

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of Southern California Edison
Company (U338E) for Approval of the
Results of Its 2015 Preferred Resources
Pilot Request for Offers.

Application 15-12-013
(Filed December 15, 2015)

**THE OFFICE OF RATEPAYER ADVOCATES
BRIEF**

(PUBLIC VERSION)

**MATT MILEY
ZHEN ZHANG**
Attorneys for
Office of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-3066
Email: mm2@cpuc.ca.gov

**CHRISTOPHER MYERS
CHRISTIAN KNIERIM**
Analysts for
Office of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Avenue, 4th Floor
San Francisco, CA 94102
Telephone: (415) 703-2386
Email: christopher.myers@cpuc.ca.gov

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I. INTRODUCTION

Pursuant to Rule 13.11 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rule), and consistent with the schedule established in the April 29, 2016 email ruling of Administrative Law Judge (ALJ) Fitch, the Office of Ratepayer Advocates (ORA) submits its brief on Southern California Edison Company's (SCE) Application (A.) 15-12-013, Application for approval of the Results of Its 2015 Preferred Resources Pilot Request for Offers (Application or PRP DG RFO). SCE filed its Application, and supporting testimony (SCE-1), on December 5, 2015 for Commission approval of two Power Purchase Agreements (PPAs) with SunEdison for in front of the meter (IFOM) solar photovoltaic (PV) projects totaling 2.167 megawatts (MW).¹ The two executed PPAs are the result of two offers made by SunEdison in SCE's PRP DG RFO. SCE requests that the Commission "approve the PRP DG RFO, SCE's conduct with respect to the PRP DG RFO, and the contracts selected through the PRP DG RFO process as prudent and reasonable."² SCE identified the Renewables Portfolio Standard (RPS) as the authority for Commission approval of its request.³

SCE states that it "is requesting recovery in rates of payment made pursuant to the SunEdison PPAs, subject only to further review with respect to the reasonableness of SCE's administration of the SunEdison PPAs."⁴ SCE clarifies that it is not proposing a rate increase at this time, but will include in its annual Energy Resource Recovery Account (ERRA) Forecast proceeding for the following year "a forecast of the costs of the resources procured through the PRP DG RFO."⁵

¹ Application, p. 1.

² *Id.*, p. 9.

³ Southern California Edison Company's (U 338-E) Reply to the Office of Ratepayer Advocates' Protest, February 1, 2016 (SCE Reply to ORA Protest), p. 4.

⁴ Application, p. 8.

⁵ *Id.*, p. 12 ("The costs of the PRP resources that will be included in rates will be trued-up to their actual recorded costs through balancing accounts.").

II. PROCEDURAL HISTORY AND SCOPE OF PROCEEDING

ORA protested SCE's Application on January 21, 2016 (ORA Protest). SCE filed a reply to ORA's Protest on February 1, 2016. A prehearing conference (PHC) was held on February 29, 2016. The Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge (Scoping Memo), issued March 4, 2016, identified four key threshold questions as within scope for consideration of SCE's Application:

- Was the SCE PRP DG RFO conducted in a reasonable and fair manner?
- Are the PPAs RPS eligible and will they fulfill SCE's RPS Category 1 needs?
- Are the terms of the PPAs reasonable?
- Are the prices of the PPAs reasonable, compared to other similar projects procured under the RPS program or other procurement mechanisms.⁶

In addition, the Scoping Memo required SCE to serve Supplemental Testimony that responded to nine questions regarding the Application.⁷ SCE served its Supplemental Testimony on March 25, 2016 (SCE-2). Pursuant to the Scoping Memo schedule, ORA served its Testimony on April 15, 2016 (ORA-1), and SCE served its Rebuttal Testimony on April 25, 2016 (SCE-3). Pursuant to the April 29, 2016 email ruling of ALJ Fitch, ORA and SCE filed motions on May 24, 2016 to move existing testimony into the formal record of the proceeding.

III. SUMMARY OF DISCUSSION

SCE failed to meet its burden to make an affirmative and verifiable showing to demonstrate that its conduct with respect to the PRP DG RFO was reasonable, and the contracts selected through the PRP DG RFO process are needed and competitively priced. Accordingly, based on the information provided by SCE in its Application,

⁶ Scoping Memo, p. 2.

⁷ *Id.*, pp. 2-3.

Testimony, Supplemental Testimony, and Rebuttal Testimony, ORA recommends that the Commission deny SCE's requests for the following reasons:

- The two SunEdison PPA are not competitively priced compared to comparable PPAs;
- The two SunEdison PPAs are not needed for SCE to meet its RPS requirements; and
- SCE has not shown that it conducted its PRP DG RFO in a reasonable and fair manner.

IV. DISCUSSION

A. Background

Under Track 1 and Track 4 of the 2012 Long-Term Procurement Plan (LTPP) proceeding, Rulemaking (R.) 12-03-014, the Commission ordered SCE to procure between 1,900 to 2,500 MW of electrical capacity in the Los Angeles Basin.⁸ For Track 1 local resource requirements, SCE was ordered to procure between 1,400 and 1,800 MW of electrical capacity to meet reliability needs resulting from the retirement of once-through cooling (OTC) generation facilities. Pursuant to the Track 1 decision,² the Commission ordered SCE to submit its Local Capacity Requirements Procurement Plan (LCR PP) in an application. SCE's instant Application states that SCE introduced a PRP pilot concept in its August 20, 2013 modified LCR PP, but did not seek approval of the pilot through the LCR PP.¹⁰

Under the Track 4 decision,¹¹ the Commission authorized SCE to procure an additional 500 to 700 MW of electrical capacity by 2022 in order to address reliability concerns stemming from the retirement of the San Onofre Nuclear Generating Station

⁸ D.14-03-004, pp. 141-142.

