BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Application of Southern California Edison Company (U 338-E) for Approval of the Results of its Second Preferred Resources Pilot Request for Offers	Application 16-11-002 (Filed November 04, 2016)

APPLICATION OF THE OFFICE OF RATEPAYER ADVOCATES FOR REHEARING OF DECISION 18-07-023

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I. INTRODUCTION

Pursuant to Rule 16.1 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules) and California Public Utilities Code Section 1731(b),[1] the Office of Ratepayer Advocates (ORA) submits this Application for Rehearing of Decision (D.) 18-07-023 (or Decision).[2] The Decision "approves the results of Southern California Edison Company's (SCE's) Second Preferred Resources Pilot [PRP] Request for Offers [RFO], and authorizes SCE to recover in rates payments made pursuant to nineteen purchase and sale agreement contracts [PSAs] for a total of 125 megawatts [MW] of preferred resources which will interconnect to the lower voltage level substations and circuits, electrically in-line with either the Johanna A-Bank substation or the Santiago A-Bank substation (J-S Region)." The Decision also "approves the results of Southern California Edison Company's (SCE's) 2015 Preferred Resources Pilot [PRP] Distributed Generation [DG] Request for Offers [RFO], and authorizes SCE to recover in rates payments made pursuant to two power purchase agreements with SunEdison [SunEdison PPAs] for in front of the meter solar photovoltaic projects…."[3]

As discussed below, the Decision commits legal error because it violates the Commission's own procedural Rules, considers and decides issues beyond those identified in the April 21, 2017 *Scoping Memo and Ruling of Assigned Commissioner* (Scoping Memo), alters the Scoping Memo without providing ORA notice and an opportunity to be heard, fails to apply and violates applicable statutes, arbitrarily and capriciously relies on out of date data, lacks an evidentiary record sufficient to support its findings, issues inconsistent findings, and fails to issue findings on all issues material to the Decision. In addition, the Commission's approval of SCE's Application constitutes a violation of the Commission's obligation to ensure that rates are just and reasonable. For these reasons, as set forth below, the Commission should grant rehearing and issue a decision that denies SCE's Application.

II. BACKGROUND AND PROCEDURAL HISTORY

In Track 1 and Track 4 of the 2012 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

[1] All references to section hereafter will refer to the Public Utilities Code, unless otherwise specified.

[2] *Decision Approving the Results of Southern California Edison Company's Second Preferred Resources Pilot Procurement*, issued July 20, 2018.

[3] Decision, p. 2.

Los Angeles Basin. 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, the Commission ordered SCE to submit its Local Capacity Requirements Procurement (LCR) Plan (LCR PP) in an application. SCE states that it 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.[4]

In the LTPP Track 4 decision, 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 (SONGS). 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." However, in the LTPP 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."[5]

On December 15, 2015 SCE filed A.15-12-013, requesting approval of the results of its 2015 PRP Distributed Generation (DG) RFO (PRP DG RFO). ORA opposed SCE's request and filed its protest on January 21, 2016. SCE filed a reply to ORA's Protest on February 1, 2016, wherein SCE informed the Commission and interested parties that "SCE is not seeking and does not require Commission authorization to conduct internal activities like the PRP."[6] D.16-09-006 approved the requests set forth in the PRP DG RFO. However, the Commission specifically found "[t]he PRP is an internal effort to SCE and review of the overall PRP as a whole is not at issue in this proceeding."[7] ORA filed an application to rehear D.16-09-006, on October 19, 2016. On August 14, 2018, the Commission issued an order dismissing ORA's application for rehearing.

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[4] Southern California Edison Company's (U 338-E) Application for Approval of the Results of Its 2015 Preferred Resources Pilot Request for Offer, p. 7 (filed December 15, 2015); in A.15-12-013.

[5] D.14-03-004, p. 65.

[6] Southern California Edison's Reply to the Office of Ratepayer Advocates' Protest, p. 3; in A.15-12-013.

[7] D.16-09-006, *Decision Approving the Application of Southern California Edison Company for Two Solar Photovoltaic Projects*, Finding of Fact (FoF) 4, p. 24; in A.15-12-013. Also, a revised version of the Proposed Decision was issued on September 2, 2016.

On November 4, 2016, SCE filed the instant Application requesting "approval of 19 Purchase and Sale Agreements (PSAs) for 125 Megawatts (MW) of preferred resources"[8] resulting from SCE's PRP RFO 2. ORA filed a protest to SCE's Application on December 28, 2016 (ORA Protest). SCE filed a reply to ORA's Protest on February 1, 2016. On January 13, 2017, Administrative Law Judge (ALJ) Miles issued rulings setting a prehearing conference (PHC) on February 23, 2017, and requiring the parties to meet, confer, and file a joint PHC statement. ORA and SCE filed a joint PHC statement on February 21, 2017. At the February 23, 2017 PHC, ALJ Miles ordered the parties to further meet and confer to address ORA's specific concerns about the reasonableness of the 19 PSAs for resources sited within the J-S Region. ALJ Miles also directed the parties to submit a joint statement that identifies what supplemental testimony, if any, SCE would submit on those issues.[9] ORA and SCE met and conferred on March 6, 2017. On March 13, 2017, the parties filed a joint brief that summarized the results of their March 6, 2017 meeting and provided each party's position on the appropriate scope of SCE's supplemental testimony, as well as the scope of the proceeding.

As detailed below, the Scoping Memo and Ruling of Assigned Commissioner (Scoping Memo), issued April 21, 2017, excluded the PRP from the scope of issues and limited the issues in the proceeding primarily to evaluation of the reasonableness of the PRP RFO 2 and resulting 19 PSAs, whether the 19 PSAs fill an existing need, whether the PRP RFO 2 is duplicative of other Commission activities, and whether approval of the PRP RFO 2 is in the best interest of SCE customers.[10] The Scoping Memo invited SCE to serve supplemental testimony.[11] SCE served its Supplemental Testimony (SCE-02) on May 1, 2017. Pursuant to the Scoping Memo schedule, ORA served its Testimony on June 2, 2017 (ORA-01), and SCE served its Rebuttal Testimony on June 23, 2017 (SCE-03). SCE served its Amended Testimony on August 16, 2017 (SCE-01).

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[8] Amended Testimony of Southern California Edison Company in Support of Application for Approval of the Results of Its Second Preferred Resources Pilot Request for Offers (SCE-01C), p. 1 [cite omitted]; See also id., p. 1 ("SCE procured 60 MW of in-front of the meter (IFOM) energy storage (ES), 55 MW of Demand Response (DR) supported by ES and load reduction, and 10 MW of behind the meter (BTM) solar photovoltaic (PV) paired with ES (Hybrid)." [cite omitted]).

[9] PHC Reporter's Transcript, February 23, 2017, pp. 48:19-49:6, 49:11-50:8, and 51:13-27.

[10] Scoping Memo, pp. 4-5.

[11] Scoping Memo, pp. 5-6.

Pursuant to ALJ Miles' August 21, 2017 email ruling, an evidentiary hearing was held on August 24, 2017. ORA and SCE submitted concurrent briefs on September 29, 2017, and concurrent reply briefs on October 30, 2017. ALJ Miles issued a Proposed Decision on February 23, 2018 that denied the requests set forth in SCE's Application. On March 15, 2018, ORA and SCE each filed opening comments on the Proposed Decision, and on March 20, 2018, ORA and SCE each filed reply comments on the Proposed Decision. Revisions to the Proposed Decision were published on May 30, 2018, and July 11, 2018.[12] On May 30, 2018, Commission President Michael Picker issued an Alternate Proposed Decision that approved the results of SCE's PRP RFO 2 and authorized SCE to execute 19 PSAs totaling 125 MW. ORA and SCE each filed opening comments on the Alternate Proposed Decision on June 19, 2018 and reply comments on June 25, 2018. A revised version of the Alternate Proposed Decision (Revised Alternate Proposed Decision) was published on July 11, 2018. On July 12, 2018, the Commission adopted the Revised Alternate Proposed Decision that approved the requests set forth in SCE's Application. On July 20, 2018, the Commission issued its Decision.

III. DISCUSSION

A. The Decision's findings on LCR need are not supported by the record evidence, arbitrarily rely on outdated and irrelevant data, are internally inconsistent, and the Decision fails to issue findings on material issues

The Decision errs by finding that the 19 PSAs contribute to an authorized LCR procurement need. Specifically, the Decision finds that "SCE's PRP RFO 2 procurement contributes 124.9 MW of preferred resources in the J-S Region to help meet a portion of the [LCR] procurement authorized by D.16-05-053."[13] The Decision makes clear that it is relying on LCR to approve the 19 PSAs where it states, "[i]n this instance, we are approving the PRP RFO 2 contracts based on their ability to fulfill the authorized LCR procurement."[14] As detailed below, the Decision's finding and associated analysis regarding the LCR issue is unlawful because:

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[12] ALJ Miles's Revised Proposed Decision was published on May 30, 2018 [retrieved from: http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M214/K985/214985835.pdf]; and ALJ Miles's Second Revised Proposed Decision was published on July 11, 2018 [retrieved from: http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M217/K851/217851773.pdf].

[13] Decision, Finding of Fact 9, p. 40.

[14] Decision, p. 33.

- Its creates inferences and findings contrary to uncontradicted evidence, that are inconsistent and uncertain in material respects;
- It fails to bridge the analytic gap between the raw data and the final orders;
- It fails to find on material issues that would have the effect to countervail or destroy the effect of other findings;
- It fails to separately state findings of fact and conclusions of law on the material issues of fact and law;
- It arbitrarily and capriciously relies on outdated and irrelevant data;
- It creates internally inconsistent findings; and
- A reasonable person could not reach the conclusion the Decision reaches.

