted in a manner

to provide the fullest possible protection to the environment within statutory mandates:

“Addressing what constitutes a project for purposes of CEQA, the Supreme Court has stated that CEQA is “to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Association for a Cleaner Environment v. Yosemite Community College Dist.* (2004) 116 Cal.App.4th 629, 637 quoting *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259, 104 Cal.Rptr. 761, 502 P.2d 1049.)

The Commission’s approval in this case was a discretionary action on a project and there exists not exception to CEQA, and so the Commission was and is required to comply with CEQA.

## 2. *The Commission’s Approval Involves Much More than a Rate Increase*

The Applicant did not just seek approval of a rate increase but has applied for, and been granted, Commission discretionary approval of a contract to purchase power from a specified power plant at a defined location, using a defined technology with a defined capacity (MW), expected deliveries (GWh/yr), contract start date, and contract term. The Applicant applied and was granted Commission approval of a 20 year contract with NRG Energy Center Oxnard LLC for 262 MW of gas fired generation from a new GE 7HA.01 gas-fired CT with contract start date of 6/1/2020 to be located at 393 North Harbor Boulevard, Oxnard, California. (SCE Testimony at p. 55.)

The Commission decision here extends far beyond approving a rate increase and the Commission’s approval of technology, time, location, and capacity specific contracts are utilized by project developers and the CEC as catalysts for future development and as grounds upon which to limit environmental review of alternatives.

The CEC environmental analysis is based upon a project description that includes the following project objective: “Fulfill the applicant’s obligations under its 20-year Resource Adequacy Purchase Agreement (RAPA) with Southern California Edison (SCE) requiring development of 262 megawatts (MWs) nominal output of newer, more flexible and efficient natural gas generation at the site of the existing Mandalay Generating Station (MGS).” (CEC Center for Biological Diversity’s Application for Rehearing

Puente Power Plant Preliminary Staff Assessment at p. 6.1-6.) As per its usual process, the CEC staff concludes that while no project alternative would be the environmentally superior alternative, because the project objectives rely upon the approval issued in D.16-05-050, “The No-Project Alternative would not attain any of the project’s basic objectives.” (*Id.* at 6.1-108.).

3. *Commission Approval of a PPA is a Catalyst for Future development*

The Puente Power Plant PPA will be a “catalyst for foreseeable future development” and the “achievement of its purpose would almost certainly have significant environmental impact.” (*City of Antioch v. City Council* (1986) 187 Cal. App. 3d 1325, 1334.) Under the current regulatory regime, a power plant will not be built if a power purchase agreement is not approved as the plant will be unable to sell its generation and the developers will not be able to attract investors. Upon the approval of power purchase agreements, the utilities and developers aggressively pursue CEC approval for new power plants. As the CEC explains, “Only if the market decides that it is likely that a project will be able to generate sufficient revenue from sales of its electricity to cover its costs of construction capital and operating expenses, (fuel, wages, etc.) will a project be built. As a practical matter in these times, that assurance comes in the form of a power purchase agreement (PPA). Without a PPA, a project is unlikely to be constructed.” (CEC Carlsbad 2012 Final Decision at p. 9-5.)

So, according to the CEC, Commission approval of a power purchase agreement along with the underlying determination that the agreement will fill a legitimate need, is not only a prerequisite for the initiation of a power plant development, but also grounds for a CEC override of significant unmitigated CEQA impacts.

In this case, additional terms of the Puente Power Plant PPA establish the PPA as a catalyst for future development. Under the contract entered between SCE and NRG, should the Puente Power Plant not be approved by the Commission within a year of the filing of the Application, SCE will owe NRG a penalty. (NRG Opening Brief at p. 41.) But, should the Plant be denied by the CEC, SCE will owe NRG a penalty. (NRG Opening Brief at p. 42.) NRG argues that the Commission should utilize these contract terms – freely and knowingly entered into by SCE and NRG not pursuant to any Commission requirement – as ground for not delaying Center for Biological Diversity’s Application for Rehearing

these proceedings so that CEQA can be complied with; NRG claims that “delay would shift permitting risk to ratepayers.” (NRG Opening Brief at p.41.) Not only is NRG’s argument unconvincing, it demonstrates precisely the opposite – this power purchase agreement will act as a catalyst for development and must, therefore, be considered as part of a project that is subject to CEQA review. Furthermore, the reasonableness of the proposed contracts was an issue of material fact for which the Commission failed to address in the Decision. The Center argued in its Reply Brief that the penalty clause made the contract unreasonable yet the Decisions is silent as to this issue:

SCE’s proposed PPA for Puente Power Plant is demonstrably unreasonable given that it penalizes SCE, and perhaps ratepayers, should the Commission need more time to make its determination or should the Commission deny the application. As NRG explains, “The Puente Contract includes a condition requiring final, non-appealable Commission approval within one year after filing the Application. . . Delay would shift permitting risk to ratepayers, and away from NECO.” (NRG Opening Brief at p. 41-43.) It is patently unreasonable for SCE to have entered into a contract that potentially exposes ratepayers to risk based upon Commission actions and the application should be denied on these grounds.

(Center for Biological Diversity Reply Brief at p. 16.)

As the CEC and developers baldly admit and the case history demonstrates, Commission approval of a power purchase agreement is a “catalyst for foreseeable future development” and is also grounds upon which the CEC excuses unmitigated environmental impacts of the power plant development. This type of piece meal review has long been dismissed by the courts as a violation of CEQA. *City of Antioch v. City Council, supra*, 187 Cal. App. 3d at pp. 1333-1334 discusses a number of examples:

In [County of Inyo] the county approved a general plan amendment and zoning on the basis of a negative declaration. As described by the court in *City of Carmel-by-the-Sea*, “The rationale behind the decision was similar to that advanced by the agency in *Bozung* and rejected by the Supreme Court, namely that preparing an EIR would be premature at the zoning stage since the tentative map for the project, a shopping center, was not before the agency. In County of Inyo, when the tentative map was in fact before the Board it was again recommended that no EIR was needed since the proposed use now conformed to the existing zoning. The court of appeal, citing *Bozung*, found that this approach--division of the project into two parts with 'mutually exclusive' environmental documents--was 'inconsistent with the mandate of CEQA' and constituted an abuse of discretion.

(*Ibid. citing City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229;

*Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263.)

4. *Use of PPAs to Dismiss Environmentally Preferable Alternatives*

Commission approval of technology, time, location, and capacity specific contracts is utilized by the CEC to limit its environmental review and to dismiss environmentally preferable alternatives. Here, NRG's application for certification to the CEC for the Puente Power Plant, NRG's first project objective is "Fulfill Applicant's obligations under its 20-year Resource Adequacy Purchase Agreement (RAPA) with Southern California Edison (SCE) requiring development of 262 megawatts (MW) . . . natural gas generation at the site of the existing Mandalay Generating Station." (CO-03 at p. 5-1.) In other words, the Commission approval of a PPA is used as the primary project objective for the purposes of CEC environmental review. NRG continues to explicitly explain how this project objective - the terms of the PPA as approved by the Commission - is used to drive the entire alternatives analysis and to dispose of any alternatives that do not meet the project as defined by the terms of the PPA:

Although all of the project objectives should be taken into consideration when evaluating alternatives to the proposed project, the first project objective identified above is particularly important. It reflect the context in which the State of California plans for an procures its electrical supply. Through the RFO process, the utility evaluates a range of alternatives and awards RAPAs that are technology-specific and location-specific to those projects best suited to meet its needs. The RAPAs are then reviewed and approved by the CPUC. It is then incumbent upon the developer to deliver the project consistent with the terms of the RAPA. Therefore, this objective is not merely a goal or aspiration of the project developer, but a legal imperative. This must be kept in mind when determining what constitutes a range of reasonable alternative, as well as which alternatives might be considered feasible. Alternatives that fail to satisfy the first project objective are neither reasonable nor feasible, and extensive analysis of such alternatives is unwarranted. (CO-03 at p. 5-2.)