² D.13-02-015, *Decision Authorizing Long-Term Procurement for Local Capacity Requirements*.

¹⁰ Application, p. 7.

¹¹ D.14-03-004, *Decision Authorizing Long-Term Procurement for Local Capacity Requirements Due to Permanent Retirement of the San Onofre Nuclear Generation Stations*.

(SONGS).¹² In its Track 4 testimony, SCE introduced its then named “Preferred Resources Living Pilot Program” to “procure and evaluate the ability of preferred resources to meet local energy needs.”¹³ However, in the Track 4 decision, the Commission stated that “SCE is not seeking approval of the Living Pilot in this proceeding; SCE intends to file a future application on this topic.”¹⁴

On December 15, 2015, SCE filed the instant Application “requesting recovery in rates of payments made pursuant to the SunEdison PPAs, subject only to further review with respect to the reasonableness of SCE’s administration of the SunEdison PPAs.”¹⁵

B. EVIDENTIARY STANDARDS AND BURDENS OF PROOF

1. Burden of Proof

The instant proceeding is in the ratesetting category. The Commission is responsible for ensuring that all rates demanded or received by a public utility are just and reasonable; “no public utility shall change any rate . . . except upon a showing before the Commission, and a finding by the Commission that the new rate is justified.”¹⁶ Thus, in ratemaking applications, the burden of proof is on the applicant utility.¹⁷

In a 1980 decision, the Commission stated what has become a frequently quoted position on the burden of proof:

Of course the burden of proof is on the utility applicant to establish the reasonableness of energy expenses sought to be recovered. We expect a substantial affirmative showing by each utility with percipient witnesses in support of all elements of its application.¹⁸

¹² Application, p. 2.

¹³ *Id.*, p. 7, citing SCE’s August 26, 2013 LTPP Track 4 Testimony, p. 49.

¹⁴ D.14-03-004, p. 65.

¹⁵ Application, p. 8.

¹⁶ *Application of Pacific Gas and Electric Company* (2000) D.00-02-046, p. 36, 2000 Cal. PUC LEXIS 239.

¹⁷ *Re Energy Cost Adjustment Clauses* (1980) 4 CPUC 2d 693, 701; D.92496.

¹⁸ *Re Southern California Edison Company* (1983) 11 CPUC 2d 474, 475; D.83-05-036.

In a later ratemaking proceeding, the Commission confirmed:

...the fundamental principle involving public utilities and their regulation by governmental authority that the burden rests heavily upon a utility to prove it is entitled to rate relief and not upon the Commission, its Staff, or any interested party or protestant, such as TURN [The Utility Reform Network], to prove the contrary.¹⁹

The Commission has noted that there is no distinction between types of ratemaking cases with respect to the utility's burden of proof:

The inescapable fact is that the ultimate burden of proof of reasonableness, whether it be in the context of test-year estimates, prudence reviews outside a particular test year, or the like, never shifts from the utility which is seeking to pass its costs of operations onto ratepayers on the basis of the reasonableness of those costs.²⁰

The Commission confirmed that the burden is on the utility for all aspects of its application:

As the Applicant, SCE must meet the burden of proving that it is entitled to the relief it is seeking in this proceeding. *SCE has the burden of affirmatively establishing the reasonableness of all aspects of its application.* Intervenors do not have the burden of proving the unreasonableness of SCE's showing.²¹

As the Applicant in this ratesetting proceeding, SCE has the burden of proving that its conduct with respect to the PRP DG RFO was reasonable, and the contracts selected through the PRP DG RFO process are needed and competitively priced.

¹⁹ *Application of Pacific Gas and Electric Company* (2000) D. 00-02-046, p. 36, 2000 Cal. PUC LEXIS 239 citing *Re Pacific Bell* (1987) 27 CPUC 2d 1, 21, D.87-12-067.

²⁰ *Opinion Regarding Proposed General Rate Increase* (2004) D.04-03-034, p. 7.

²¹ See *In the Matter of the Application of California Water Company* (2003) D.03-09-021, p. 17, emphasis added.

2. Standard of Proof

With the burden of proof placed on SCE in the instant proceeding, the Commission recently affirmed in D.14-12-025, adopting the new General Rate Case (GRC) framework, that the *standard* for the degree of proof that the utilities must meet to fulfill the Commission’s standards of compliance in GRCs is that of a preponderance of the evidence. The preponderance of the evidence standard is prevalent in civil and administrative law cases, and is generally viewed to require that the evidence presented on one side of an issue is more persuasive than that in opposition.²² The preponderance of the evidence standard does not relieve the applicant of the burden of initially producing evidence that is actually persuasive, and other parties are not required to offer evidence if the applicant fails to meet its initial burden.

It is clear that in this case SCE has failed to demonstrate, by a preponderance of the evidence, that (1) the SunEdison PPA prices are reasonable when compared to comparable PPAs, (2) the SunEdison PPAs are needed for SCE to meet its RPS requirements, and (3) SCE conducted the PRP DG RFO in a reasonable and fair manner. In fact, SCE repeatedly and inappropriately relies on the “important objectives” and “benefits” of its internal PRP as a basis for conducting and approving the PRP DG RFO, which are unsupported by any record evidence and are beyond the scope of this proceeding per SCE’s request. SCE’s statements only highlight the lack of a coherent explanation by SCE for why the Commission should require California ratepayers to pay for high-priced long-term contracts that have not been demonstrated to be necessary to meet RPS compliance obligations or any other authorized need.

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²² California Administrative Hearing Practice 2nd Ed. (CEB) § 7.51.