1. The Decision's finding that the 19 PSAs fulfill an LCR procurement need is contrary to the substantial and uncontradicted evidence

The substantial and uncontradicted evidence shows that: (1) SCE does not have an LCR need, (2) SCE declared it neither predicated procurement of the 19 PSAs on LCR nor implied that it procured the 19 PSAs to meet an LCR reliability need, and (3) that SCE testified that the 19 PSAs were not procured to meet an LCR obligation.[15] Nevertheless, the Decision erroneously finds that the 19 PSAs contribute to SCE's LCR requirement.

In its Opening Testimony SCE stated that "the procurement may also offset 124.9 MW of SCE's *current* residual 169.4 MW [LCR] procurement requirement (which is contingent on the outcome of a pending California Independent System Operator (CAISO) analysis) with resources sited in the local J-S Region."[16] SCE made it clear that its LCR position was *contingent* on the forthcoming CAISO LCR study where it stated:

> The CAISO will release an updated analysis later this year or early next year indicating whether a need remains for long-term local capacity resources in the Western LA Basin. That analysis may conclude that the electric grid reliability issue has been resolved, or reduced, assuming certain mitigation activities come to fruition.[17]

[15] Exh. SCE-03, pp. 9:21 to 10:2.

[16] *Testimony of Southern California Edison Company in Support of Application for Approval of the Results of its Section Preferred Resources Pilot Request for Offer* (SCE Opening Testimony), p. 1:14-17, emphasis added (served November 4, 2016). SCE's Opening Testimony was later amended by Exh. SCE-01 on August 16, 2017. The amendments in Exh. SCE-01 did not alter SCE's testimony cited here. (See, Exh. SCE-01, p. 1:14-17.)

[17] SCE Opening Testimony, p. 3:5-8. (See, Exh. SCE-01, p. 3:5-8.)

In May 2017, the CAISO released its updated analysis, which found no LCR deficiencies in the LA Basin and its subareas in either 2018 and 2022.[18] In June 2017, ORA served its Testimony, which introduced the CAISO's studies onto the record and it further provided analysis that proved SCE did not have a need to procure LCR resources in the LA Basin or in its subareas.[19] Specifically, ORA's Testimony demonstrated that in addition to identifying no LCR deficiencies, the CAISO's 2018 LCR study shows a "surplus of 3,862 MW (Category B) and 3,210 MW (Category C) of LCR in the LA Basin for 2018."[20] ORA also demonstrated that the CAISO's 2022 LCR study shows a "surplus of 2,181 MW (Category B) and 2,116 MW (Category C) of LCR in the LA Basin for 2022."[21] ORA also introduced onto the record SCE's discovery responses that confirmed that the "CAISO's LCR study shows that sufficient qualifying capacity exists, therefore there is no need for procurement of new incremental resources in the LA Basin."[22]

Following the May 2017 release of the CAISO's studies with the updated analysis, and receipt of ORA's Testimony and supporting evidence, SCE disavowed any claim that the 19 PSAs were needed to satisfy an LCR requirement. In Rebuttal Testimony, SCE testified that "SCE does not need PRP RFO 2 resources to meet an LCR reliability need, as SCE never predicated PRP RFO 2 procurement on LCR. SCE never stated or even implied SCE procured the PRP RFO 2 resources to meet a LCR reliability need."[23] At evidentiary hearings, SCE further testified that the "CAISO concluded that there was no LCR need, and so therefore these

[18] Exh. ORA-01, pp. 2-2, fn. 29.

[19] Exh. ORA-01C, App. E, pp. 1-9 (excerpts from the CAISO's 2018 and 2022 LCR Studies). See also, Exh. ORA-01, pp. 2-2, fn., 29.

[20] Exh. ORA-01C, p. 2-3:1-2.

[21] Exh. ORA-01C, p. 2-3:7-8.

[22] Exh. ORA-01C, App. F, p. 13 (SCE Response to Data Request A.16-11-001 ORA-SCE-004, Q #3(a). *See also*, Exh. ORA-01C, App. F, pp. 11-14 (SCE Response to Data Request A.16-11-001 ORA-SCE-004, Q# 1-4); affirming that SCE received the CAISO's 2018 and 2022 LCR studies, that SCE reviewed those studies, and that SCE confirmed there is sufficient qualify capacity in both 2018 and 2022 so there is no need to procure incremental resources to meet an LCR need in the LA Basin.

[23] Exh. SCE-03, p. 9:22-24.

contracts are obviously not filling an LCR need."[24] SCE also testified that "[t]here is going to be sufficient capacity in the western LA Basin . . . for meeting LCR needs."[25]

The evidentiary record does not support the Decision's finding that the 19 PSAs are needed to contribute to an LCR requirement.[26] Therefore, the Decision errs because it fails to act upon clear, positive and uncontradicted evidence that: (1) the CAISO's LCR studies show there is no LCR deficiency in the LA Basin or its subareas; and (2) SCE concedes that it does not have an LCR need in the LA Basin. (*Shandralina G v.* Homonchuk, 147 Cal.App.4th 395, 416 (2007), quoting, *Western Digital Corp. v. Superior Court*, 71 Cal.App.4th 1471, 1487 (1998), citing *Fullerton Union High School Dist. v. Riles*, 139 Cal.App.3d 369, 383 (1983) ["[A] trier of fact may not indulge in inferences rebutted by clear, positive and uncontradicted evidence."]) The Decision further errs because it approves the 19 PSAs based upon a finding that is contrary to uncontradicted evidence and is materially inconsistent and uncertain. (*Stiefel v.McKee*, 1 Cal.App.3d 263, 265 (1969) (*Stiefel*) ["the findings in some vital respects are contrary to uncontradicted evidence and are so inconsistent and uncertain in material respect that they cannot and do not support the judgment."])

2. The Decision concedes that there are adequate resources in the LA Basin but fails to make a finding on that material issue

It is an uncontradicted and well conceded fact that there are more than sufficient resources in the LA Basin and its subareas, including the Western LA Basin. Thus, none of those areas are forecasted to have LCR deficiencies in either 2018 or 2022 (as detailed in Sections A.1 above and Section A.3.a below).[27] The Decision states that it "did not find there was an LCR need, and instead recognized that there are adequate resources in the Los Angeles Basin LCR."[28] However, despite the Decision's concession and the substantial and uncontradicted record evidence, the Decision never actually makes a finding that there is not an LCR need and that

[24] Evidentiary Hearing Reporter's Transcript, August 24, 2017, pp. 12:28 to 14:14-16.

[25] Evidentiary Hearing Reporter's Transcript, August 24, 2017, p. 15:1-3.

[26] Section 1757(a)(4).

[27] See also, Decision, Dissent of Commissioner Carla J. Peterman, p. 2. ["The 2018 and 2022 CAISO LCR studies that were filed in this proceeding indicate there is currently no LCR deficiency in the Los Angeles Basin, a position which no party disputed."]

[28] Decision, p. 37.

there are adequate resources to meet LCR needs in the LA Basin. Instead, the Decision simply includes the 2018 CAISO LCR study's raw data into its findings. Specifically, the Decision finds that the:

> 6. CAISO LA Basin Local Capacity Technical Analysis for 2018 forecast that there is 10,735 MW of qualifying capacity.[29]
>
> 7. CAISO LA Basin Local Capacity Analysis for 2018 forecast that there is a 2018 LCR need of 6,873 in the case of a Category B event and 7,525 MW [need] in the case of a Category C event.[30]

These findings are inadequate because they fail to bridge the analytic gap between the raw data and the final orders. (*Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Co.*, 210 Cal.App.4th 1255, 1281 (2012) (*Asociacion de Gente Unida por el Agua*), quoting *Environmental Protection Information Center v. California Dept. of Forestry and Fire Protection*, 44 Cal.4th 459, 516 (2008) (*Environmental Protection Information Center*) ["'[T]he agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.'"]) As the record evidence demonstrates, once the raw data that is identified in Findings 6 and 7 of the Decision is objectively analyzed, the results conclusively show that there is no LCR deficiency in the LA Basin or its subareas (in fact there is a surplus of qualifying capacity available), as the Decision concedes outside of its findings.[31] This is an uncontradicted fact, and one that the Decision does not find.

The Decision's failure to issue findings reflecting that the CAISO study concludes there are no LCR deficiencies in the LA Basin, and that SCE concedes that it neither has an LCR need nor procured the 19 PSAs to meet an LCR obligation, constitutes legal error because it fails to find on material issues that "have the effect to countervail or destroy the effect of the other finding[]." (*Renfer v. Skaggs*, 96 Cal.App.2d 380, 383 (1950) (*Renfer*) ["If the court fails to find on material issues made by the pleadings – issues as to which a finding would have the effect to countervail or destroy the effect of the other findings – and as to which evidence was introduced, the decision is 'against law.' In such cases, a re-examination of the facts is necessary in order

[29] Decision, Finding of Fact 6, p. 40.

[30] Decision, Finding of Fact 7, p. 40.

[31] Exh. ORA-01, p. 2-3; see also, Decision, p. 37.

that the issues of fact may be determined."]). As such, the Commission's Decision fails to proceed in a manner required by law because it failed to issue separately stated findings on material issues. (*Greyhound Lines, Inc. v. Public Utilities Commission*, 65 Cal.2d 811, 813 (1967) (*Greyhound Lines Inc.*) ["the commission's decision in this case discloses that there were other material issues on which evidence was introduced . . .[h]owever, the decision contains no findings separately stated thereon."])

3. The finding that the 19 PSAs fulfill an LCR procurement need is contrary to SCE's request and the Commission's prior order, and is inconsistent with the Decision's other findings

In addition to the existence of surplus resources available in the LA Basin and its subareas, SCE also concedes that it does not have an LCR need and did not procure the 19 PSAs to contribute to an LCR obligation.[32] However, instead of issuing separately stated findings on these material issues, the Decision issues findings that an LCR need exists, which are not supported by the record evidence.[33] Specifically, the Decision finds that SCE has a residual LCR requirement and that the 19 PSAs contribute 124.9 MW to help meet a portion of that residual requirement:

> 4. In D.16-05-053, the Commission's Order Modifying D.15-11-041, the Commission required SCE to procure an additional 169.4 MW of preferred resources or energy storage.[34]
>
> 9. SCE's PRP RFO 2 procurement contributes 124.9 MW of preferred resources in the J-S Region to help meet a portion of the procurement authorized by D.16-05-053.[35]

As detailed below, the Decision errs in making these findings because: (1) SCE did not procure, and did not request, the 19 PSAs to fulfill a portion of the residual 169.4 MW requirement, (2) it disregards the Commission's order in D.16-05-053 to consult the CAISO's updated studies, and instead arbitrarily relies on outdated and irrelevant data, and (3) the findings are internally inconsistent with other findings in the Decision as well as the substantial record evidence.