The CEC has long demonstrated a willingness to comply with this approach, utilizing the Commission approval of a PPA as grounds to dismiss alternatives. As explained above, this staff has concluded that a no project alternative and alternatives

sites would not fulfill the project objective, based upon the objective defined by D.16-05-050 approval. (CEC Puente Power Plant Preliminary Staff Assessment at pp. 6.1-101 – 110.) This conclusion will almost certainly become part of the CEC's decisions as it has in so many other cases. For example, in a proposed decision approving a project that the CEC acknowledged would result in high, unmitigated bird mortality, the CEC recently demonstrated how it utilizes the Commission approval of power purchase agreement to dismiss environmentally preferable alternatives and override unmitigated environmental impact:

Petitioner states that the CPUC approved the PPA, in part, because this technology represented a means to diversify the renewable energy generation sources on the grid and advance an important alternative generation source. Thus, a change in technology is prohibited by the terms of the PPA barring first counterparty and then CPUC approval. Petitioner concludes that the PV alternative is infeasible because it would have the effect of rendering the project's PPAs void and incapable of being executed. This would effectively negate the main objective of the project.

(Revised Presiding Members' Proposed Decision, September 2014, CEC-800-2014-002-PMPD-REV, 09-AFC-7C– Palen Solar Electric Generating System; TN#203061. )

The Commission cannot look at the project in a vacuum; the argument fails that EIR preparation is premature and unnecessary because other phases of development will be accorded appropriate environmental review in due course. That other review is entirely dependent upon the discretionary action taken by the Commission and also does not address the impacts of the decisions solely under Commission jurisdiction.

## **B. Environmental Review Must be Completed Prior to a Commission Decision**

Environmental review of the PPA must be done and it must be done prior to any Commission decision on the project. Such review has not occurred in this case and no legally cognizable argument has been put forth as to why this project is exempt from CEQA review or how the CEC will review the impacts of decisions solely within the Commission's jurisdiction. Where a project is a development, for which various governmental approvals are necessary, all

phases of project planning, implementation, and operation must be considered in the initial study of the project and an EIR must address all phases. (Cal. Code Regs., tit. 14, § 15063, subd. (a)(1)); *City of Carmel-by-the-Sea, supra*, 183 Cal.App.3d at pp. 242-243.)

Environmental review pursuant to CEQA is intended to inform the public and decision-makers of the environmental consequences of a decision *before* it is made. “[A]t a minimum an EIR must be performed before a project is approved, for ‘[i]f postapproval environmental review were allowed, EIR’s would likely become nothing more than post hoc rationalizations to support action already taken.’” (*Save Tara v. City of West Hollywood* (2008) 45 Cal. 4th 116, 130 quoting *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 394.) Accordingly, CEQA requires agencies to prepare EIRs and negative declarations “as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.” (Cal. Code Regs., tit. 14, §15004, subd. (b).)

The Decision eludes to “substantial uncertainty for project developers” as justification for the Commission making a discretionary decision prior to the CEC review and without completing any review of its own. The Commission clearly stated that “there is no clear or compelling reason based on the record of this proceeding to modify the process of allocating responsibilities between this Commission and the CEC that has been used successfully for many years.” (D.16-05-050 at p. 22.) While it is surely much more efficient for project developers and proponents to proceed without sufficient environmental review, this is hardly an argument for flouting the requirements of CEQA.

*a. The Commission Is Statutorily Prohibited From Relying On CEC Environmental Review Prior To The Issuance Of The CEC’s Final Approval Of A Project*

For projects requiring Commission and CEC approval, pursuant to Public Resources Code, section 21080.5 and the California Code of Regulations, title 14, section 15251, subdivision (j), the CEC is permitted to conduct its own CEQA functionally equivalent review as a certified agency. But, the Commission can rely upon such review only in limited circumstances. The Commission is *not* permitted to rely on the CEC’s certified *prior to* the

CEC's issuance of its final approval. (Cal. Code Regs., tit. 14, § 15253; *City of Morgan Hill v. Bay Area Air Quality Management Dist.* (2004) 118 Cal. App. 4th 861, 875-876.) "The conditions under which a public agency shall act as a responsible agency when approving a project using an environmental analysis document prepared under a certified program in the place of an EIR or negative declaration are as follows . . . The certified agency is the first agency to grant a discretionary approval for the project." (Cal. Code Regs., tit. 14, § 15253, subd. (b)(1).)

In *City of Morgan Hill*, the Bay Area Air Quality Management District ("Air District") attempted to rely upon the CEC's environmental review before it was complete. (*City of Morgan Hill v. Bay Area Air Quality Management Dist.*, *supra*, 118 Cal. App. 4th 861.) The Court found that, pursuant to Section 15253, the District was not permitted to issue a Clean Air Act permit prior to the issuance of the CEC's environmental review. (*Ibid*; see Cal. Code Regs., tit. 14, § 15253, subds. (a)-(b)(1).) But, in that case, unlike here, the Air District has been operating under an executive order temporarily suspending the requirement that the CEC first finalize its environmental review and so, while "in other times, the [petitioner] might prevail," it did not given the highly unusual circumstances. (*Ibid*.)

The Commission has failed its duty to "consider the cumulative environmental effects of its action before a project gains irreversible momentum" and should take immediate action to rectify this oversight. (*City of Antioch v. City Council*, *supra*, 187 Cal. App. 3d at p. 1333.)

*b. The Commission Cannot Rely upon the CEC's Certified Agency's CEQA Equivalent Review and Should Prepare a Staged EIR*

While the Commission could have, in theory, fulfilled its duty to conduct environmental review of this project by staying the proceedings until the CEC completed its review and acting as a responsible party to the CEC review, the sufficiency of the Commission's review will depend upon the CEC's compliance with Section 15253. "Certified agencies are not required to adjust their activities to meet the criteria in [this section]" and "Where a certified agency does not meet the criteria . . . (1) The substitute document prepared by the agency shall not be used by other permitting agencies in the place of an EIR or negative declaration." (Cal. Code Regs., tit. 14, § 15253, subd. (c).) If the Commission were to rely upon the CEC's review, the CEC will

need to analyze alternatives and propose mitigation measures for the significant environmental effects within the jurisdiction of the Commission, as a responsible agency. This would include a review of LCR need determination and other issues not within the purview of the CEC.

If the CEC review is insufficient, the Commission will have to “comply with CEQA in the normal manner and prepare an EIR.” (Cal. Code Regs., tit. 14, § 15253, subd. (c); see also *Save Tara v. City of West Hollywood*, *supra*, 45 Cal. 4th at p. 142-143 (Where the Court set aside a completed and otherwise sufficient EIR because it was completed after a project approval was issued.)