C. THE PRP IS OUTSIDE THE SCOPE OF THIS PROCEEDING

SCE's internal PRP is, by its own request,²³ outside the scope of this proceeding. As SCE correctly acknowledges, the "March 4, 2016 (Scoping Memo) limited the scope of this proceeding to the approval of the PPAs, not the PRP as a whole, stating: 'the scope of issues for this application[] focus[es] on the following key threshold questions:

- Was the SCE PRP DG RFO conducted in a reasonable and fair manner?
- Are the PPAs RPS eligible and will they fulfill SCE's RPS Category 1 [citation omitted] needs?
- Are the terms of the PPAs reasonable?
- Are the prices of the PPAs reasonable, compared to other similar projects procured under the RPS program or other procurement mechanisms.'"²⁴

Accordingly, the PRP program, per SCE's request, is out of scope, and cannot be relied upon as a reasonable justification of the two SunEdison contracts at issue in SCE's Application.

²³ Prehearing Conference (PHC), February 29, 2016, PHC Reporter's Transcript, p. 19, lns. 3-19:

Mr. Miley [ORA]: I guess probably make this more clear in our comments, but on scope I would want to make sure that ORA's position is understood and that what's not - - Edison is not asking for approval of the PRP program. And it would be important to ORA that any proposed decision that comes out of this proceeding not reach a determination on the reasonableness of the program as a whole.

Commissioner Florio: Two contracts, that's all it's about.

ALJ Fitch: That's my understanding. And I think Edison's response made that pretty clear from their perspective. I mean do you want to speak to that?

Ms. Meiers-De Pastino [SCE]: No. I think you Honor has it exactly right.

ALJ Fitch: Yeah. That's my understanding as well. We would not reach a conclusion about the preferred resources pilot overall. It's just about the two contracts under this particular RFO, which is in itself only a portion of the PRP as I understand it.

Ms. Meiers-De Pastino [SCE]: Correct.

²⁴ SCE-2, p. 1, lns. 11-12, citing Scoping Memo, p. 2.

Despite the fact that the PRP is out of scope, SCE's pleadings and supporting testimonies are replete with SCE's reliance on its internal PRP, and the unsupported but claimed "important objectives" and "benefits" of the PRP, as the basis for conducting and receiving Commission approval of the PRP DG RFO and the resulting two SunEdison contracts. For example, SCE states a number of times that the "primary goal in acquiring these contracts is to support offsetting the local customer load growth consistent with the important objectives of the PRP,"²⁵ that "[i]f the PRP proves that preferred resources can achieve that goal, SCE may not have to rely on new conventional resources to meet the projected growth [in the PRP Region],"²⁶ and that "[t]he Commission should grant SCE's application for approval of these two PPAs because they not only meet the goals of the PRP, but also several other important policy objectives."²⁷ As detailed below, all of these and similar statements regarding the "goals" and merits of the PRP are outside the scope of this proceeding, are unsupported by the record, and therefore should not be given any weight by the Commission. SCE argues for approval of these contracts based on alleged, unsupported benefits of a pilot program, while at the same time explicitly requests that the pilot program itself and the associated "goals" not be subject to examination. SCE's argument is circular, contradictory, and in direct conflict with the narrow list of issues set forth in the Scoping Memo.²⁸

Consistent with the Scoping Memo's clear direction, ORA analyzed the reasonableness of terms and prices of the SunEdison contracts, the RPS need for the contracts, and the reasonableness of SCE's conduct with respect to the PRP DG RFO. As detailed below, SCE failed to meet its burden to demonstrate reasonableness on these scoped issues, and ORA therefore recommends that SCE's request for a finding of reasonableness be denied.

²⁵ See SCE-3, p. 2, lns. 1-2, p. 3, lns. 9-10, and p. 7, lns. 10-11.

²⁶ SCE-1, p. 1, lns. 9-11.

²⁷ *Id.*, p. 1, lns. 12-14.

²⁸ SCE-2, p. 1, lns. 11-12, citing Scoping Memo, p. 2.

D. REASONABLENESS OF SUNEDISON PPA PRICES AND NEED

SCE requests that the Commission approve the SunEdison contracts on the grounds that the contracts are RPS eligible and thus will fulfill SCE's RPS needs.²⁹ Regarding the RPS program, the Scoping Memo identifies the following two issues as within scope: (1) whether the PPAs are RPS eligible and whether they will fulfill SCE's RPS Category 1 needs, and (2) whether the prices of the PPAs are reasonable, compared to other similar projects procured under the RPS program or other procurement mechanisms.³⁰ Although the SunEdison contracts are RPS eligible, the contracts should not be approved because (1) the contracts are not needed for SCE to meet its RPS requirements, and (2) the prices of the contracts are unreasonable because they are more expensive than other types of similarly sized RPS projects that can be procured through other RPS mechanisms.

1. The two SunEdison PPAs are not needed for SCE to meet its RPS requirements

The two SunEdison contracts are not needed to fulfill SCE's RPS requirements because SCE is currently meeting or exceeding its RPS targets. Table 1 shows SCE's current and forecasted RPS procurement position. Table 1 is based on SCE's Renewable Net Short (RNS) calculations, which is a required methodology for calculating "the amount of new renewable generation necessary for retail sellers to meet or exceed the renewable procurement quantity requirements."³¹ SCE's reported RNS calculations demonstrate that SCE exceeded its RPS targets in 2014 and 2015, and is on track to meet and exceed its targets from 2016 through 2020. Although the two SunEdison contracts are not needed for RPS compliance, SCE asserts that it "should not be precluded from entering into RPS contracts simply because the contracts it has executed are sufficient to

²⁹ See SCE Reply to ORA Protest, pp. 4-5 ("SCE Application and Testimony Expressly Cited the RPS as the Authority for the Commission's Approval").