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[32] Exh. SCE-03, pp. 9:21 to 10:2.

[33] Section 1757(a)(4).

[34] Decision, Finding of Fact 4, p. 40.

[35] Decision, Finding of Fact 9, p. 40.

a) SCE testified that it did not procure the 19 PSAs to meet its residual LCR obligations

The Decision states, "SCE proposed that the PRP RFO 2 resources be eligible to count toward the 169.5 [sic] MW preferred resources and energy storage procurement requirement specified by D.16-05-053."[36] However, the Decision omits a critical fact about SCE's proposal – SCE testified that its proposal "is contingent on the outcome of a pending [CAISO] analysis."[37] The CAISO's analysis concluded that no LCR deficiency exists in the Western LA Basin. Thereafter, SCE testified that:

> SCE does not need PRP RFO 2 resources to meet an LCR reliability need, as SCE never predicated PRP RFO 2 procurement on LCR. SCE never stated or even implied SCE procured the PRP RFO 2 resources to meet a LCR reliability need. SCE's testimony was clear that the PRP RFO 2 contracts were not executed to meet a LCR obligation, but rather to meet the PRP objectives.[38]

SCE also testified that "[i]n several sections within our testimony however, we indicate that we did not go out and contract for these resources to meet the LCR need."[39] SCE testified that "the contracts were not procured predicated on an LCR need."[40] Further, ORA produced evidence that SCE confirmed "the [PRP RFO 2] was not an LCR RFO; the 2013 LCR RFO is the only RFO SCE has run to date that was directed at soliciting resources to meet the LCR procurement authorized in the [Long Term Procurement (LTPP) Track 1 and Track 4 Decisions]."[41] In fact, in its discussion, the Decision acknowledges that SCE argued that it did not "even imply it procured the PRP RFO 2 resources to meet a LCR reliability need."[42] Thus, the substantial evidence shows that SCE affirmed that it did not request approval of the 19 PSAs to satisfy the residual 169.4 MW LCR procurement requirement identified in D.16-05-053. The

[36] Decision, p. 38.

[37] Exh. SCE-01, p. 1:16-17.

[38] Exh. SCE-03, pp. 9:22 to 10:2, emphasis added.

[39] Evidentiary Hearing Reporter's Transcript, August 24, 2017, p. 13:2-5.

[40] Evidentiary Hearing Reporter's Transcript, August 24, 2017, p. 13:18-19.

[41] Exh. ORA-01C, App. D, pp. 25-26 (SCE Motion to Strike the City of Oxnard's Reply Comments).

[42] Decision, p. 23.

Decision errs because it findings are contradicted by, rather than supported by, the substantial evidence, in light of the whole record.[43]

Indeed, the Decision further errs by failing to issue a finding that SCE testified it *did not* procure the 19 PSAs to fulfill an LCR requirement. Section 1705 requires that the Commission decision "contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision." (See *California Motor Transport Co. v. Public Utilities Com.*, 59 Cal.2d 270, 275 (1963) (*California Motor Transport Co.*) [the court annulled the Commission's order because it held that "under section 1705, the commission must separately state findings and conclusions upon the material issues of fact and law that determine the ultimate issue of public convenience and necessity."]) By failing to issue a finding that SCE repeatedly testified that it did not procure the 19 PSAs to contribute to the LCR requirement, the Decision is unlawful under *Greyhound Lines Inc.* and *Renfer.* Notably, had the Decision accurately stated findings on this material issue, such findings would have the "effect to countervail or destroy the effect" of the finding on which the Commission rests its approval of the 19 PSAs.

b) The Decision purports to act pursuant to D.16-06-063 but disregards the order in D.16-05-053 to consider updated CAISO studies, and instead arbitrarily relies upon outdated and irrelevant information

The Decision's findings that D.16-05-053 ordered SCE to procure 169.4 MW of preferred resources or energy storage, and that the 19 PSAs contribute 124.9 MW of preferred resources to help meet a portion of the procurement authorized by D.16-05-053 arbitrarily relies upon outdated and irrelevant data, and disregards the orders in D.16-05-053. Specifically, in D.16-05-053, the Commission ordered SCE to review "all relevant updated gird [sic] reliability information"[44] and conduct "additional analysis"[45] when deciding whether it needs to procure incremental resources in the Western LA Basin, and D.16-05-053 orders that "[it] is reasonable to allow SCE to consider CAISO updated LCR studies when procuring the remaining minimum

[43] Section 1757(a)(4).

[44] D.16-05-053, Ordering Paragraph 1(c), p. 18.

[45] D.16-05-053, Ordering Paragraph 1(f), p. 20.

preferred resources or energy storage."[46] The record evidence conclusively shows that, consistent with the order in D.16-05-053, SCE made clear the 19 PSAs would only count toward LCR need if such need actually exists, and did in fact consult the CAISO's updated LCR studies and reviewed updated grid reliability information.[47]

In discussion, the Decision notices the conditions for SCE's LCR procurement in D.16-05-053, stating "We find reasonable SCE's request to consider CAISO updated LCR studies to account for planned transmission upgrades and load forecasts update [sic] when procuring the remaining minimum preferred resources or energy storage."[48] The Decision goes on to explain that "SCE is allowed to consider CAISO LCR studies; and alternatively, SCE can file a petition for modification . . . if additional procurement is necessary."[49] However, rather than acknowledge the Commission's directive that SCE base its fulfillment of the authorized LCR procurement on a showing of current need, via the updated CAISO Studies, the Decision arbitrarily finds that:

> To date, SCE has not filed such a petition. As a result, we find SCE's authorization to procure 169.4 MW of preferred resources under D.16-05-053 remains in effect and that the PRP RFO 2 procurement may also contribute 124.9 MW of preferred resources in the J-S Region to help meet a portion of SCE's procurement authority.[50]

In D.16-05-053, the Commission clearly conditioned SCE's procuring toward any residual targets on the results of the CAISO updated LCR studies and a review of updated grid reliability information. The fact that SCE has not filed a petition for modification to date, does not obviate the requirement that the updated CAISO studies and additional analysis and information be considered when determining the need to fulfill any residual procurement. Thus, while allowing SCE to procure toward an LCR need existing at the time, D.16-05-053 also recognized that in

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[46] D.16-05-053, Ordering Paragraph 1(q), p. 22.

[47] The evidentiary record shows that SCE: (1) received the CAISO's 2018 and 2022 LCR studies, (2) reviewed the contents of the CAISO's 2018 and 2022 LCR studies, and (3) after review, verified that the CAISO's 2018 and 2022 LCR studies concluded that there are no LCR deficiencies in the Western LA Basin in either 2018 or 2022. (See, Exh. ORA-01C, App. F, pp. 11-14 (SCE Response to Data Request A.16-11-001 ORA-SCE-004, Q# 1-4)) Further, SCE conducted additional analysis and reviewed updated grid reliability. (See, Exh. SCE-01, p. 16, fn. 34. Note: In D.17-02-015, the Commission granted SCE a permit to construct the "Mesa- Loop-in" project.)

[48] Decision, p. 26, citing D.16-05-053, p. 18.

[49] Decision, pp. 26-27.

[50] Decision, p. 27.

order to meet a procurement need, that need must first exist. The Decision arbitrarily ignores this conditional aspect of the Commission's LCR authorization in D.16-05-053.

The Decision errs because it fails to act upon any of these material issues, and thus fails to proceed in the manner required by law.[51] The Decision ignores the substantial evidence, including that SCE itself provided that conclusively confirms that there is no LCR need in the Western LA Basin. Instead, the Decision arbitrarily and capriciously finds that "SCE's authorization to procure 169.4 MW of preferred resources under D.16-05-053 remains in effect and that the PRP RFO 2 procurement may also contribute 124.9 MW of preferred resources in J-S Region to help meet a portion of SCE's procurement authority."[52]

c) The Decision errs because its finding that the 19 PSAs contribute to SCE's LCR requirement is inconsistent with the CAISO's conclusion that there is no need for SCE to procure incremental LCR resources in the Western LA Basin

The Decision's findings that D.16-05-053 ordered SCE to procure 169.4 MW of preferred resources or energy storage, and that the 19 PSAs contribute 124.9 MW of preferred resources to help meet a portion of the procurement authorized by D.16-05-053 constitutes legal error because they are inconsistent with the Decision's other findings that show there is no need to procure incremental LCR resources in the LA Basin or its subareas. As discussed above, the Decision concedes that it "did not find there was an LCR need, and instead recognized that there are adequate resources in the Los Angeles Basin LCR."[53] Further, the record shows, and it is not disputed that,[54] the raw data in Findings 6 and 7 of the Decision confirm that the 2018 CAISO study concludes there is no LCR deficiency in the LA Basin. Thus, the Decision commits legal error by issuing inconsistent findings on one of the principal issues in this proceeding; namely, whether there is a local area need (*California Portland Cement Co. v. Public Utilities Com*., 49 Cal. 2d 171, 176 (1957) ["the commission . . . has made inconsistent findings with respect to the principal issue involved and . . . has followed an erroneous view of the law. The orders based on these findings must therefore be annulled."]).

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[51] Section 1757(a)(2).

[52] Decision, p. 27.

[53] Decision, p. 37.

[54] See, Exh. ORA-01C, App. F, pp. 11-14 (SCE Response to Data Request A.16-11-001 ORA-SCE-004, Q# 1-4).