Alternatively, the Commission can prepare a staged EIR pursuant to California Code of Regulations, title 14, section 15167. “Where a statute such as the Warren-Alquist Energy Resources Conservation and Development Act provides that a specific agency shall be the lead agency for a project and requires the lead agency to prepare an EIR, a responsible agency which must grant an approval for the project before the lead agency has completed the EIR may prepare and consider a staged EIR.” (Cal. Code Regs., tit. 14, §15167, subd. (c).)

While this section may only apply to large capital project that will require a number of discretionary approvals from government agencies and one of the approvals will occur more than two years before construction, these requirements are met here. (See Cal. Code Regs., tit. 14, §15167, subd. (a).)

### **III. THE DECISION DOES NOT PROVIDE ANY LEGALLY COGNIZABLE ARGUMENT AS TO WHY CEQA DOES NOT APPLY IN THIS CASE**

The Decision addressed the applicability of CEQA to power purchase agreements only by quoting part of D.15-11-041. That justification in that decision for why the Commission claims that power purchase agreements are specially exempt from CEQA relies entirely on D.15-05-051 and D.86-06-060. Neither D.16-05-050 nor D.15-11-041 cites to any precedential authority or law and no argument is presented other than, ‘this is the way we’ve always done it.’

Commission approval in D.15-05-051 of a power purchase agreement for Carlsbad Energy Center was granted without any agency, including the Commission, having first conducted environmental review. The entire argument in D.15-05-051 that the Commission is not responsible for conducting CEQA review for power purchase agreements is based entirely

upon a 1979 denial of a writ and 1986 Commission decision that cites only to the 1979 denial. The denial of a writ has no precedential value and dicta in the 1986 Commission denying another power purchase agreement has no precedential value. This argument demonstrates only that the Commission has a long history of flouting the requirements of CEQA, not that CEQA does not apply to the Commission's discretionary action on such projects.

**A. The 1979 denial of a writ via an unpublished minute order is not precedent for anything**

In D.15-05-051 the Commission argues that “It is well-settled that “[s]uch a ratemaking order is not ‘project’ under CEQA. All Commission orders concluding that CEQA does not apply to a ratemaking proceeding have been upheld. (*E.g., Samuel C. Palmer, III v. Public Utilities Commission* SF# 23980, writ denied 5/10/79.)” (D.86-10-044 at 16-17, 1986 Cal. PUC LEXIS 642, 16-17 (Cal. PUC 1986).)22 FN 22 In its reply brief, CBD challenges this precedent as being stale . . .” (D.15-05-051 at p. 30.)

First, this is an inaccurate statement of the Center's position – while this argument is indeed stale, it is not based upon any precedent. Second, while the Commission clearly believes this to be “well-settled,” neither the California Supreme Court, the California Attorney General's Office, nor the Center agree.

In *Consumers Lobby Against Monopolies v. Public Utilities Commission* (1979) 25 Cal.3d 891, the California Supreme Court very clearly directed the Commission that its attempts to rely upon the denial of a writ as precedent for a holding of law was entirely without merit. Yet, the Commission persists, over 30 years later, in ignoring the Supreme Court's very clear and direct holding on this point:

At the outset we address a contention that is often presented to us in response to a petition for writ of review, but nevertheless misapplies the authority on which it relies and ignores the realities of our rulings on such petitions. Both the commission and Pacific assert that we have previously decided the issue now before us -- i.e., the commission's authority to award attorney fees and costs to public interest participants in its proceedings -- and imply that we should follow those decisions under the doctrine of stare decisis. The decisions in question, however, are not embodied in published opinions of this court, but rather in minute orders in which we denied without opinion petitions for writs of review on two occasions several years ago. . .

For different reasons we also conclude the prior cases invoked by the commission and Pacific should not be given stare decisis effect. The doctrine of stare decisis applies only to judicial precedents, i.e., to the ratio decidendi or actual ground of decision of a case cited as authority. (*Hart v. Burnett* (1860) 15 Cal. 530, 598-599.) It follows, of course, that a case is not authority for a point that was not actually decided by the court. (*Ibid.*; accord, *In re Tartar* (1959) 52 Cal. 2d 250, 258 [339 P.2d 553], and cases cited.) The ratio decidendi of an appellate decision is ordinarily discovered by examining the opinion of the court. But we deal here, by definition, with cases in which this court rendered its decision without opinion, summarily denying petitions for writs of review. By relying on such cases as authority for points of law, the commission and Pacific imply that our ratio decidendi in each instance was necessarily a ruling on the substantive grounds presented by the writ and answer. The code itself demonstrates this is not so.” . . .

In short, although a summary denial by this court of a petition for writ of review is "a decision on the merits" for res judicata purposes (*Western Air Lines*), it is not stare decisis.

(*Consumers Lobby Against Monopolies v. Public Utilities Com.*, *supra* at pp. 902-905.)

The Commission sites only to *Samuel C. Palmer, III v. Public Utilities Commission* SF# 23980, writ denied 5/10/79 as support for the argument that CEQA does not apply to any ratemaking proceeding. *Samuel C. Palmer, III* was apparently a challenge by concerned parties to the Commission's approval of a rate increase for a water district that was issued without any environmental review. Because the writ was summarily denied in an unpublished minute order, there is no published record of the decision. The Center was able to obtain the Commission's Demurrer and Answer in this case from the Los Angeles County Law Library brief depository but unfortunately, the writ could not be found.

In *Samuel C. Palmer, III*, the Commission demurred to the writ, claiming that the writ had not been filed within the statutory deadline and should therefore be denied. (See Public Utilities Demurrer and Answer of Respondent to Petition for Writ of Review in S.F. No. 23980). Because the writ was summarily denied in an unpublished minute order, we will never know the grounds upon which it was denied but, there is a high likelihood that the writ was denied based on the failure of the Petitioner to comply with the filing deadline. This situation is precisely contemplated in *Consumers Lobby*: "As we have seen, the merits of the decision may well be procedural rather than substantive; yet because there is no opinion, its ratio decidendi does not

appear on its face. It would therefore be sheer speculation for litigants to rely on such decisions as precedents. In addition, such reliance may well prove a trap for the unwary: members of the public who have potentially meritorious petitions for review to present to this court may be dissuaded from doing so by the mere fact that we declined to take an earlier case allegedly raising the same question. For the foregoing reasons, the prior cases relied on herein by the commission and Pacific are neither binding nor persuasive on the issue now before us.” (*Consumers Lobby Against Monopolies v. Public Utilities Com., supra* at p. 905.)