³⁰ Scoping Memo, p. 2,

³¹ Administrative Law Judge's Ruling on Renewable Net Short, Rulemaking 11-05-005, filed May 5, 2011, p. 1.

meet its targets because deliveries under those contracts may not necessarily come to fruition and can be banked for future use.”³² SCE’s assertion ignores the comparably high price of the SunEdison contracts. Although the RPS program allows for the banking of certain types of energy deliveries for future use in later compliance periods, and although over-procurement is sometimes practiced to create a buffer for failed or underperforming projects, this is still not sufficient justification for entering into long-term and comparably high-priced contracts. There are other, less expensive, RPS projects procured through a variety of procurement mechanisms which can be used to both satisfy overall RPS goals and create a buffer for underperforming contracts.

Table 1
SCE’s Renewable Net Short Calculations³³

	2014 Actual	2015 Forecast	2016 Forecast	2017 Forecast	2018 Forecast	2019 Forecast	2020 Forecast
Annual RPS Requirement	21.7%	23.3%	25%	27.0%	29.0%	31.0%	33%
Annual Net RPS Position	■	■	■	■	■	■	■

2. The two SunEdison PPAs are not competitively priced compared to comparable PPAs

The two SunEdison contracts should not be approved because the contracts are more expensive than other types of similarly sized RPS-eligible renewable energy resources that could be used to fulfill RPS needs.

Table 2 demonstrates that projects procured for RPS purposes through the Feed-in Tariff (FiT)/Renewable Market Adjusting (ReMAT) and Renewable Auction Mechanism (RAM) programs are less expensive than the similarly sized two SunEdison contracts.

³² SCE-3, p. 7.

³³ SCE-1C, Confidential Appendix B, Renewable Net Short Calculations, pp. B-3 - B-4. Data is compiled from both the “Physical RNS Calculations Based on SCE Assumptions” and “Optimized RNS Calculations Based on SCE Assumptions” tables.

The majority of the projects in Table 2 were procured through the FiT/ReMAT program, with contract prices ranging from [REDACTED] to [REDACTED], while the prices for the two SunEdison contracts are [REDACTED], at [REDACTED] and [REDACTED]. Two projects procured through the sixth RAM solicitation and SCE's 2014 RPS RFO, were procured at [REDACTED] and [REDACTED], respectively, which are also significantly less expensive, by [REDACTED], than the SunEdison contracts. The only projects in Table 2 that are similar in price to the requested SunEdison contracts are the two projects procured through Solar Photovoltaic Program (SPVP) 5, priced at [REDACTED] and [REDACTED]. Even then, comparing the average prices of the two SPVP 5 contract prices to the SunEdison contract prices, the SPVP 5 average price is lower, at [REDACTED], while the average price of the two SunEdison contracts is [REDACTED]. Further, as discussed in greater detail below, SCE regards the prices of the SPVP 5 projects as expensive and not competitive enough with other types of renewable contracts. As a result, SCE filed a Petition for Modification asking to terminate its SPVP early on the basis of high contract prices for small scale commercial solar PV projects.³⁴

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³⁴ SCE Petition for Modification, pp. 4-5.

As detailed in ORA’s Testimony, small scale RPS-eligible projects, like the two SunEdison contracts, could have been procured using a wide variety of RPS procurement mechanisms.³⁶ The PRP DG RFO specified new, eligible renewable energy resources at least 250 kW in size and located in the PRP region.³⁷ Based on these size requirements, all of the existing RPS procurement mechanisms could have been used as vehicles to acquire the two SunEdison contracts. However, SCE states that since 2014 it “encouraged bidders in its RPS, RAM, and SPVP solicitations to submit offers for projects that would be sited in the PRP Region, but SCE did not receive sufficient viable offers for IFOM renewable DG to support the PRP. The lack of market response in the existing programs resulted in the PRP DG RFO.”³⁸ SCE’s rationale for conducting the PRP DG RFO in order “to support the PRP” should be rejected. In fact, such rationale supports ORA’s findings that the projects are not competitively priced and should be rejected. As discussed above, the PRP program, and, by extension, any assumed benefits of the PRP, are outside the scope of this proceeding.

(a) ORA’s methodology for comparing the price of the SunEdison contracts to the price of similarly sized RPS contracts is appropriate and fair

SCE asserts that the final contract prices of the RPS projects in Table 2 are insufficient for comparison with the two SunEdison contracts because “contract price should not be the sole factor in the Commission’s determination of the reasonableness of the contracts.”³⁹ According to SCE, ORA’s analysis fails to consider (1) the benefits of the SunEdison contracts, and (2) annual price escalation factors that are applicable to

³⁶ For a more detailed explanation of RPS procurement programs, see ORA-1, pp. 1-1 to 1-4. These programs include: Utility Scale Request for Offers (RFOs), Bilateral Agreements, Renewable Auction Mechanism (RAM), RPS Feed-in Tariff (FiT) and Renewable Market Adjusting Tariff (ReMAT), Bioenergy Feed-in Tariff (BioFiT) and Bioenergy Market Adjusting Tariff (BioMAT), and Utility Solar Photovoltaic Program (SPVP).

³⁷ Application, p. 5.

³⁸ SCE-2, p. 8.

³⁹ SCE-3 p. 3.

several of the projects listed for comparison in Table 2.⁴⁰ These arguments should be rejected.