The Decision acknowledges that it is "approving the PRP RFO 2 contracts based on their ability to fulfill the authorized LCR procurement."[55] As such, per D.16-05-053, the principle issue is whether SCE needs the 19 PSAs to meet an LCR need.[56] The record evidence shows the answer to the question is no; SCE does not need the 19 PSA to meet an LCR need. SCE concedes that it does not need the 19 PSAs to meet an LCR need in the LA Basin or its subareas and, in fact, testified that its "testimony *was clear that the PRP RFO 2 contracts were not executed to meet a LCR obligation . . . .*"[57] Findings of Fact 6 and 7 in the Decisions confirm that there is enough qualifying capacity to satisfy the LA Basin and its subareas' LCR needs. These are uncontradicted and conceded facts. Therefore, the Decision errs by issuing Finding of Fact 9 because is inconsistent and, in fact, in conflict with Findings of Fact 6 and 7, which show enough qualifying capacity in the LA Basin and its subareas to meet LCR needs.

4. The Decision's discussion of ORA's LCR analysis and the CAISO's LCR studies is factually incorrect and inconsistent with the evidentiary record

The Decision erroneously states that the 2018 and 2022 CAISO LCR studies demonstrating adequacy of resources are insufficient because "[t]he CAISO analysis relied on by ORA focuses on the needs and resources in the entire CAISO LA Basin local area, rather than examining the more specific needs and resources of the J-S Region, which would have been more instructive."[58] The Decision errs because it is not supported by the evidentiary record, misrepresents the CAISO LCR studies and ORA's position, and improperly shifts the burden of proof onto ORA to show why SCE's requested relief is unreasonable.

First, the Decision's attempts to identify an LCR need at the Johanna and Santiago Substations, which are in the Southwest portion of the Western LA Basin.[59] This claim is not supported by the evidentiary record. As detailed in Sections A.1 and A.3.a above, no party

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[55] Decision, p. 33.

[56] The Scoping Memo reflects SCE's request to consider only whether an existing LCR need exists after reviewing updated CAISO studies by including in the scope the question: "Do the PSAs, collectively and individually, fulfill an existing procurement or local area need." (Scoping memo, p. 4.) Thus, the Commission never intended to determine whether the 19 PSAs fulfill a procurement authorized in D.16-05-053; instead, the Commission clearly indicated it would consider whether the 19 PSAs fill an LCR need. No such needs exists.

[57] Exh. SCE-03, pp. 9:24 to 10:1, emphasis added.

[58] Decision, pp. 37-38.

[59] Exh. SCE-01C, p. 5, fn. 10.

asserted or presented evidence showing that there is an LCR need in the LA Basin or its subareas, including the Western LA Basin. On the contrary, ORA provided substantial evidence[60] and SCE testified at length that it did not have an LCR need in the Western LA Basin[61] and, therefore, the 19 PSA did not meet an LCR need. At no time did SCE or any other party argue that there is an LCR need at the Johanna and Santiago Substations. To the contrary, SCE testified that "the load growth in [J-S Region] would be satisfied by imports, so there is no reliability need for these resources."[62] In fact, the Decision concedes there are adequate resources in the LA Basin to satisfy LCR needs.

Second, the Decision's criticism of ORA for using the CAISO's most recent LCR studies is arbitrary and inconsistent with the Commission's determination in D.16-05-053 that it is reasonable to consult the CAISO LCR studies to determine whether an LCR need remains in the LA Basin and its subareas. Specifically, in D.16-05-053, the Commission concluded that "[i]t is reasonable to allow SCE to consider CAISO updated LCR studies when procuring the remaining minimum preferred resources or energy storage."[63] The evidentiary record shows that ORA and SCE reviewed the CAISO LCR studies and agreed that the CAISO LCR studies show there is no LCR deficiencies in the LA Basin or its subareas in either 2018 or 2022.

Third, the Decision misrepresents the CAISO LCR studies and ORA's position. ORA previously explained in comments on the Alternate Proposed Decision that the reasoning used to claim a flaw in ORA's determination that there is a significant surplus is wrong.[64] The error noted in ORA's comments on the Alternate Proposed Decision was not remedied and still stands as an error. The Decision states that "we are not convinced by ORA's calculation of the magnitude of surplus resources due to complexities associated with sub area needs within a CASIO local area."[65] It supports this statement by erroneously claiming that the simple arithmetic shown in the CAISO study has "the potential to mask deficiencies in subareas

[60] See, Exh. ORA-01C, pp. 2-1:19 to 2-7:13.

[61] See, Exh. SCE-03, pp. pp. 9:22 to 10:2.

[62] Evidentiary Hearing Reporter's Transcript, August 24, 2017, p. 17:20-23.

[63] D.16-05-053, Ordering Paragraph 1(q), p. 22.

[64] ORA Comments on the Alternate Proposed Decision, pp. 8-9.

[65] Decision, pp. 22-23.

embedded within the larger local area."[66] The Decision then points to the Stockton LCR area, stating that CAISO found a deficiency in a subarea of the Stockton LCR area while also finding a surplus of capacity in the Stockton LCR area, indicating that a deficiency could exist in a subarea of the LA Basin despite the surplus capacity determined in the CAISO 2018 LCR study.[67] However, the example the Decision provides is an exception explicitly noted by CAISO in its 2018 LCR Studies, and actually demonstrates that CAISO's analysis considers subareas.

An important asterisk in the CAISO 2018 LCR study explains that the arithmetic discrepancy in the Stockton area is a result of a special subarea need, but "no local area is overall deficient."[68] If a similar condition of subarea deficiency existed for the J-S Region in the LA Basin, then the CAISO studies would highlight it with an asterisk just like it did for the Stockton area. Far from undermining ORA's analysis, the example used in the Decision substantiates ORA's claims that there is no need in the Western LA Basin and, therefore, no need in the J-S Region. Rather than acknowledge and remedy this error, the Decision ignores the evidence and maintains its reliance on a false interpretation of the CAISO study, and then uses that false interpretation in support of approving the 19 PSAs.

Lastly, the Decision's assertion that an additional examination of the needs and resources in the J-S Region would have been more instructive is problematic for at least two reasons. First, its shows that SCE failed to meet its burden to provide the Commission with adequate information because apparently the Decision determines more analysis was needed as to the precise needs and resources at the Johanna and Santiago Substations (an assertion that is not supported by the evidentiary record). Second, the Decision's apparent criticism of ORA for not providing this more in-depth analysis improperly attempts to shift the burden to ORA to show why SCE's requested relief is unreasonable. The Commission has stated that:

> 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.[69]

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[66] Decision, p. 23, fn. 68.

[67] Decision, p. 23, fn. 68.

[68] Exh. ORA-01, pp. 2-2, fn., 29; and, CAISO 2018 LCR Study, p. 2-3. See the asterisk ("*").

[69] *Southern California Edison Test Year 2006 General Rate Application*, D.06-05-016, p. 7.

Thus, to the extent that the Commission determined that there was an evidentiary gap and that additional evidence was required, the burden fell on SCE to fill-in the evidentiary void. By faulting ORA for not providing additional analysis to show the specific needs and resources that made up the foundation of SCE's requested relief in this proceeding, the Decision improperly shifted the burden off the applicant and onto the intervenor.

5. The Decision's finding that the CAISO's analysis only determines the minimum quantity of LCR is not based on the evidentiary record

The Decision also disregards the CAISO's 2018 and 2022 LCR studies where it finds the "CAISO analyses determine the minimum quantity of local capacity necessary to meet LCR criteria but do not specify a maximum quantity of local resources needed."[70] The Decision's finding is erroneous for at least two specific reasons: (1) no party argued that the CAISO's LCR studies determine the minimum quantity of local capacity necessary to meet LCR criteria and, therefore, there is no record evidence to support the finding; and (2) it is inconsistent with the Commission's previous determinations in the D.13-02-015 (LTPP Track 1 Decision).

No party advanced the position or offered any testimony that the CAISO's LCR studies determine the minimum quantity of local capacity necessary to meet LCR. In fact, the Decision offers no rationale or citation to the evidentiary record to indicate where and how it formulated its finding. (*Asociacion de Gente Unida por el Agua* at 1281, quoting, *Environmental Protection Information Center* at 516-517 ["While the findings need not be "'extensive or detailed[,]'" "'mere conclusory findings without reference to the record are inadequate.'"])[71] Thus, the Decision's finding that the CAISO analyses determine the minimum quantity of local capacity necessary to meet LCR is arbitrary, conclusory, and not support by the evidentiary record and, therefore, constitutes legal error.

Second, notwithstanding the fact that the Decision's finding is not supported by the evidentiary record, it is also inconsistent with the Commission's LTPP Track 1 Decision. There,

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[70] Decision, Finding of Fact 5, p. 40.

[71] The evidentiary record is replete with evidence that contradicts the finding. Following the release of the CAISO LCR studies, no party supported the position that the 19 PSAs met an LCR need in the LA Basin or its subareas. SCE disavowed any claim that the 19 PSAs met an LCR need and, moreover, testified that "[t]here is going to be sufficient capacity in the western LA Basin for, for meeting LCR needs." (See, Evidentiary Hearing Reporter's Transcript, August 24, 2017, p. 15:1-3.)

the Commission came to the opposite conclusion regarding determinative value of CAISO studies. For example, in its analysis of the Moorpark LCR area the Commission determined:

> The [CA]ISO contends that there is a need for 430 MW of total in-area generation in the Moorpark area, even with a viable transmission alternative (or any preferred resources which do not have similar operating characteristics to OTC [Once-Through-Cooling] plants.) The ISO recommendation appears to be conservative on this point, as the ISO has not shown that 430 MW is the minimum amount of LCR need necessary to maintain vital operating characteristics.[72]

Instead, the Commission stated:

> The combination of likely preferred resource options and at least one viable transmission solution lead to the conclusion that less than 430 MW is needed for the Moorpark sub-area. . . . Therefore the minimum procurement level for the Moorpark sub-area will be 215 MW. A reasonable maximum level is the 290 MW level per the TURN [The Utility Reform Network] recommendation.[73]

Thus, not only is the Decision's finding not supported by the evidentiary record, it is inconsistent with the Commission's previous examinations of the CAISO studies.