The likelihood that *Samuel C. Palmer, III* was denied based upon a procedural defect is greatly increased by the fact that the only argument the Commission made in its Answer relies upon *People v. Western Airlines*. The Commission argued “Under the principles established by this court in *People v. Western Air Lines, Inc.* 42 Cal.2d 621, 633 (1954), the denial of a petition for writ of review of a Commission decision is ‘ . . . a decision on the merits both as to the law and the facts presented in the review proceeding. This is so even though the order of this Court is without opinion.’” (*Public Utilities Demurrer and Answer of Respondent to Petition for Writ of Review in S.F. No. 23980* at p. 13.) The Commission’s Answer continues to refer to the “clear legal precedent” of previously summarily denied writs. (*Id.* at p.13, 15.) This argument was entirely disproved in *Consumers Lobby*: “In support of their contention the commission and Pacific then quote the following language of *People v. Western Air Lines, Inc.* (1954) 42 Cal. 2d 621, 630-631 [268 P.2d 723]: “It is established . . . that the denial by this court of a petition for review of an order of the commission is a decision on the merits both as to the law and the facts presented in the review proceedings. [Citation.] This is so even though the order of this court is without opinion.” The reliance is misplaced: *Western Air Lines* is not a stare decisis case but a res judicata case, and hence is governed by very different considerations. . . .” (*Id.* at p. 904.)

In their *Samuel C. Palmer, III* Answer, the Commission also relied upon this losing argument in a weak attempt to disregard the official opinion of the Office of the Attorney General of the State of California that “CEQA’s definition of “project” includes the PUC’s approval of utility rate changes” (58 Ops. Cal. Atty. Gen. 708 - 58) and “CEQA applies to rate making” (*Public Utilities Demurrer and Answer of Respondent to Petition for Writ of Review in S.F. No. 23980* at p. 5). The Commission wrote: “The cited opinion attempts to avoid the obvious precedential value of this Court’s repeated denials of the above-mentioned petitions . . .”

(Public Utilities Demurrer and Answer of Respondent to Petition for Writ of Review in S.F. No. 23980 at page 15.) The Commission was wrong then and they are wrong now – CEQA applied to Commission approval of power purchase agreements in this case and all others.

**B. Dicta In A 1986 Commission Decision Denying A Power Purchase Agreement Based Solely Upon A 1979 Minute Order Is Not Precedent For Anything**

The single Commission decision that the Commission cites as evidence that CEQA is not applicable (D. 86-10-044) is based only upon unsupported allegations and the summary denial of the writ in *Samuel C. Palmer, III*. D. 86-10-044 was actually a denial of an application for approval of a power purchase agreement. The denial of an application is, by definition, not a project so CEQA would not have been applicable. Any discussion of CEQA in D. 86-10-044 is purely dicta, and dicta in a 1986 Commission decisions denying an application for some other power purchase agreement is not precedent in any way for the Commission’s unsupported position that they do not need to abide by CEQA for power purchase agreements in this or any other case. The reliance on dicta in the Commission’s denial of a single application almost 30 years ago is without merit.

Furthermore, D. 86-10-044 is, by its own terms, limited to its facts. The decision concludes that “*This application* is not a “project” under CEQA” and “The Commission is not a ‘responsible agency’ under CEQA *for the Dinkey Creek Project*” (emphasis added). While the Commission was incorrect in D. 86-10-044, even if it were not so, there are no grounds upon which D. 86-10-044 can be relied upon as precedent for future decisions on the applicability of CEQA to power purchase agreements generally or in a specific case.

A. 86-02-008, the proceeding where the Commission *denied* a power purchase agreement approval in D.86-10-044, precisely demonstrates why the Commission’s approval of a power purchase agreement is thereby subject to CEQA review. As explained above, the approval of a power purchase agreement is a “catalyst for foreseeable future development” for which the “achievement of its purpose would almost certainly have significant environmental impact” (*City of Antioch v. City Council* (1986) 187 Cal. App. 3d 1325, 1334.) Such projects must undergo CEQA review and D.15-05-051 makes no cognizable argument to the contrary.

In D.86-10-044, the Commission denied PG&E's application for approval of a power purchase agreement with the Kings River Conservation District for purchase of power from the Dinkey Creek Hydroelectric Project. According to the Kings River Conservation District, "The Dinkey Creek Project was a fully designed 120-megawatt hydroelectric facility that was licensed and approved for construction on Dinkey Creek, a tributary of the Kings River in Fresno County. The project progressed nearly to the point of construction before it was halted in 1986 due to a decision by the Pacific Gas and Electric Company to withdraw from the power purchase agreement." (Kings River Conservation District, *Dinkey Creek*, [http://www.krcd.org/power/other\\_power\\_studies/dinkey\\_creek.html](http://www.krcd.org/power/other_power_studies/dinkey_creek.html), accessed April 27, 2015) PG&E, of course, withdrew from the power purchase agreement because the Commission denied approval. Without the "catalyst for foreseeable future development" of an approved power purchase agreement, the development of the dam could not proceed.

### **C. Changes To CEQA And Commission Jurisprudence And Procedure Are Relevant**

CEQA jurisprudence, the Public Utilities Code, and Commission regulations and procedure have changed drastically since 1979. The fact that the Commission needs to stop relying upon the tired and wrong argument that dicta in a 1986 Commission decision and a 1979 unpublished minute order excuses Commission non-compliance with CEQA is made clear by the fact that, in 1986, the preferred resources loading order did not exist.

The preferred resources loading order is found in Public Utilities Code section 454.5, promulgated in 2002 and amended four times since. The Commission's Energy Action Plan 2008 Update established that "The 'Loading Order' established that the state, in meeting its energy needs, would invest first in energy efficiency and demand-side resources, followed by renewable resources, and only then in clean conventional electricity supply." (Energy Action Plan 2008 Update at p. 1, <http://www.cpuc.ca.gov/PUC/energy/resources/Energy+Action+Plan/>.)

As explained above, the Commission is the only agency with the jurisdiction to decide how need will be filled. Where, as here, the Commission fails to comply with the statutorily mandated preferred resources loading order and permits fossil fueled generation over all other resources types, the Commission has made a discretionary decision with irrefutable

environmental impacts and this decision is subject to environmental review under CEQA. Because the California Energy Commission (“CEC”) is not charged with and refuses to take into account the loading order in its licensing of thermal power plants over 50 MW, the Commission cannot rely upon the CEC’s CEQA equivalent review to address this environmental impact.

**IV. THE RFO PROCESS WAS BIASED AGAINST PREFERRED RESOURCES AND THE COMMISSION HAS IMPERMISSIBLY APPROVED CONTRACTS THAT VIOLATE THE PREFERRED RESOURCES LOADING ORDER AND ARE NEITHER JUST NOR REASONABLE**

**A. The Commission Lacked sufficient information to evaluate the RFO process**

In its testimony, SCE presented Table V-7 Summary of Indicative Offers. (A.14-11-016, Testimony of SCE at p. 26, Table V-7 Summary of Indicative Offers.) This table shows the number of offers “for both the Western LA Basin and Moorpark sub-area.” (Ibid.) SCE did not provide and refused to provide this information for the Moorpark sub-area, the RFO for which the Commission was tasked with evaluating: “I could not tell you the specific number of offers that were for Moorpark delivery or relying on Moorpark customers.” (A.14-11-016, Evidentiary Hearing, Reporter’s Transcript 62:13-16 (J. Bryson, SCE).

Given that SCE selected less than 1 MW of ES and no DR for Moorpark, yet were able to procure significant percentages of ES and DR in the LA Basin, it was especially important that the parties and the Commission were able to evaluate the ES and DR offers and how and why SCE selected no DR and de minimus ES resources. SCE did not provide information sufficient for such an evaluation despite requests from parties to do so. At the same time, the information SCE provided was confusing and contradictory.