First, SCE asserts that the use of contract prices alone is insufficient because “benefits should also be considered.”⁴¹ However, SCE fails to provide any evidentiary support for such benefits, or otherwise demonstrate how such benefits are achieved by the two SunEdison contracts. Rather, using general language to make blanket statements, SCE attempts to propose benefits such as: displacing fossil fuel consumption, reducing air pollution and greenhouse gas emissions, and satisfying the state’s need for a diversified and balanced energy generation capabilities.⁴² SCE does not provide any explanation or any metrics that demonstrates how these alleged benefits are achieved by the two SunEdison contracts. SCE also fails to explain or provide metrics to demonstrate that these alleged benefits gained from the SunEdison projects are comparable or more favorable to benefits gained from other RPS projects. Finally, using another general statement, SCE seems to propose that an additional overall benefit of the SunEdison projects is that they will help “support offsetting the local customer load growth consistent with the important objectives with the PRP.”⁴³ This assertion should be disregarded because SCE fails to explain or provide metrics to demonstrate how this alleged benefit is achieved by the two projects.

Next, SCE states that price escalation factors should also be considered when using contract prices to compare the two SunEdison contracts to other similar RPS projects.⁴⁴ Here, again, SCE fails to provide any detailed figures or financial projections, with price escalation factors applied, that prove that the prices of the two SunEdison contracts are comparable to, or more favorable than, the other RPS projects listed in

⁴⁰ *Id.*, p. 3.

⁴¹ *Id.*, p. 6.

⁴² SCE-1, p. 25.

⁴³ SCE-3, p. 7.

⁴⁴ *Id.*, p. 6.

Table 2. SCE cites the “Mirasol Murietta 1” project as an example of how price escalation factors should have been considered in ORA’s analysis. However, SCE fails to apply and compare the actual price escalation factors of the SunEdison and Mirasol Murietta 1 contracts in order to determine that the two SunEdison contracts are comparable or more favorable to other RPS contracts.⁴⁵ In fact, SCE presents no detailed comparison to any RPS projects whatsoever to support its rationale for the necessity of applying price escalation factors to the contract prices. SCE also fails to present any evidence to dispute ORA’s finding that the two SunEdison contracts are more expensive than other similarly sized RPS contracts. At best, SCE provides a general explanation for what it considers the ideal analytical process for price comparison; however, SCE fails to actually use that analytical process to support its argument that the prices of the two SunEdison contracts are reasonable. This lack of evidentiary support further highlights SCE’s failure to meet its burden to demonstrate the reasonableness of the SunEdison contracts.

(b) SCE’s comparison of the SunEdison contracts to solely the “Santa Ana” project is limited and flawed

SCE also asserts that ORA’s comparison of the SunEdison contracts to a wide selection of RPS projects, rather than projects that fit into the specific constraints and requirements of the IFOM DG market in the PRP area (i.e., the Santa Ana project), is inappropriate.⁴⁶ This claim should be disregarded for several reasons. First, SCE favors the “Santa Ana” project procured in SPVP 4 as the most appropriate comparison to the SunEdison contracts and states that “because the three contracts further the same PRP objectives, it is reasonable to compare the projects to determine whether the SunEdison PPAs are competitively priced.”⁴⁷ However, pursuant to the Scoping Memo, and by

⁴⁵ *Id.*, p. 6.

⁴⁶ *Id.*, p. 3.

⁴⁷ *Id.*, p. 4.

SCE’s own request, the merits of the PRP are outside the scope of this proceeding.⁴⁸ Accordingly, SCE’s attempt to limit the comparison to only those projects that meet the exact parameters of the PRP RFO (i.e., the Santa Ana project) is contradictory and inappropriate. Second, this proceeding asks whether the prices of the SunEdison PPAs are reasonable compared to “other similar projects procured under the RPS program”⁴⁹ and the scope does not limit the comparison of projects to a specific technology type, generation profile, or location. By design, the RPS program allows for the use of 12 different eligible renewable energy resources,⁵⁰ which feature a variety of technology types and generation profiles, to accomplish the same overall environmental and energy policy goals of the RPS program. Therefore, ORA’s use of a wider comparison of various RPS project types is appropriate and consistent with the scope of this proceeding. SCE’s argument that it is inappropriate to compare the SunEdison projects to a wide variety of RPS project types because their generation characteristics are different should be disregarded.⁵¹

In order to provide a fair comparison to the two SunEdison contracts, ORA chose to use project size as the base comparison, and the RPS projects selected for comparison are sized 5 MW or below. The 5 MW limit was selected in order to capture as many RPS procurement vehicles as possible, but only one of the comparison projects is over 3MW.

[REDACTED]

[REDACTED]

[REDACTED].⁵² The Santa Ana

⁴⁸ See Scoping Memo, p.2; and PHC Reporter’s Transcript, p. 19, lns. 3-19.

⁴⁹ Scoping Memo, p. 2.

⁵⁰ Public Resources Code, Section 25741.

⁵¹ SCE-3, p. 4.

⁵² Advice Letter 3206-E, filed May 12, 2015, p.8, describes SCE’s evaluation methodology to rank and select eligible project offers by using time-of-delivery (“TOD”) adjusted offer price plus the transmission adder less resource adequacy benefits (“PTAR”).

[REDACTED]

project was chosen by SCE solely because of its location in the PRP region and its potential to satisfy the objectives of SCE's PRP.⁵³ The Santa Ana project has since been terminated.⁵⁴

(c) The termination of SPVP is relevant in the comparison of the SunEdison contracts

A more appropriate comparison of the SunEdison contracts is to the contracts executed in SPVP 5. In July 2015 SCE conducted SPVP 5 and procured two projects with contract prices of [REDACTED] and [REDACTED]. Like the projects selected in the PRP DG RFO, the executed contracts in SPVP 5 were for small commercial rooftop solar PV projects, adjacent to the PRP area that resulted in similar contract prices to the SunEdison contracts.⁵⁵ In support of its request for approval for the SPVP 5 contracts, SCE explained that the SPVP 5 solicitation experienced weak market participation.⁵⁶ Of the 14 eligible RPS projects shortlisted in SPVP 5, SCE only chose two for contract execution because the remaining 12 were deemed by SCE as being too expensive and not competitive enough.⁵⁷ Furthermore, SCE noted that in comparison with SPVP 4 contract prices, SPVP 5 prices were not much more competitive and seemed to have stagnated:

“levelized pre-TOD prices offered in SPVP 5 were comparable to those offered in SPVP 4. This is in contrast to all prior SPVP solicitations, in which each solicitation provided a noticeable decrease in prices as compared to the prior solicitation. Not including an offer that was selected specifically to support SCE's Preferred Resources Pilot, the lowest and highest selected PTAR values in SPVP 4 were [REDACTED], respectively. Most SPVP

⁵³ *Id.*

⁵⁴ SCE-2, p.3., lns 15-16.