6. A reasonable person could not conclude that the 19 PSAs are needed to meet an LCR need in the Western LA Basin

Finally, the Decision commits reversible error on the LCR issue because a reasonable person, when reviewing the substantial evidence, could not concluded that the 19 PSAs are needed to meet an LCR need in the LA Basin and it subareas. (*McMillan v. American Gen. Fin. Corp.*, 60 Cal.App.3d 175, 186 (1976) ["Courts may reverse an agency's decision only if, [b]ased on the evidence before the agency, a reasonable person could not reach the conclusion reached by the agency."]) The substantial and uncontradicted evidence proves that the 19 PSAs are not needed to meet an LCR requirement in the LA Basin or its subareas. This evidence can be summarized as follows:

- SCE testified that, "*contingent on the outcome of a pending [CAISO] analysis*," the 19 PSAs may offset 124.9 MW of SCE's residual 169.4 MW LCR procurement requirement.

[72] D.13-02-015, p. 72.

[73] D.13-02-015, pp. 72-73.

- In May 2017, the CAISO released its 2018 and 2022 LCR studies that concluded there are no LCR deficiencies in the LA Basin and its subarea, including the Western LA Basin.
- ORA's Testimony provided an analysis that shows:
  - The 2018 CAISO LCR study identified a surplus of 3,862 MW (Category B) and 3,210 MW (Category C) of LCR in the LA Basin for 2018; and
  - The 2022 CAISO LCR study identified a surplus of 2,181 MW (Category B) and 2,116 MW (Category C) of LCR in the LA Basin for 2022.
- SCE discovery responses confirm that "CAISO's LCR study shows that sufficient qualifying capacity exists, therefore there is no need for procurement of new incremental resources in the LA Basin."
- ORA produced evidence that SCE confirmed "the [PRP RFO 2] was not an LCR RFO; the 2013 LCR RFO is the only RFO SCE has run to date that was directed at soliciting resources to meet the LCR procurement authorized in the [Long Term Procurement (LTPP) Track 1 and Track 4 Decisions]."
- In Rebuttal Testimony SCE declared, "SCE does not need PRP RFO 2 resources to meet an LCR reliability need, as SCE never predicated PRP RFO 2 procurement on LCR. SCE never stated or even implied SCE procured the PRP RFO 2 resources to meet a LCR reliability need. SCE's testimony was clear the PRP RFO 2 contracts were not executed to meet a LCR obligation, but rather to meet the PRP objectives."
- In evidentiary hearings, SCE testified that:
  - "CAISO concluded that there was no LCR need, and so therefore these contracts are obviously not filling an LCR need."
  - "[T]here is no need, LCR need"[74] and that "[t]here is going to be sufficient capacity in the western LA Basin for, for meeting LCR needs."
  - "In several sections within our testimony however, we indicate that we did not go out and contract for these resources to meet the LCR need."
  - "[T]he contracts were not procured predicated on an LCR need."
  - "[L]oad growth in the [Southwest portion of the Western LA Basin] would be satisfied by imports, so there is no reliability need for these resources."
- The Decision states "[we] did not find there was an LCR need, and instead recognized that there are adequate resources in the Los Angeles Basin LCR."

The Decision's finding that the 19 PSAs contribute 124.9 MW of preferred resources to help meet a portion of the procurement authorized by D.16-05-053 is "contrary to uncontradicted evidence and [is] so inconsistent and uncertain in material respect that [it] cannot and do[es] not

[74] Evidentiary Hearing Reporter's Transcript, August 24, 2017, pp. 12:28 to 13:1.

support the judgment." (*Stiefel* at 265)[75] No party holds the position, advances the argument, or presented evidence that the 19 PSAs are needed to meet a residual LCR need in the LA Basin or its subareas. Thus, the Decision is also "against law" because it fails to "find on material issues made by the pleadings – issues as to which a finding would have the effect to countervail or destroy the effect of the other findings – and as to which evidence was introduced [.]" (*Renfer* at 383)[76] Indeed, in light of the overwhelming record evidence, a reasonable person could not reach the conclusion reached by the Decision.

B. The Decision errs by arbitrarily relying on out-of-date data to find that the PSAs contribute to an LCR requirement and that the J-S Region is the most effective place to site reliability resources

The Decision commits legal error by arbitrarily and capriciously relying upon out of date and irrelevant data to support its finding that the PSAs contribute to an LCR requirement and, that the Southwest portion of the Western LA Basin is the most effective area to place reliability resources. (*California Assn. for Health Services at Home* at 680 [an agency acts "arbitrarily and capriciously by relying on out of date and irrelevant data"]) First, the residual LCR requirement that the Decision finds the 19 PSA will contribute to offsetting came from information and analysis dating as far back as 2013.[77] The record evidence conclusively shows that the most up-to-date data and analysis confirms that the need identified from that information and analysis is now out of date and irrelevant. The record conclusively proves that there is no LCR need in the LA Basin and its subareas. No party advances an argument that the 19 PSAs are needed to contribute to an LCR requirement, all the updated studies and analyses confirm that there is no need to procure incremental resources to contribute to an LCR requirement, and no other piece of evidence supports a finding that the 19 PSAs were procured to meet SCE's residual LCR requirement. Therefore, the Decision errs by arbitrarily and capriciously relying upon outdated data and information to find that SCE still has to fulfill an LCR requirement, even though the most up-to-date and uncontradicted data and analyses proves otherwise

Second, the Decision finds that the "CAISO's 2014 analysis cites the Southwest LA Basin sub-area, which contains the J-S Region, as one of the most effective areas to site

[75] Section 1757(a)(4); Section 1757(a)(2).

[76] Section 1757(a)(3); Section 1757(a)(2).

[77] SCE's LCR procurement requirements originated from D.13-02-015 and D.14-03-004.

resources to meet the area's long-term local capacity needs."[78] This finding arbitrarily ignores record evidence demonstrating that the CAISO's 2022 LCR study does not conclude that the Southwest subarea of the Western LA Basin is the most effective location to place new LCR resources. The evidence ignored by the Decision, if considered, would show the CAISO 2014 analysis is now outdated and irrelevant.

The Decision's finding is based on an outdated 2014 CAISO analysis that provided information about the locational effectiveness factors of LCR resources for the LA Basin area. The CAISO conducted the analysis "to assist SCE with the direction received from the CPUC in D.13-02-015 [LTPP Track 1 Decision] to take into account the locational effectiveness of resources as determined by the [CA]ISO."[79] The record evidence shows that, in its 2013 Western LA Basin LCR RFO, SCE targeted its LCR procurement in the Southwest subarea of the Western LA Basin.[80] In D.15-11-041, the Commission approved the results of SCE's 2013 Western LA Basin LCR RFO, which totaled 1,813 MW.[81] Of the 1,813 MW authorized, SCE located at least 1,462 MW (or approximately 81%) of its LCR procurement in the Southwest subarea of the Western LA Basin.[82] Since SCE sited the bulk of its LCR resources in the Southwest portion of the Western LA Basin, the CAISO's locational effectiveness factors changed, and thus the Decision's finding is based on outdated information.

The CAISO's 2022 LCR study, which is the most up-to-date analysis introduced onto the record, does not conclude that the Southwest subarea of the Western LA Basin is the most effective location to place new LCR resources.[83] Moreover, the CAISO's 2018 and 2022 LCR

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[78] Decision, Finding of Fact 8, p. 40.

[79] Exh. SCE-01, p. 14, fn. 26 (referencing CAISO, Clarification to the ISO Board-Approved 2013-2014 Transmission Plan: Locational Effectiveness Factor Calculations in the LA Basin Area, at pp. 1-5 (April 23, 2014) retrieved from: https://www.caiso.com/Documents/LocationalEffectivenessFactors-LA-Basin_2013-2014.pdf).

[80] Exh. ORA-01C, App. C, pp. 7-14 (A.14-11-012, SCE 2013 Western LA Basin LCR RFO Testimony).

[81] See, D.15-11-041, FOF 7 & COL 5 (SCE requested approval of 1,883 MW of total LCR capacity; the Commission rejected 70 MW, which brings the total capacity approved to 1,813MW).

[82] Exh. ORA-01C, p. 3-4, fn. 125 (SCE procured 1,382 MW of natural gas-fired generation with three projects located in the Southwest LA Basin subarea.). See also, Ex. SCE-01C, p. 15:9-10 ("Approximately 80 MW of the preferred resources and energy storage procured through the LCR RFO will be sited in the J-S Region.") See also, Exh. SCE-02, Appendix A, p. A-6.

[83] Exh. ORA-01C, p. 2-2, fn. 29 incorporates CAISO's 2022 LCR study by link. See CAISO's 2022 LCR Study, pp. 52-52, and Appendix B, pp. 121-123.

studies find there are no LCR deficiencies in the LA Basin or in its subareas.[84] No party holds the position that there is an LCR need and, therefore, no party argues that incremental resources need to be sited in the J-S Region to meet a long-term local capacity need. To comport with due process of law, "the Commission must act upon evidence and not arbitrarily."[85] In other words, the Commission cannot act in the absence of, or contrary to, evidence.