SCE testified that some of the 113 DG offers indicated on their Table V-7 “indicated a Moorpark delivery or Moorpark participating customer.” (A.14-11-016, Evidentiary Hearing, Reporter’s Transcript 62:22-26 (J. Bryson, SCE)). Later, during the same cross examination, SCE’s witnesses testified that “Well, in the Moorpark RFO, there were -- there were no DR offers that were ultimately submitted. And there was – from our perspective, there seemed to be very little interest in demand response from the onset -- from the beginning of the RFO.” (A.14-11-016, Evidentiary Hearing, Reporter’s Transcript 69:8-13 (J. Bryson, SCE)). When further questioned “I thought you testified that there were indicative offers that specified Moorpark,” the

witness stated:

There were. We were talking about the 113 offers. . . There were some that were submitted from -- for Moorpark, however, the -- during the negotiations, the emphasis was always on the Western LA Basin. And the -- in the context of the discussions that I previously mentioned where concerns had been raised around the geographical area associated with demand response, there was particularly a concern with Moorpark because it is a smaller area and there are fewer customers. We -- we had a hard time getting engagement from the market on demand response products in that area. (A.14-11-016, Evidentiary Hearing, Reporter's Transcript 69:14 – 70:4 (J. Bryson, SCE)).

Later, this same witness testified that "SCE selected the preferred resources that were bid into the RFO" (A.14-11-016, Evidentiary Hearing, Reporter's Transcript 112:17-18 (J. Bryson, SCE) and "we selected ultimately all energy efficiency, DR, renewable, DG that was submitted into the RFO. In this case, we had -- energy efficiency and renewable DG were the two options that we could -- that were bid in. We can't buy something that's not bid in" (Id. at 112:24-113:3).

SCE should have been able to answer the simple question of how many bids did it receive for DR in the Moorpark RFO. Its inability and/or refusal to do so made it impossible for the parties and the Commission to truly evaluate if the RFO was conducted as required. SCE's witnesses' unsupported, vague, and contradictory statements regarding the failure of SCE to procure any DR strains credibility. Yet, the Commission made no findings of fact or conclusions of law regarding the sufficiency of the information provided on the RFO. Approving results of an RFO without the basic information needed to evaluate the process and the offers was an abuse of discretion. Without such information the findings could not be supported by substantial evidence.

## **B. The Results of the RFO Violate the Preferred Resources Loading Order**

The Commission required SCE to "show in a subsequent application for approval of procurement contracts that it has done *everything it could* to obtain cost-effective demand-side resources which can reduce the LCR need, and cost-effective preferred resources and energy storage resources to meet LCR needs." (D.13-002-015, *supra*, pp.78, emphasis added.) The Commission added that SCE's application should include "[a] demonstration of technological

neutrality, so that no resource was arbitrarily or unfairly prevented from bidding in SCE’s . . . solicitation process.” (D.13-02-015 at p.94.) A “significant aspect” of its review of SCE’s application, the Commission stated, “will be to ensure consistency with the Loading Order.” (*Ibid.*)

Even without the necessary information to evaluate the RFO procedure, the results speak for themselves – SCE presented a portfolio of contracts of over 96% gas fired generation. The Commission clearly did not require SCE to follow its own order and the results of the RFO as approved by the Commission unquestionably violated the preferred resources loading order. SCE demonstrated a clear disregard for the statutory mandate requiring compliance with the preferred resources order, blaming its non-compliance on the Commissions’ failure to specifically direct SCE to comply with the Public Utilities Code and Commission policy: “If the Commission intended that there by minimum procurement requirements for certain types of resources in the Moorpark sub-area, the Commission would have undoubtedly provided such requirements in its overall procurement authorization to SCE in the LTPP Track 1 decision, as it did for the Western LA Basin.” (A.14-11-016, Rebuttal Testimony of SCE at p. 14.) This failure is all the more dramatic when compared to the results of the LA Basin RFO – which was, according to SCE, was actually the same RFO as Moorpark sub-area. (A.14-11-016, Evidentiary Hearing, Reporter’s Transcript 101:23 (J. Bryson, SCE).

Table 3. Comparisons of Selected Offers of Moorpark and LA Basin RFO’s

<b>Resource Type</b>	<b>Moorkpark RFO percentage of total proposed</b>	<b>LA Basin RFO percentage of total proposed</b>
Gas fired generation	96.2%	73.4%
EE	1.9%	6.6%
DG	1.8%	2%
ES	.1%	14%
DR	0	4%
Total Preferred Resources	3.8%	26.6%

SCE offered two unreasonable and unavailing explanations for why it was able to procure significantly more preferred resources in LA Basin than in Moorpark sub-area. First, SCE states “The volume of Preferred Resource offers SCE received in Moorpark was much less than in the Western LA Basin. This difference has more to do with the smaller load level in the Moorpark sub-area than shortcomings in SCE’s procurement process.” (A.14-11-016, Rebuttal Testimony Center for Biological Diversity’s Application for Rehearing

of SCE at p. 14.) Obviously, an RFO requesting greater MW's is almost certain to receive a greater volume of offers as it can accommodate a offers for great MW's. But, this does not provide any explanation for why the rate by which SCE accepted preferred resources offers was so much higher in LA Basin (26.6%) than Moorpark (3.8%).

When asked for an explanation for the difference in the rates, SCE's only substantive answer was, "Moorpark [] customers have a different load profile. It's a different climate zone, smaller customer base." (A.14-11-016, Evidentiary Hearing, Reporter's Transcript 116:3-6 (J. Bryson, SCE). The LA Basin and Moorpark sub-areas are not in a different "climate zones" but are in fact directly adjacent to eachother in relatively mild Southern California. This explanation strains credibility and SCE has offered no other explanation for how it is reasonable that, in the same RFO, it was unable to procure even a fraction of preferred resources in Moorpark while it procured over a quarter of preferred resources in LA Basin.

The Commission made no findings of fact or conclusions of law regarding the failure of SCE to run an RFO as directed by both state law and the Commission's own order. But the facts speak for themselves - the preferred resources loading order and D.13-002-015 were violated and in granting its approval, the Commission thus engaged in an abuse of discretion and failed to proceed in the manner required by law.

**C. There Is Demonstrated Evidence That There Are Sufficient Preferred Resources Available In The Moorpark Sub-Area To Fill The LCR Need.**

The Southern California Regional Energy Network has identified 200 MW of preferred resources available for the Moorpark sub-area that will eliminate any need for the procurement of gas fired generation. (A.14-11-016, Testimony of Bill Powers, P.E. at p. 24 and Exhibit 23.) SoCalREN, as administered by the County of Los Angeles, is funded by California utility ratepayers under the auspices of the California Public Utilities Commission. Such preferred resources can be solicited in an RFO based upon the successful Orange County preferred resources pilot program. (Ibid.) SCE presented no evidence that preferred resources cannot be used to fill all 215-290 MW of need. Nonetheless, the Commission made no findings of fact or conclusions of law regarding the availability of preferred resources for the Moorpark sub-area.

In approving gas fired generation where preferred resources were a viable option, failing to address the material issue of availability of preferred resources, and approving a contract that was neither just nor reasonable, the Commission engaged in an abuse of discretion, and failed to proceed in the manner required by law. The Decision was also, therefore, not supported by substantial evidence.