⁵⁵ SPVP 5's executed contracts are for projects less than 2 MW and are within 60 miles of the SunEdison projects.

⁵⁶ Advice Letter 3348-E, filed January 15, 2016, pp. 7-8.

⁵⁷ *Id.*, pp. 7-8 .

5 offer PTARs were within this range, but at the higher end of the range.”⁵⁸

Because of the weak market participation and stagnant prices in SPVP 5 for small commercial rooftop solar PV projects, SCE filed a Petition for Modification to close its SPVP program early, before it had reached the program’s target of 125 MW of total procurement from independent power producers.⁵⁹ In the Petition for Modification, SCE asserted “[a]dditional breakthroughs in SPVP commercial solar rooftop prices appear unlikely in the near term given the results of SCE’s fifth SPVP RFO.”⁶⁰ SCE explained that it “received only 11.5 MW of eligible offers during the fifth SPVP RFO and prices were very costly relative to other competitive options for renewable contracts. The results of this RFO represent a significant drop in market response and do not provide economic benefits to customers.”⁶¹ SCE requested that the Commission authorize it to conclude the SPVP early on the basis of high contract prices for small scale commercial solar PV projects.⁶² SCE claims that “the termination of SPVP is not relevant and does not invalidate the reasonableness of the PRP contracts.”⁶³ However, SCE is arguing against itself, asking that the Commission turn a blind eye on SCE’s prior explanation that the SPVP 5 prices are too high. SCE requested to have its SPVP end early on the

⁵⁸ *Id.*, Appendix C, p. C-2.

⁵⁹ See Southern California Edison Company’s (U-338-E) Petition to Modify D.14-06-048 (SCE Petition for Modification), dated January 15, 2016. Also, in Advice Letter 3348-E, p. 9, SCE states that it was: “unable to procure sufficient capacity in SPVP 5 to meet the 125 MW SPVP procurement target. As required in D.14-06-048,⁵⁹ SCE is concurrently filing a petition to modify D.14-06-048 requesting that the Commission find that SCE has achieved the goals of the SPVP and continued procurement is not required.”

⁶⁰ SCE Petition for Modification, p. 6.

⁶¹ *Id.*, pp. 4-5.

⁶² The Commission issued a proposed *Decision for Granting Petition for Modification and to Terminate the Solar Photovoltaic Program* on May 20, 2016. If adopted, the PD would grant SCE’s Petition for Modification requesting to terminate the SPVP before having reached the program’s procurement targets based on the following rationale: “We conclude that all feasible SPVP innovations and price reductions have already been achieved, and that additional breakthroughs in SPVP commercial solar rooftop prices appear unlikely in the near term. As noted by ORA, additional SPVP benefits are unlikely given the insignificant number of cost competitive bids in the fifth RFO, indicating that market prices have leveled off. *In relation to other renewable procurement programs, SPVP projects are significantly more expensive than other procurement alternatives. Even assuming some price reduction, these projects would not be competitive to other renewable alternatives.*” (See p. 9, emphasis added.)

⁶³ SCE-3, p. 6.

basis of high contract prices for small scale commercial solar PV projects. It is unreasonable to approve SCE's two SunEdison projects at their current, similar contract price levels.

(d) High costs attributed to technology-specific project challenges should not be used as justification for the approval of the SunEdison contracts

SCE proposes that the high cost of the SunEdison contracts should be excused, or allowed, because of the locational and engineering challenges posed by deploying commercial rooftop solar PV in the PRP region. According to SCE, factors like expensive rooftop leases from building owners, the limited availability of land for development, limitations on panel mounting angles and arrangements, and lower solar radiance levels all increase project costs.⁶⁴ Notably, two project developers in the PRP DG RFO also voiced concerns over these challenges and the potential for incurring high costs.⁶⁵ However, these challenges and high costs do not in themselves justify expensive RPS contracts when, as detailed above: (1) SCE has met and is exceeding its RPS targets, and (2) there are other, less expensive technologies and projects that can be employed to accomplish the RPS program's overall goals. Furthermore, SCE did not demonstrate that engineering and locational factors are given special consideration when selecting RPS contracts, nor did SCE demonstrate that the SunEdison projects are more optimal than other types of RPS projects for accomplishing RPS objectives. Therefore, the project challenges associated with these contracts should not be given special consideration and do not justify the high cost of the contracts. Finally, SCE inappropriately uses locational

⁶⁴ *Id.*, p. 5.

⁶⁵ SCE-1, Confidential Appendix C-2 RFO Survey Questions and Responses. [REDACTED]

and engineering factors to limit comparison of the SunEdison contracts to the project requirements of their PRP DG RFO when the scope of this proceeding asks for a comparison of the contracts to a wider variety of RPS projects.