Here, the Decision arbitrarily and capriciously issues a finding that relies on an out-of-date and now-irrelevant 2014 CAISO study that was conducted prior to the Commission's approval of SCE's request to site at least 1,462 MW of LCR resources in the Southwest subarea of the Western LA Basin. The Decision fails to act upon evidence that, among other things, the updated CAISO analyses shows there is no LCR need, that SCE testified that it did not procure the 19 PSAs to meet a long-term local capacity need in the Southwest portion of the Western LA Basin, and that the 19 PSAs are not needed to meet reliability needs. The Decision does not weigh the evidence and find one piece of evidence more persuasive than another. Instead, the Decision cherry-picks a single out-of-date study to issue an unsupported finding that the Southwest portion of the Western LA Basin is the most effective area to place reliability resources while it arbitrarily ignores the updated CAISO studies, SCE's long-term reliability need disavowals, and its own decisions which previously addressed this same need, all of which directly undermine the basis of the Decision's finding. As a result, the Decision is arbitrary and capricious and fails to proceed in the manner required by law.[86]

Further, the Decision contradicts itself in its finding regarding the 2014 CAISO analysis, because Findings of Fact 6 and 7 demonstrate that the CAISO's updated studies show that there are adequate resources in the LA Basin, thus there is no need to site resources anywhere in that area. In this way, the Decision creates legal error by issuing inconsistent findings on one of the principal issues of whether there is a local area need (*California Portland Cement Co. v. Public Utilities Com*., 49 Cal. 2d 171, 176 (1957) ["the commission . . . has made inconsistent findings

[84] Exh. ORA-01, pp. 2-2, fn., 29 (incorporating the CAISO's 2018 and 2022 LCR studies in their entirety by CAISO website link).

[85] *Railroad Com. Of California v. Pacific Gas & Electric Co*., 302 U.S. 388, 393 (1938), citing *Interstate Commerce Comm'n v Louisville & Nashville R. Co.,* 227 U.S. 88, 91; *St. Joseph Stock Yards Co. v. United States*, 298 U.S. 38, 51, 73; *Morgan v. United States*, 298 U.S. 468, 480-481; *Ohio Bell Telephone Co. v. Public Utilities Comm'n*, 301 U.S. 292, 304, 305.

[86] Section 1757(a)(2).

with respect to the principal issue involved and . . . has followed an erroneous view of the law. The orders based on these findings must therefore be annulled."]).

C. The Decision errs by effectively prejudging the outcomes of other proceedings, by providing an erroneous statutory interpretation of cost-effectiveness, and by failing to apply and issue a finding on the statutory cost-effectiveness requirement to the 19 PSAs

The Decision errs by failing to comply with the Commission's statutory mandate that procurement of energy storage must be cost-effective. Specifically, Section 2836.6 mandates that "[a]ll procurement of energy storage systems by a load serving entity or local publicly owned electric utility *shall* be *cost-effective*."[87] The Decision attempts to circumvent the cost-effectiveness requirement by failing to provide a finding on cost-effectiveness and stating in discussion:

> [E]nergy storage must be cost-effective when procured through the biennial storage solicitation process. The SCE PRP RFO 2 resources were not procured through the biennial storage solicitation process.[88]

The Decision implies and rests on a determination that, because the SCE PRP RFO 2 resources were not procured through the biennial storage solicitation, they need not be cost-effective. The implication and determination that the statutory cost-effective requirement for energy storage is not applicable to the 19 PSAs is erroneous. The Decision effectively determines that the cost effectiveness requirement for energy storage is applicable only if energy storage is procured through the biennial storage solicitation process. No party argues that the cost-effectiveness mandate for energy storage only applies to the biennial storage solicitation. No party refutes that the 19 PSAs are required to be cost-effective. Moreover, the Scoping Memo did not inform parties to this proceeding, and the Commission did not notice the parties to its Energy Storage Program and other energy storage related proceedings, that it intended to restrict its interpretation[89] of the overall application of the state's energy storage cost-effectiveness policies. The Decision unlawfully prejudges all other current and future utility applications for energy

[87] Section 2836.6, emphasis added.

[88] Decision, p. 39.

[89] See, D.18-05-024, p. 16. The Commission interpreted Section 2836.6's "cost-effective" requirement to apply to San Diego & Electric Company's 2016 Track 4 LCR Preferred Resources Request for Offer application.

storage procurement and denies the parties to those proceedings their due process right to be heard on this issue.[90] Furthermore, as detailed below, the Decision fails to proceed the manner required by law because it erroneously interprets the cost-effectiveness statute and it fails to issue a finding on the cost-effectiveness requirement to the 19 PSAs.[91]

1. The Decision's statutory interpretation that the cost-effective requirement for energy storage is not applicable to the 19 PSAs is erroneous

The Decision's interpretation of the Commission's statutory obligation is erroneous because it fails to give the text of Section 2836.6 – "[a]ll procurement of energy storage systems . . . shall be cost-effective" – its plain and commonsense meaning. (*MacIsaac v. Waste Management Collection & Recycling, Inc.*, 134 Cal.App.4th 1076, 1083 (2005) (*MacIsaac*) ["We give the words of the statute 'a plain and commonsense meaning' unless the statute specially defines the words to give them a special meaning."]) There is no basis for the Commission to construe Section 2836.6's use of the word "all" to only mean a specific procurement program established by the Commission because: (1) the Legislature explicitly used the word "all" in Section 2836.6 and further established specific cost-effectiveness requirements for the Commission's energy storage procurement program in other sections;[92] (*MacIsaac* at 1082-1083 ["The Legislature's chosen language is the most reliable indicator of its intent."]) and (2) it is contrary to the intent and plain language of the statute (*American Federation of Labor v. Unemployment Insurance Appeals Board*, 23 Cal.App.4th 51, 58 (1994) ["even though a court will give great weight to the agency's view of a statute or regulation, the reviewing court construes the statutes as a matter of law and will reject administrative interpretations where they are contrary to statutory intent."]).

To understand the statutory intent of Section 2836.6, it must be read *in pari materia* with the state's other energy storage statutes. (*Droeger v. Friedman, Sloan & Ross*, 54 Cal. 3d 26, 50 (1991) [an "elementary rule of statutory construction is that statues in pari materia – that is, statutes related to the same subject matter – should be construed together"]). Specifically,

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[90] Section 1708..

[91] Section 1757(a)(2).

[92] Sections 2836 and 2836.2.

Sections 2835-2839[93] establish the state's overall energy storage policies and requirements. In pertinent part, they include:

1. Section 2835 - Defines energy storage and the functions energy storage must serve;

2. Section 2836 - Requires that the Commission open a proceeding to consider adopting procurement targets for cost-effective and viable energy storage;

3. Section 2836.2 - Sets forth the issues that the Commission shall consider in its mandated proceeding;

4. Section 2836.4 - Establishes the applicability of energy storage to resource adequacy;

5. Section 2836.6 - Requires that all energy storage shall be cost-effective; and

6. Section 2837 - Establishes the applicability of energy storage to Renewable Procurement Standard.

"[T]he biennial storage solicitation process" identified in the Decision is a product of the energy storage proceeding that the Commission opened pursuant to Section 2836.[94] Section 2836 ordered the Commission to open a proceeding to determine cost-effective energy storage targets, if any; and, Section 2836.2 sets forth the requirements that govern the establishment of any potential energy storage procurement targets and policies. Consistent with these sections, the Commission initiated a proceeding to consider the adoption of procurement targets for viable and cost-effective energy storage systems.[95] In 2013, the Commission issued D.13-10-040, which established the 1,325 MW energy storage procurement target[96] and the biennial storage solicitation process identified in the Decision.[97] There, the Commission acknowledged that "Section 2836.2 provides specific guidance with regard to the criteria to be used for establishing energy storage procurement targets" including the requirement that the Commission must

[93] Assembly Bill 2514 [Chapters 356, Statutes of 2010], in part, added Sections 2835-2839 to the Public Utilities Code.

[94] Section 2836(a)(1) ("On or before March 1, 2012, the commission shall open a proceeding to determine appropriate targets, if any, for each load-serving entity to procure viable and cost-effective energy storage systems to be achieved by December 31, 2015, and December 31, 2020.")

[95] Rulemaking 10-12-007, *Order Instituting Rulemaking Pursuant to Assembly Bill 2514 to Consider the Adoption of Procurement Targets for Viable and Cost-Effective Energy Storage* (file December 16, 2020).

[96] D.13-10-040, Conclusion of Law 41, p. 76

[97] D.13-10-040, Ordering Paragraph 4, p. 77.

"[e]nsure that the energy storage system procurement targets and policies that are established [in R.10-12-007] are technologically viable and cost effective."[98]

Thus, the Legislature mandated that the Commission only approve cost-effective energy storage resulting from the biennial storage solicitation process established in the required energy storage proceeding, as adopted in D.13-10-040. However, the Decision's interpretation that the cost-effectiveness requirement for energy storage is not applicable to the 19 PSAs is erroneous because the Legislature did nothing to confine its cost-effectiveness mandate to Sections 2836 and 2836.2. Instead, it went further and included Section 2836.6, which explicitly applies to "all" energy storage. Thus, when read *in pari materia* with other energy storage statutes, the cost-effectiveness requirement in Section 2836.6 is of general applicability and inclusive of all energy storage. In contrast, the cost-effective requirement in Sections 2836 and 2836.2's is specifically applicable to the required energy storage proceeding. (*Medical Bd. of Cal v. Superior Court*, 88 Cal.App.4th 1001, 1016 (2001) [the rule of *pari materia* "applies when, as here, one statute deals generally with the subject and another deals with the subject with more specificity"])

Finally, the Decision's interpretation violates the rule of statutory interpretation against surplusage because it results in an outcome whereby Sections 2836, 2836.2, and 2836.6 all focus exclusively on the required energy storage proceeding (i.e., the biennial storage solicitations). (*DeVita v. County of Napa*, 9 Cal.4th 763, 778 (1995), citing *Mar v. Sakti Internat. Corp.*, 9 Cal.App.4th 1780, 1784 (1992) ["When two statutes touch upon a common subject, they are to be construed in reference to each other, so as to 'harmonize the two in such a way that no part of either becomes surplusage.'"]) The most plain and commonsense interpretation of Sections 2836, 2836.2, and 2836.6 is to read them together to apply uniformity to the state's energy storage cost-effectiveness policies. That is, it is reasonable to concluded that, by enacting Section 2836.6, the Legislature did not intend for energy storage to only be cost-effective when procured as part of the proceeding required by Section 2836, or any successor proceeding. If that were true, Section 2836.6 serves no independent function because Sections 2836 and 2836.2 already require cost-effectiveness and, therefore, Section 2836.6 is redundant. The rules against surplusage discourage such an interpretation. Instead, Section 2836.6 ensures that there are not separate standards for review of energy storage procurement. The cost-effectiveness mandate

[98] D.13-10-040, p. 23.

applies in any forum where the load-serving entity is requesting Commission authorization for energy storage procurement.