**D. SCE Impermissibly Solicited Offers For Resources To Be Operational Well Before The Ordered Date Of 2021**

The Commission had not permitted SCE to solicit for resources to be delivered at any date earlier than 2021, yet SCE did just this. With contract dates far prior to 2021, the RFO was non-compliant with the Commission's order and the Commission engaged in an abuse of discretion when it approved results of the RFO regardless of SCE's failure to comply. It is unknown what impact this had on potential bidders but it is clear that the RFO wrongly represented to potential bidders that there was LCR need in Goleta to be filled in 2016 and in the Moorpark sub-area over in 2018, all well before 2021.

In the Track 1 decision, D. 13-02-015, the Commission ordered "Southern California Edison Company shall 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 by 2021." (D. 13-02-015 at p. 131.)

SCE's application stated: "SCE stated a preference for LCR resources in the Goleta service area and indicated that bids would be accepted in the Goleta service area for delivery as early as 2016." (A.14-11-016, Testimony of SCE at p 7.) SCE informed vendors that "Contracts may start delivery as early as January 1, 2018, however contracts that interconnect at the Goleta, Johanna or Santiago substations (or interconnect to lower voltage substations that are connected to these substations) may start delivery as early as January 1, 2015." (A.14-11-016, Application Appendix F at p. E-23.) SCE has selected contracts with start dates as early as 2016 with the latest start date July 1, 2020. (A.14-11-016, Testimony of SCE at pp. 52-55.)

SCE was not authorized to solicit for resources for 2016, 2018 or any date prior to 2021. SCE's explanation for its unilateral amendment of the Commission's order is unavailing:

“Recognizing that coming on a little earlier may be beneficial, we identified 2018 for the broader Moorpark area. And because we have an identified reliability concern in Goleta, we were encouraging resources to bid in Goleta and offer the 2016 start date for those projects.” (A.14-11-016, Evidentiary Hearing, Reporter’s Transcript 124:11-17 (J. Bryson, SCE).) SCE is not permitted to make such determinations on its own. But, according to SCE, even though Track 1 decisions does not authorize procurement prior to 2021, because the Energy Division approved SCE’s procurement plan with these early start dates, it was authorized by the Commission to procure as early as 2016. (*Ibid.*) While the Energy Division may have taken the unfortunate step of approving a procurement plan with these date, SCE was not and is not authorized by the Commission to procure prior to 2021, and certainly not five year priors.

SCE also states that it needed to procure as early as 2016, “Because if some of the contracts didn't succeed, there is no wriggle room for that.” (Id. at 124:8-10.) It is unbelievable that the Commission approved contracts whereby ratepayers would be forced to bear the cost of unneeded generation five years prior to the authorized start date because SCE claimed to need “wriggle room” for the anticipated failures of its selected contracts! Having done so, again without making any findings of fact or conclusions of law regarding the material issue of the timing of the RFO, the Commission abused its discretion and approved contracts that were neither just nor reasonable.

#### **E. The RFO Schedule Did Not Allow Sufficient Time For Preferred Resources Vendors To Participate**

SCE accepted offers between September 12, 2014 and December 16, 2014, with Notice of Intent to Offer due December 2, 2014. This 91 day window (really only 77 days, as the Notice was mandatory) is insufficient for preferred resources to prepare and submit bids. Preferred resource companies are generally much smaller than those capable of developing fossil-fuel power plants and have far less resources to prepare bids. The large number of bids for fossil-fuel generation demonstrates this inequity, especially in comparison to other generation resources. The Commisison did not make any findings of fact or conclusions of law regarding the material issue of whether the timing of the RFO was prejudicial to preferred resources vendors.

SCE acknowledged the need to provide greater time for preferred resource bidding in its Preferred Resources Pilot RFO when it allowed 132 days for bidding. SCE also ran the LA Basin and Moorpark RFO's concurrently, forcing smaller companies without resources to participate in both to choose one RFO or the other. Since SEC was ordered to procure renewable generation in the LA Basin RFO and was not so ordered to do so in this RFO, preferred resource companies forced to choose between the RFO's would logically elect to participate in LA Basin, as a much better risk. This RFO was therefore prejudiced against preferred resource participation. At the same time, SCE requested and received three extensions to its deadline to submit this application demonstrating that this was not an issue of SCE not having enough time to extend the bidding window, but based on SCE's preference.

#### **F. The RFO Was Otherwise Designed To Discourage Preferred Resources**

There are a number of other ways in which the RFO failed the statutory requirements and Commissions order that SCE must be able to make "A demonstration of technological neutrality, so that no resource was arbitrarily or unfairly prevented from bidding in SCE's solicitation process." (D. 13-02-015 at p. 135.) By approving results of the RFO that was conducted in violation of the Commission's own orders and that violates the preferred resources loading order, the Commission engaged in an abuse of discretion and failed to proceed in a manner required by law.

##### *1. Failure to Provide Draft Contracts for DG Resources*

SCE offered bidders draft contracts for all forms of resources except for distributed generation. SCE claims, "In the end, SCE concluded that DG was too overarching to lend itself to a single stated document format. At this point, SCE prefers to procure DG by first seeing if a DG offer can be accommodated in one of the seven document formats SCE plans to release. If offers do not lend themselves to any particular agreement, SCE will work with the bidder to develop acceptable terms. This provides sellers flexibility to bid products that are DG, but which SCE might not otherwise have considered." (RFO Proposal at p. 29.)

SCE's justification for this approach is unavailing and, even if it was reasonable, SCE's presentation materials to vendors does not communicate this to DG vendors. (See Application Appendix E.) SCE has entered into contracts for DG in the past and is certainly capable of offering a draft contract for DG as it did for all other resources.

Instead, SCE's approach marginalized DG vendors – communicating to them that SCE does not view DG as really fitting into this RFO, and that DG is not on the same footing as other types of resources in this RFO. The RFO was not, in this regard, technologically neutral.

## 2. *Security Required*

SCE required bidders to post security. As SCE admits, “Although this is a common provision for new renewable and conventional generation resources, SCE is concerned that EE, DR, and some DG bidders may not be accustomed to this requirement.” (RFO Proposal at p. 29.) This is not a common requirement for these preferred resources, is one that surely prevented bidders from participating, and one that gave clear preference to bidders of great financial capabilities. Since preferred resources companies are generally smaller with less resources than companies capable of developing fossil-fuel generation plants, the requirement of security prejudiced the RFO against preferred resources.

## 3. *Resources Excluded Based on CAISO Failure to Study*

SCE excluded consideration of two-hour DR and “set the maximum response time for DR resources to twenty minutes” because CAISO didn't study two-hour resources – this is unreasonable and clearly prejudicial against these DR resources. SCE states:

The CAISO results indicate that some Preferred Resources are effective in meeting the LCR need in conjunction with GFG and transmission solutions. The results of these studies also suggest that up to 15 MW of two-hour dispatch/discharge resources will be effective in meeting or reducing the identified LCR need in the Moorpark sub-area. The CAISO, however, did not study the effectiveness of two-hour resources in meeting the system RA requirements beyond the local area and was not prepared to support any system RA value for such resources. As a result, SCE ultimately excluded the consideration of two-hour resources from its recommended LCR procurement. (Application testimony at p. 8.)