E. REASONABLENESS OF THE PRP DG RFO

SCE emphasizes that the “PRP is an internal endeavor and SCE does not plan to apply for Commission approval of the overall PRP activities.”⁶⁶ SCE then argues that the “RFO requirements were based on the needs of the overall PRP.”⁶⁷ SCE cannot have it both ways. SCE cannot refuse to subject its overall PRP to stakeholder review and Commission approval while at the same time rely upon the needs or alleged, but unsupported, “goals” and merits of the PRP as the basis for why the RFO and resulting contracts are reasonable. SCE’s internal PRP is, by SCE’s own request, outside the scope of this proceeding. For all of these reasons, and as detailed below, SCE’s reliance on the PRP as rationale for its PRP DG RFO is unsupported and inappropriate. Therefore, the Commission should not find the PRP DG RFO to be reasonable, and should deny the results of SCE’s solicitation.

1. SCE’s claim that “discrete” aspects of the PRP are within scope of this proceeding is erroneous

From the onset of this proceeding SCE asserted that it “is not seeking and does not require Commission authorization to conduct internal activities like the PRP.”⁶⁸ Now, after reviewing ORA’s testimony and analysis demonstrating that the SunEdison contracts are unreasonable on the basis of price and RPS need, SCE retreats from its position and asserts that “only discrete aspects of the PRP are within scope of this proceeding. Specifically, matters relating to the PRP DG RFO are relevant and within the scope.”⁶⁹ SCE’s new assertion is unsupported and incorrect.

⁶⁶ SCE-2, p. 7.

⁶⁷ SCE-3, p. 10.

⁶⁸ SCE Reply to ORA Protest, p. 3.

⁶⁹ SCE-3, p. 8.

Consistent with SCE’s own request and the Scoping Memo’s clear direction, the reasonableness of the PRP DG RFO and its resulting contracts must be evaluated only under RPS standards and RPS authorities. In ORA’s Protest, ORA stated that if SCE’s “Application is not seeking approval of the PRP, then SCE should identify the specific authority for its requested approval of the two SunEdison contracts procured from the PRP DG RFO.”⁷⁰ In response, SCE explicitly stated that “SCE[’s] Application and Testimony Expressly Cited the RPS as the Authority for the Commission’s Approval.”⁷¹ SCE further asserts:

In addition, the prayer for relief in the application requests that the Commission “[f]ind that any procurement pursuant to the two SunEdison contracts is procurement from an eligible renewable energy resource for purposes of determining SCE’s compliance with any obligation that it may have to procure eligible renewable energy resource pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.” It is therefore clear under what authority SCE is seeking and the Commission may rely upon for its own authority to approve the SunEdison contracts.⁷²

SCE clearly requested the Commission review and approve the SunEdison contracts under RPS standards and RPS authorities. The record neither supports SCE’s new assertion that discrete aspects of the PRP are within scope, nor should the Commission entertain it.

2. SCE does not justify “discrete” aspects of its PRP

Even if the Commission entertained SCE’s claim that “discrete aspects of the PRP are within the scope of this proceeding[,]” SCE does not explain what those discrete aspects are, and, in fact provides no showing that it divorces the PRP DG RFO from the overall PRP program in any way. To the contrary, the first three pages of SCE’s

⁷⁰ ORA Protest, pp. 3-6.

⁷¹ SCE Reply to ORA Protest, p. 4.

⁷² *Id.*, p. 5.

Testimony are devoted to describing the PRP and its purported goals generally. SCE claims:

SCE needs to know by 2018 if it can acquire, deploy, and measure the performance capabilities of a mix of preferred resources that will meet the approximately 30 megawatts (MW) per year of forecasted load growth through 2022 in the PRP Region. If so, the use of those preferred resources may defer or eliminate the need for new conventional generation resources in the PRP Region.⁷³

Yet, SCE provides no explanation of how the PRP DG RFO fits within this overall procurement target. Nor does SCE provide any analysis demonstrating the value of the SunEdison contracts based on “discreet aspects of the PRP.” SCE does not provide answers to basic questions such as:

- How much IFOM DG procurement is needed, and how do the SunEdison contracts fill that need?
- At what price point would the PRP DG RFO results be deemed cost-ineffective?
- What specific investments will the PRP DG RFO defer or eliminate, and how?
- How will SCE measure whether the SunEdison contracts are successful in achieving discreet PRP goals?
- How does SCE measure whether the PRP DG RFO is successful?

These questions are basic to determine whether a separate solicitation may provide incremental benefits that existing procurement programs with the same or similar objectives failed to achieve. Absent a clear showing that the PRP DG RFO is distinctive in any measureable or distinguishable way, the only value appears to be general procurement. As detailed above, such procurement is unnecessary.

⁷³ SCE-1, p. 2.

SCE states that it “clearly justif[ies] the need to conduct the PRP DG RFO given that other solicitations failed to yield IFOM DG[.]”⁷⁴ SCE’s description of justification is misplaced. Failure of prior solicitations does not in itself justify the need of those solicitations in the first place, or the need for the PRP DG RFO, much less confer reasonableness upon any solicitation results.

Thus, SCE fails to meet its burden to show that the SunEdison contracts are reasonable. SCE also fails to define the discrete portion of the PRP it references, or to show that even a discrete portion of the PRP is reasonable or will achieve any measureable goal. At this point, the only certainty is that the SunEdison contracts will encumber SCE’s customers with long-term, high-priced contracts that have not been demonstrated to fulfill any authorized need.