2. The Decision fails to apply and issue a finding on the statutory cost-effectiveness requirement to the 19 PSAs

Section 1705 requires that a Commission decision "contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision." The Decision errs by failing to act upon the substantial record evidence and issue a finding on the material issue of whether the19 PSAs are cost-effective. (*Betrand v. Pacific Electric Ry. Co*., 46 Cal.App.2d 7, 13 (1941) (*Betrand*) ["'A failure to make a finding on a material issue results in prejudicial error entitling the complaining party to a reversal, provided it appears from the record that there was evidence introduced as to such issues, and the evidence was sufficient of sustain a finding in favor of such party.'"]) ORA submitted substantial evidence onto the record that shows that "SCE's decision to execute the 19 PSAs, despite the lack of need and the negative economic values, is in conflict with [Section 2836.6]."[99] The record evidence shows that each of the 19 PSAs has a negative net present value (NPV) and that SCE's valuation of the 19 PSAs shows that ratepayers will sustain a significant loss on their investments if the 19 PSAs are approved.[100] ORA produced evidence that SCE declined numerous energy storage contracts that it received in its 2014 energy storage solicitation, despite the fact that those offers met the same criteria, had similar economic valuations, and were located in the same geographic location as the 19 PSAs.[101]

Notwithstanding the substantial record evidence that shows the 19 PSAs are not cost-effective, the Commission is still required to issue a finding on the 19 PSAs' cost-effectiveness regardless of the record evidence because it is a material issue raised by the evidence and pleadings in this proceeding. (*Speegle v. Leese*, 51 Cal. 415 (1876) ["The court below wholly omitted to find upon this issue, and if the fact be that no evidence on this point was introduced, either by the plaintiff or defendant, this does not excuse the want of a finding. It is the duty of the trial court to find upon all material issues made by the pleadings, whether evidence be introduced or not, and if there be no finding on a material issue, the judgment cannot be

[99] Exh. ORA-01, pp. 1-4:8-11.

[100] Exh. ORA-01, pp. 1-2:8 to 1-4:12; citing Exh. SCE-01C, Table VII-19, p. 61.

[101] Exh. ORA-01, pp. 3-15:1 to 3-17:4.

supported."]) ORA raised the Section 2836.6 cost-effective issue in its December 2016 Protest.[102] Thereafter, in ORA's Testimony,[103] and both its Opening[104] and Reply Briefs,[105] ORA repeatedly alerted the Commission to its statutory obligation to review and make a finding on the cost-effectiveness of the 19 PSAs – the Commission did not. Moreover, the Decision also fails to make a finding on the scoping issue of whether the price of each PSA is reasonable.[106] Therefore, by neglecting to make a finding on the cost-effectiveness of the 19 PSAs and not making a finding that the price of each PSA is reasonable, the Decision fails to proceed in the manner required by law[107] because it did not issue findings of fact on all material issues raised by the evidence and pleadings as required by Section 1705.

D. The Decision's findings on whether the PSAs support existing Commission mandates, programs, and procurements are ambiguous and inconsistent with the Decision's other findings

The Decision's finding that "Many of the SCE [PRP] RFO 2 PSAs support objectives that are consistent with existing Commission mandates, programs, and procurement[s]"[108] is legally erroneous not only because it determines an issue that is outside the scope of the proceeding, as detailed below, but because it is ambiguous and inconsistent with the Decision's other findings and determinations. In *Renfer*, *supra*, the Court of Appeal addressed whether a trial court's order granting a new trial contained sufficient findings. The Court of Appeal summarized a holding of the California Supreme Court, stating "Where the findings are so inconsistent, ambiguous, and uncertain that they are incapable of being reconciled and it is impossible to tell how a material issue is determined, the decision is 'against the law.'" (*Renfer* at 383, citing *Nuttall v. Lovejoy*, 90 Cal. 163, 167 (1891).) Here, by unlawfully determining an issue that is outside of scope, the Commission's finding is not determining a "material issue." Nevertheless, the finding is legally erroneous under *Renfer* because it is ambiguous, uncertain, and inconsistent with the Decision's other findings and determinations. The finding is

[102] ORA Protest, p. 25 (filed on December 28, 2016).

[103] Exh. ORA-01, pp. 1-4:8-12 & 2-20:2-3.

[104] ORA Opening Brief, pp. 20, 43.

[105] ORA Reply Brief, p. 16.

[106] Scoping Memo, p. 4.

[107] Section 1757(a)(2).

[108] Decision, FOF 12, p. 41.

ambiguous and uncertain because: (1) its fails to identify the specific PSAs that constitute the "[m]any of the SCE [PRP] RFO 2 PSAs," (2) it fails to identify the existing Commission mandates, programs, and procurements that it is referencing, (3) it fails to identify what objectives the "many" PSAs are supposed to support, and (4) there is no intelligible nexus between the "objectives" and "existing mandates, programs, and procurements."

The finding is also entirely inconsistent with the Decision's other findings and determinations. In *Cal. Portland Cement*, *supra*, the California Supreme Court made clear that a Commission decision that is based on inconsistent findings must be annulled.[109] In its Opening Testimony, SCE stated that the 19 PSAs will support other Commission efforts including LCR, two Distribution Resources Plan (DRP) demonstration projects, SCE's Electric Program Investment Charge (EPIC) Integrated Grid Project (IGP), and the Energy Storage Program.[110] The scope of this proceeding is to consider the discrete issue of whether the 19 PSAs are needed for any of these programs.[111] ORA explained that the 19 PSAs are not needed to meet these Commission efforts and, in some instances, run afoul of the regulations governing the Commission's efforts.[112] On the issue of need, the Decision fails to either issue consistent findings; or, fails to issue findings specific to the existing mandates, program, and procurement (and their respective objectives) that the Decision finds "many" of the PSAs will support.

First, as described in Section A.3.a, the Decision concedes that SCE "was clear that the PRP RFO 2 contracts were not executed to meet a LCR obligation"[113] and that "[the Decision] did not find there was an LCR need, and instead recognized that there are adequate resources in the Los Angeles Basin LCR."[114] Nonetheless, the Decision finds that the 19 PSAs may contribute to an LCR requirement,[115] even though it issues two other findings that show the CAISO's 2018 LCR study provides raw data that, when objectively analyzed, shows a surplus of

[109] *Cal. Portland Cement* at 176. ("Findings of fact of the commission . . . are as a general rule final and not subject to review. (Pub. Util. Code, § 1757.) Here, however, the commission, as we have seen, has made inconsistent findings with respect to the principal issue involved and . . . has followed an erroneous view of the law. The orders based on these findings must therefore be annulled.")

[110] Exh. SCE-01, pp. 1:11-17 and 76:19 to 77:6.

[111] Scoping Memo, p. 4.

[112] Exh. ORA-01C, pp. 2-1 to 3-17. See also, ORA Opening Brief, pp. 51-58.

[113] Decision, p. 23.

[114] Decision, p. 37.

[115] Decision, FOF 9, p. 40.

qualifying capacity in the LA Basin.[116] Accordingly, the Decision's cannot lawfully rely on an LCR need to support its finding that "many of the [PSAs] support objectives that are consistent with existing Commission mandates, programs, and procurement[s]," since no such need exists.[117]

Second, the Decision cannot lawfully rely on the DRP Demo projects to support its finding. The Decision fails to issue a finding specific to the two DRP demonstration projects. Presumably, this is because in its discussion the Decision states:

> [T]he determination of whether the PRP RFO 2 Demo C and Demo D PSAs authorized here are eligible to count toward SCE's DRP goals need not be addressed here. The DRP proceeding, if appropriate, could address whether the PRP RFO 2 resources authorized here are consistent with DRP policies.[118]

Thus, there can be no mistake that the Decision's finding that many of the PSAs support objectives that are consistent with existing Commission programs does not apply to the two DRP demonstration projects because the Decision declines to address the DRP issue.

Third, the Decision cannot lawfully rely on the Energy Storage Program to support its finding. The Decision fails to issue a finding specific to the Energy Storage Program. Again, presumably this is because the Decision states:

> Again, the determination of whether the PRP RFO 2 in-front of the meter storage PSAs authorized here are eligible to be counted toward SCE's AB 2514 energy storage target goals need not be addressed here. The AB 2514 proceeding (i.e., R.10-12-007), if appropriate, could address whether the PRP RFO 2 resources authorized here are consistent with AB 2514 policies.[119]

Thus, there can be no mistake that the finding that many of the PSAs support objectives that are consistent with existing Commission programs does not apply to the Energy Storage Program because the Decision declines to address the Energy Storage Program issue.

Fourth, the Decision does not bother to address SCE's EPIC IGP at all, other than to note that SCE identified it in its pleadings (the Decision makes no reference to the position ORA took

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[116] Decision, FOF 6-7, p. 40.

[117] Evidentiary Hearing Reporter's Transcript, August 24, 2017, p. 17:20-23. See also, Exh. SCE-03, pp. 9:21 to 10:2.; and Exh. ORA-01C, App. F, pp. 11-14 (SCE Response to Data Request A.16-11-001 ORA-SCE-004, Q# 1-4).

[118] Decision, p. 32.

[119] Decision, pp. 33-34.

on the EPIC IGP in its pleadings).[120] Accordingly, the Commission's cannot lawfully rely on SCE's EPIC IGP to support its finding. In sum, the Decision's own findings and determinations on the "existing Commission mandates, programs, and procurement" that SCE testified the 19 PSAs will support, and which the finding appears to rely on, are inconsistent with the Decision's finding. Under *Renfer* and *Cal. Portland Cement*, the Decision must therefore be annulled.