Even though, “CAISO’s study showed that a maximum of 15 MW of two-hour dispatch/discharge duration for DR and ES resources in the Moorpark sub-area could be used to meet or reduce LCR need” these resource were wrongly excluded from participation in the RFO. (Application testimony at p. 18.) The Commission wrongly deferred to CAISO’s opinion especially given that CAISO’s opinion was based upon a willful failure to study the relevant scenarios. The undue deference given CAISO’s worthless opinion and the Commission’s failure to make findings of fact or conclusions of law regarding the material issue of artificial limitations placed on preferred resources is an abuse of discretion.

**V. IT HAS NOT BEEN DEMONSTRATED THAT 215-290 MW ARE NEEDED IN THE MOORPARK SUB-AREA AND PROCUREMENT OF 262 MW OF GAS GENERATION IS NEITHER JUST NOR REASONABLE**

The Commission has a statutory mandate to keep utility rates “just and reasonable.” (Public Utilities Code §§451, 454; see *PG&E Corp. v. Pub.Util.Com.* (2004) 118 Cal.App.4th 1174, 1198, fn.21.) To prevent ratepayers from having to pay excessive rates, the Commission is charged with ensuring that the IOUs do not procure more power than needed. (See D.13-02-015, *supra*, pp.122, 126; D.14-03-004, p.67.) The Commission has failed to do so and failed to make any findings of fact or conclusions of law on a number of issues material to the determination if the contracts are just and reasonable.

**A. The Commission Abused its Discretion in Granting Complete Deference to the Opinions of CAISO and in failing to make any findings of fact or conclusions of law on materials issues regarding the accuracy of the modeling**

*1. SCE stated that the McGrath Power Plant was not factored into the modeling upon which the Track 1 decision was based*

The Decisions does not address the McGrath Power Plant and its impact on the modeling used in Track 1 in any fashion. McGrath Power Plant is a 47.2 MW peaker plant owned by SCE

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that became operational in November 2012. (A.14-11-016, Evidentiary Hearing, Reporter's Transcript 233:10-27 (G. Chin, SCE).) The plant is located in Oxnard, adjacent to the proposed plant at Mandalay Bay yet its 47.2 MW appears to not have been taken into account in the Track 1 decision that determined 215-290 MW of Moorpark sub-area LCR need. Had it been taken into account, the LCR need would have been decreased by up to 23%.

In its Reply to Protest, SCE unequivocally stated that "The McGrath peaker was not factored into CAISO's study." (A.14-11-016, Southern California Edison Company's (U 338-E) Reply To Protests at p. 10.) In its rebuttal testimony, SCE wordsmithed an answer that neither admitted nor denied that the McGrath Plant was not included in the modeling used in Track 1: "CBD states that the McGrath peaker was erroneously excluded from CAISO modeling in D.13-02-015. CAISO, however, modeled this project in their 2014-15 TPP, as well as other generation in the Moorpark sub-area. The 2014-15 CAISO Transmission Plan identified that the procurement selected by SCE through the LCR RFO, which was authorized by the Commission in the LTPP Track 1 decision, as well as other energy efficiency in the area, is critical to meet the Local Capacity Requirement. Based on the CAISO's 2014 – 2015 Transmission Plan, it is evident that the procurement proposed by SCE is necessary to ensure reliable operation of the transmission system." (A.14-11-016, Rebuttal Testimony of SCE at p. 11.)

At the evidentiary hearing, SCE appeared to have forgotten the factual allegation it presented to Commission in a sworn brief and was unwilling to provide an answer as to the inclusion of the McGrath Peaker in the Track 1 modeling. The Center raised the issue of in its protest over four months prior to the evidentiary hearing and SCE made the factual allegation at that time. SCE, therefore, had ample time to prepare an answer to address this important question and SCE's refusal to do so must, therefore, be viewed under heavy scrutiny. SCE's testimony on this matter is as follows:

Q Was the 2011-2012 Cal ISO transmission plan used in the Track 1 decision as modeling?

A I believe so.

Q Thank you. None of the McGrath peaker generation was included in the modeling for Track 1, correct?

A I recall there was some discussion whether that was modeled or not. . .

Q And so do you have an answer on whether or not the McGrath peaker generation was included in the modelling that was used in Track 1?

A I guess I don't have solid – I didn't look into necessarily what was specific modeled for that particular study. I don't think in the record there is any publication that showed details down to that level. But I guess our reference is the 14-15 which is the most current study. It is included.

Q But not included in the Track 1 decision?

A I don't know that.

(A.14-11-016, Evidentiary Hearing, Reporter's Transcript 234:9 – 236:3 (G. Chinn, SCE).)

CAISO never addressed the issue in any written submission but likewise offered questionable witness testimony on this matter. CAISO's witness claimed that, because an appendix to the 2011-2012 Transmission Plan included an apparent reference to McGrath Peaker in a list of effectiveness factors, the modeling must have included the plant's generation. (A.14-11-016, Evidentiary Hearing, Reporter's Transcript 468:22– 473:7 (R. Sparks, CAISO).) But when asked if all items in the list of effectiveness factors were included in the modeling, the witness answered "In addition to the models which we still have on file from that analysis." Neither SCE nor CAISO has entered any evidence of the models into the record to refute SCE's statement that McGrath Peaker was not included.

If the McGrath Peaker generation was not accounted for in the modeling used for the Track 1 decision, the LCR need determination overestimated need by almost one quarter and the needs determination must be reopened. Because SCE never withdrew their original representation that the McGrath Peaker was not included and has not made a showing by a preponderance of the evidence refuting its own factual assertions, the Commission should have assumed that it was not included and should have denied this RFO as procuring more generation than needed. The Commission failed to make such an assumption or to address this material issue in any fashion and therefore approval of procurement based on Track 1 modeling was an abuse of discretion.

*2. The Commission Accorded CAISO Undue Deference and failed to make findings regarding the material issue of fact of whether the 2014-2015 Transmission Plan demonstrates that the Track 1 needs determination is still valid*

The Commission likewise failed to address CAISO's use of the 2014-2015 Transmission Plan as alleged evidence that the needs determination of Track 1 is accurate and that the RFO contracts should be approved. The Decision is silent on this issue and so it must be assumed that

the Commission accepted CAISO's opinion on this matter. The 2014-2015 Transmission Plan is irrelevant to these proceedings – it was not part of the record in Track 1, utilizes the results of SCE's RFO as inputs, is not modeled based upon the required standards, and estimates need for 2024, years beyond the Track 1 timeline. In failing to make findings of fact or conclusions of law on this material issue, in showing undue deference to CAISO on this material issue, and in approving gas generation where need has not been demonstrated, the Commission has abused its discretion and approved a contract that is neither just nor reasonable. The Decision is also not supported by substantial evidence and is contrary to applicable law.

Even if the 2014-2015 Transmission Plan were relevant to these proceedings and was modeled correctly, it plainly demonstrates that there is a 230 MW need, *not* the 319.16 MW SCE has applied for here. ((A.14-11-016, Testimony of Neil Millar, Exhibit 1 at p. 94.; (A.14-11-016, Evidentiary Hearing, Reporter's Transcript 435:28 – 436:27 (R. Sparks, CAISO).)