3. SCE fails to provide metrics to evaluate whether the projects meet local area needs

The Scoping Memo required SCE to “[d]escribe the relevant PRP metrics to evaluate the proposed PPAs and whether the projects meet the local area needs.”⁷⁵ ORA’s Testimony demonstrated that “SCE presents no PRP DG RFO-specific metrics to evaluate whether the solicitation achieve a specific objective.”⁷⁶ According to SCE, ORA’s “assertion is untrue.” In support, SCE claims that its “Supplemental Testimony recites the PRP criteria for this solicitation.”⁷⁷ SCE incorrectly equates solicitation criteria to evaluation metrics. They are not the same. SCE clearly states the purpose of the solicitation criteria was to require “projects to meet the . . . criteria to be considered in the PRP DG RFO.”⁷⁸ The offers either succeeded in meeting the solicitation criteria for

⁷⁴ SCE-3, p. 8.

⁷⁵ Scoping Memo, p. 3.

⁷⁶ ORA-1, p. 2-1.

⁷⁷ SCE-3, p. 9.

⁷⁸ SCE-1, pp. 9-10.

contract shortlisting or they did not.⁷⁹ Evaluating the proposed PPAs upon the requirements of the PRP DG RFO, as SCE would have the Commission do, only determines whether SCE accurately selected the participants of the RFO. Evaluation metrics, however, are distinct in that they measure the effectiveness of meeting identified goals.⁸⁰

In fact, the Commission has found “[m]etrics offer a good way of measuring progress in the implementation of any policy.”⁸¹ In R.08-12-008,⁸² the Commission proposed smart grid metrics to “allow the Commission, other parties and the public to measure, compare and contrast the adherence of [the utilities] to statutes and policies created by the Commission.”⁸³ Similarly, in D.13-11-025, the Commission adopted evaluation metrics, stating:

In development of a project or proposal, each EPIC [Electric Program Investment Charge] Administrator will establish a measurement plan to evaluate the effectiveness of the planned area of investment in its approved EPIC Investment Plan. Metrics selected for a specific program or proposal will be driven by the specific project scope and stated objectives. Metrics of success change over time as a program or project moves from concept to completion.⁸⁴

Under the Commission’s description of metrics as detailed above, SCE fails to provide any metrics to evaluate the effectiveness of the results of its PRP DG RFO. SCE does not provide any metrics to “measure the performance capabilities of a mix

⁷⁹ *Id.*, p. 12.

⁸⁰ D.12-04-025, *Adopts Metrics to Measure the Smart Grid Deployment of Pacific Gas and Electric Co., Southern California Edison Co., and San Diego Gas & Electric Co.*, p. 1; in R.08-12-009.

⁸¹ February 8, 2010 *Assigned Commissioner and Administrative Law Judge’s Joint Ruling Amending Scoping Memo and Inviting Comments on Proposed Policies and Findings Pertaining to the Smart Grid*, pp. 24-25; in R.08-12-009. Also stating, “Our preliminary proposal is that the Commission adopt a set of metrics and require each utility to measure its performance relative to the metrics [.]”

⁸² R.08-12-008, *Order Instituting Rulemaking to Consider Smart Grid Technologies Pursuant to Federal Legislation and on the Commission’s own Motion to Actively Guide Policy in California’s Development of a Smart Grid System*.

⁸³ July 30, 2010 *Assigned Commissioner’s and Administrative Law Judge’s Joint Ruling*, p. 1; in R.08-12-009.

⁸⁴ D.13-11-025, Attachment 4, p. 1; in A.12-11-001 et al.

portfolio”⁸⁵ in relation to the two SunEdison contracts. Nor does SCE provide an indication of how much IFOM DG is required or the consequences if it cannot meet that target. SCE fails to provide any metrics to show that the results of its PRP DG RFO meet any measureable objective and, thus, the PRP DG RFO cannot be found reasonable.

4. SCE’s PRP objectives require a thorough review by stakeholders and the Commission

SCE’s basic rationale for the reasonableness of the PRP DG RFO and the SunEdison contracts is based upon PRP objectives,⁸⁶ but the objectives of the PRP are not within the scope of this proceeding, by SCE’s own request. If it is SCE’s intent to assert the PRP as justification for a Commission finding that a particular request is reasonable, SCE must overcome its burden to show that the PRP, holistically, is just and reasonable. Or, if the Commission is interested in the merits of the PRP, and how it may affect future procurement, the Commission should require SCE to seek formal approval of its PRP so that the Commission and parties can weigh and evaluate whether the costs and benefits to ratepayers are reasonable. This is consistent with the Commission’s conclusions in its LTPP Track 4 decision:

As the [Preferred Resources] Living Pilot is not before us at this time, we cannot make any determination about its viability or ability to meet LCR needs in the LA Basin. To the extent that new resources are eventually procured through this effort, we will need to look closely to determine how they interact with other authorizations (e.g., do Living Pilot procurements count toward SCE’s LTPP preferred resources requirements?). . . We intend to take a close look at the Living Pilot when SCE files its application.⁸⁷

Whether the PRP has merit may be the subject of a separate proceeding wherein SCE brings forth its PRP Pilot for Commission review. It has not done so here. Rather,

⁸⁵ SCE-3, p. 10.

⁸⁶ See *Id.*, p. 7.

⁸⁷ D.14-03-004, p. 66.

SCE requests approval of the PRP DG RFO and SunEdison contracts pursuant to RPS authorities. As such, they should be reviewed pursuant to, and denied in accordance with, the RPS standards as detailed above.

V. CONCLUSION

For the reasons stated herein, and based on the information provided by SCE in its Application, Testimony, Supplemental Testimony, and Rebuttal Testimony, ORA recommends that the Commission deny SCE's requests for the following reasons:

- The two SunEdison PPA are not competitively priced compared to comparable PPAs;
- The two SunEdison PPAs are not needed for SCE to meet its RPS requirements; and
- SCE has not shown that it conducted its PRP DG RFO in a reasonable and fair manner.

Respectfully submitted,

/s/ MATT MILEY

MATT MILEY

Attorney for
Office of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-3066
Email: matt.miley@cpuc.ca.gov

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