The 2014-2015 Transmission Plan is based upon the Category D critical contingency and the critical contingency for the Moorpark sub-area is repeatedly referred to as the loss of the three Moorpark-Pardee lines. For example, the RFO proposal states, "the critical contingency [] is the loss of the three Moorpark-Pardee lines." CAISO refers to this as an N-1 followed by N-2 critical contingency. This concept appears to have originated from CAISO, but it is not supported by any evidence and is in stark contrast to critical contingency standards. The LCR determination of 215-290 MW for the Moorpark sub-area, based upon the stated critical contingency of the loss of three transmission lines that share a right of way, is in violation of federal standards and any procurement based upon this error will be a failure of the Commission to protect California ratepayers.

An area's local capacity requirement ("LCR") is determined in accordance with reliability standards promulgated by the North American Electric Reliability Corporation ("NERC") and Western Electricity Coordinating Council ("WECC"). Under the Federal Power Act, 16 U.S.C. §824o, the Federal Energy Regulatory Commission ("FERC") has delegated its regulatory authority regarding electrical transmission reliability standards to NERC, which has delegated this authority to eight regional entities, including WECC.

When planning for electricity needs, NERC/WECC standards require modeling a range

of contingencies, from normal conditions (Category A) to extreme events (Category D). More severe contingencies, such as the simultaneous loss of two transmission lines (an “N-2” event) or loss of two transmission lines within less than thirty minutes (an “N-1-1” event) can be addressed with controlled load shedding because such events are so unlikely to occur that it is considered economically unreasonable to procure sufficient generation resources to mitigate them entirely. Category D events are so extremely unlikely that utilities are not required to plan for them.

Pursuant to NERC Standard TPL-001-0.1 and all other relevant NERC and WECC standards, the loss of all transmission lines on a common right-of way is a category D event, considered to be so unlikely that it does not need to be planned for. (CBD-03, CDB-04, CBD-05.) This is precisely the situation proposed for the Moorpark sub-area – the simultaneous loss of three transmission lines on the same right of way. Even if the loss of three lines within the same right of way could be considered a Category C event, this can still be mitigated by load shedding and does not call for an increase in LCR need.

The creative attempt of CAISO to reclassify the loss of three transmission lines within a shared right of way as two separate events for which LCR need is required fails the NERC/WECC standards. Procurement of additional generation under such a situation is waste of ratepayer resources and the Commission should fix this error before we are any further down this road.

CAISO disregards the crystal clear language of the NERC standards that Category D includes “extreme events resulting in the loss of two or more, multiple elements removed or cascading out of service” by claiming that the standard implied a simultaneous loss. (A.14-11-016, Evidentiary Hearing, Reporter’s Transcript 452:7 - 465:5 (R. Sparks, CAISO). The NERC standards are clear and unambiguous that both simultaneous and cascading losses of all lines in a common right away is a Category D extreme, and CAISO’s attempt to argue otherwise reflects poorly upon their witnesses’ credibility.

### *3. Changed Circumstances Has Made The Track 1 Needs Determination Obsolete*

The Track 1 needs determination for Moorpark sub-area is no longer valid and the  
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proceeding should be reopened so that changed circumstances can be taken into account. The Commission is under a continuing duty to comply with the statutorily mandated preferred resources loading order and to protect ratepayers from unjust and unreasonable increases in rates due to the cost of constructing and operating unneeded utilities infrastructure. Where materially relevant circumstances have changed since the Commission authorized procurement, as they have here, the Commission must take such changes into consideration in ruling on applications for power purchase agreements to fill said procurement. In other words, the Commission approval of power purchase agreements does not happen in a vacuum – regardless of any past decisions, the Commission must consider the actual relevant conditions at the time it rules instead of past conditions no longer relevant. If it fails to do so, and the present conditions call for less procurement or offer greater opportunities for utilizing preferred resources, the Commission has failed to proceed in a manner required by law by approving unjust and unreasonable procurement not in compliance with the preferred resources loading order.

In this case, significant changed circumstances called for a reduced LCR and increased utilization of preferred resources and the Commission failed to proceed in a manner required by law when it refused to consider these changed circumstances.

*a. Closure of Ormond Beach Power Plant Uncertain*

The decision states “The need determination of the Moorpark sub-area in D.13-02-015 depended upon the retirement of Mandalay Unites 1 and 2 and Ormond Beach on-through-cooling generation units.” (D.16-05-050 at p. 25.) On February 12, 2016 NRG, the operator of Ormond Beach Power Plant, informed the State Water Resources Control Board by letter that “at this time, NRG does not intend to retire either Unit 1 or Unit 2 [of the Ormond Beach Power Plant] by the December 31, 2020 compliance date, but rather intends to comply by satisfying Track 2 of the Policy.”<sup>8</sup> Although SCE and NRG had a duty to provide the Commission with this information critical to the outcome of the Puente Power Plant application, they failed to do. This issue was properly brought before the Commission by the California Environmental Justice Alliance in its May 6, 2016 Motion To Set Aside Submission And Reopen Record To Take

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<sup>8</sup> Available at :  
[http://www.swrcb.ca.gov/water\\_issues/programs/ocean/cwa316/powerplants/ormond\\_beach/docs/ormond\\_response.pdf](http://www.swrcb.ca.gov/water_issues/programs/ocean/cwa316/powerplants/ormond_beach/docs/ormond_response.pdf)

Additional Evidence. The motion was timely brought prior to the Decision, met the requirements of Commission Rule 13.14 for reopening the record, and was thus wrongly denied by the ALJ. At the very least, the Commission was under a duty to investigate the issue of material fact of whether the plant will actually close, as was assumed in the procurement authorization proceedings. Instead, the Commission appears to have relied upon ex parte communications whereby the operators of Ormond Beach Power Plant attempted to retract its February 2016 letter to the Water Board claiming that it, once again, plans to shut the Ormond Beach Power Plant. The issue of whether or not NRG will actually close the Ormond Beach Power Plant was not addressed in any fashion in the Decision. Having failed to make any findings of fact or conclusions of law regarding this absolutely critically material issue of fact, the Commission abused its discretion and failed to proceed in a manner required by law.

*b. Other Changed Circumstances*

Other changed circumstances that impact the calculation of LCR need since the issuance of D.13-02-015 include: continued actual unchanged or declining peak demand in SCE service territory, which includes the Moorpark sub-area; an increase in SCE's net-metered solar target from approximately 850 MW under the California Solar Initiative (2007) to 2,240 MW under AB 327 passed October 2013, codified in Public Utilities Code section 769, which will add substantial unanticipated solar resources in the Moorpark sub-area; an increase in SCE's energy storage target from 50 MW in D.13-02-015 to 580 MW in D.13-10-040 (October 2013); and establishment by the Commission of explicit LCR values for rooftop solar and energy storage in May 2014 in the 2014 Long-Term Procurement Proceeding (LTPP) that allow precise calculation of the LCR need reduction of additional rooftop solar and energy storage projects in SCE and SDG&E territories that were not quantified in either D.13-02-015 or D.14-03-014. (A.14-11-016, Testimony of Bill Powers, P.E. at pp. 4-20.)

**WHEREFORE**, the Center submits that the Commission should rehear this matter and deny the application with prejudice. The Center requests that the Commission hear oral argument on this motion.

Respectfully submitted,

Date: June 30, 2016

Center for Biological Diversity

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