Finally, the Decision's Conclusion of Law 3 that the "PSAs under this PRP RFO 2 may be eligible to support procurement required through other programs"[121] is also legally erroneous because it is ambiguous and inconsistent with the Decision's other findings and determinations. Because of the ambiguity of Finding of Fact 12 and its inconsistency with other findings, as discussed above, the Decision cannot lawfully reach its Conclusion of Law that the PSAs "may be eligible to support procurement required through other programs." (*Falk v. Falk*, 48 Cal. App. 2d 762, 769 (1941) citing *McKay v. Gesford* 163 Cal. 243, 246 (1912), et. al. ["It has been repeatedly held that an erroneous conclusion [of law] of the court which is drawn from and based upon facts previously found to be true cannot stand if the specific facts upon which the conclusion is based do not support it."])

E. The Decision improperly relies on issues outside the scope of the proceeding and conflates scoping memo issues to reach a finding that is out the scope of the proceeding and is not supported by the record

The Commission commits legal error when it considers or decides issues that are beyond the scope of the proceeding. In *Southern California Edison v. Public Utilities Commission*, 140 Cal.App.4th 1085, 1092 (2006) (*Edison*), the court held that the Commission's Rules have the "force and effect of law" and failure to adhere to its Rules is a violation of law. The Court annulled D.04-12-056, in part, because the Commission decided issues beyond the issues set forth in the scoping memo and because the Commission violated its own Rules by considering new issues. Thus, the court in *Edison* found that that the "PUC's failure to comply with its own rules concerning the scope of issues to be addressed in the proceeding therefore [is] prejudicial." Former Commissioner Sandoval articulated the importance of this legal requirement in her dissent in D.15-05-051:

[120] Decision, pp. 6, 9.

[121] Decision, Conclusion of Law 3, p. 41.

> The Assigned Commissioner's Scoping Memo creates the universe of issues the proceeding is to examine, building a scaffold that supports due process and reasoned decision-making. The Scoping Memo apprises the parties and the public of what's at stake in the proceeding by specifying the issues the proceeding will examine, the topics on which the parties should comment in the briefs and arguments, and subjects for which they should submit evidence.[122]

Here, by considering and relying on issues outside the scope of the proceeding, the Decision commits legal error similar to the error in *Edison*. Further, the Decision's reliance on out of scope issues effectively alters the Scoping Memo without providing ORA notice and an opportunity to be heard. In addition, the Decision errs by issuing related findings that are not support by substantial evidence in light of the whole record.

1. The Decision improperly relies upon and address an issue that is out the scope of the proceeding to support its approval of the 19 PSAs

By SCE's own request, the PRP is not within the scope of this proceeding. The record shows that ORA initially requested that the Commission include the entire PRP in the scope of the proceeding so that the Commission and the public could have the formal opportunity to analyze and create a robust record on the merits of the PRP itself.[123] In its Reply to ORA's Protest[124] and at the Prehearing Conference, SCE objected to ORA's request.[125] SCE declared that "[t]o be clear: SCE is not seeking and does not require Commission authorization to conduct internal activities like the PRP."[126] SCE prevailed on this issue and, as witnessed by the issues listed in the Scoping Memo and acknowledged in the Decision, the PRP was excluded from the scope of this proceeding. The Decision specifically states:

> SCE has not previously sought Commission approval for the PRP itself, and does not do so here. Instead, the scope of this

[122] D.15-05-051, *Decision Conditionally Approving San Diego Gas & Electric Company's Application for Authority to Enter into Purchase Power Tolling Agreement with Carlsbad Energy Center, LLC*, issued May 29, 2015, dissent of Commissioner Sandoval, p. 3. On November 6, 2015, the Commission issued D.15-11-024, *Order Modifying Decision 15-05-051 and Denying Rehearing of the Decision, as Modified*.

[123] ORA Protest, pp. 1-17.

[124] SCE Reply to ORA Protest, p. 2.

[125] Prehearing Conference, Reporter's Transcript, February 23, 2017, pp. 16:27 to 17:1.

[126] SCE Reply to ORA Protest, p. 2.

> proceeding is limited to the request for approval for the PSAs that were executed under the second PRP RFO.[127]

Furthermore, as Commissioner Peterman, the Assigned Commissioner in the proceeding, noted in her dissent "the [PRP RFO 2] that led to these contracts is part of a larger pilot program that has not previously been authorized or evaluated by the Commission, and which SCE adamantly argued should not be evaluated here."[128]

To date, the only finding that the Commission has issued on the merits of the PRP happened D.14-03-004 (LTPP Track 4 Decision). There, the Commission found that the "[PRP] is not being proposed by SCE at this time, therefore it is not possible now to make any determination about its viability or ability to meet LCR needs in the LA Basin."[129] There the Commission stated that "[w]e intend to take a close look at the [PRP] when SCE files its application."[130] SCE has not filed a PRP application to allow the Commission to take a close look at the PRP.[131] As such, ORA did not litigate the PRP. (*Edison*, p. 1106 ["[the court] cannot fault the parties for failing to respond to the merits of proposals that were not encompassed in the scoping memo absent an order amending the scope of issues to include the new proposals."])

Nonetheless, the Decision makes it clear that, despite the exclusion of the PRP from the scope of the proceeding, the PRP played a compelling role in the Commission's decisions to find the PRP RFO 2 and 19 PSAs reasonable. Specifically, the Decision states:

> Over the course of several years, and through multiple decisions and actions, the Commission has expressed support both specifically for the PRP concept and for the types of resources that SCE proposed to acquire through the PRP RFO 2.[132]

The Decision further issues the following findings, conclusions and orders that all invoke or rely upon the PRP:

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[127] Decision, p. 12. [cite omitted].

[128] Decision, Dissent of Commissioner Carla J. Peterman, p. 1.

[129] D.14-03-004, Finding of Fact 57, p. 129.

[130] D.14-03-004, p. 66.

[131] In A.15-12-013, SCE filed an application requesting approval of the results of its PRP DG RFO. However, like here, SCE did not seek approval of its PRP. Thus, in its decision on the application, the Commission found " [t]he PRP is an internal effort to SCE and review of the overall PRP as a whole is not at issue in this proceeding." (D.16-09-006, Finding of Fact 4, p. 24.) ORA filed an application to rehear D.16-09-006 because that decision also unlawfully relied on the PRP to approve the resources at issue in that proceeding.

[132] Decision, p. 11.

> Finding 2. In D.14-03-004, the Commission stated support for the concept of the PRP as promising both as a way to meet LCR needs and as a laboratory for innovation regarding preferred resources.
>
> Finding 3. The Commission has endorsed California's Distributed Resources Action Plan to guide development and implementation of policy related to DERS, under which the PRP is listed as an existing DER sourcing mechanism.
>
> Conclusion 5. The Commission should monitor the PRP on an ongoing basis to assess the progress and impact of the program on the goals of the PRP.
>
> Conclusion 6. SCE should file an annual compliance report as described in this decision. The first report should be due on August 1, 2019, and subsequent reports filed on August 1 thereafter. The filing of the compliance report does not re-open the proceeding.
>
> Order 2. Southern California Edison shall seek authorization from the Commission for the overall Preferred Resources Pilot (PRP) program for future PRP resource acquisitions.
>
> Order 4. SCE should file an annual compliance report as described in this decision. The first report should be due on August 1, 2019, and subsequent reports filed on August 1 thereafter. The filing of the compliance report does not re-open the proceeding.

The Decision's reliance on an issue that is not within the scope of this proceeding constitutes a failure of the Commission to comply with its own Rules and a failure to proceeding in the manner required law under *Edison*.[133] The Decision's error is prejudicial and unlawful in that its reliance on the out of scope PRP effectively alters the Scoping Memo without providing ORA notice and an opportunity to be heard.[134]

2. The Decision findings, conclusions, and orders regarding the PRP are arbitrary and capricious, and lacking in evidentiary support

Moreover, the Decision's findings, conclusions, and orders regarding the PRP are arbitrary and capricious, and lacking in evidentiary support. (*Mateel Environmental Justice Foundation v. Office of Environmental Health Hazard,* 24 Cal.App5th 220, 229 (2018), quoting *Exxon Mobil Corporation v. Office of Environmental Health Hazard Assessment*, 169

[133] Pub. Util. Code Section 1757(a)(2).

[134] Section 1708.

Cal.App.4th 1264, 1277 (2009) ["'In general … the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support ….' [citation omitted] When making that inquiry, the . . . court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [citation omitted].'"]) First, since the PRP is not within the scope of the proceeding, there is no rational basis for the Commission to issue findings on the conceptual merits of the PRP, and conclude and order SCE to file PRP compliance reports so that the Commission can monitor the PRP's progress. Second, since the PRP was specifically excluded from the scope of the proceeding, nothing on the record regarding the PRP can be used to support the Decision's findings, conclusions, and orders specific to the PRP. Lastly, it is arbitrary and capricious, and an abuse of discretion for the Commission to indicate that it is approving ratepayer funds for contracts to support SCE's PRP, even though it is not within the scope of the proceeding and the Commission has never determined that the PRP is justified and reasonable – yet, that is exactly what Order 2 does.

Specifically, to support Order 2, the Decision states:

> To the extent SCE intends to establish ongoing PRP resource acquisitions (i.e., PRP RFO 3, PRP RFO 4, etc.), SCE is also required to seek authorization from the Commission for the overall PRP program.[135]

Apparently, the Decision is approving cost recovery for the 19 PSAs to support an unauthorized PRP. However, if SCE wants to spend any additional ratepayer funds on incremental PRP resources, then the Commission must make sure the overall PRP is just and reasonable. This is illogical. The Decision's choice to approve the 19 PSAs to meet a PRP objective flies in the face of the fact that the PRP is not within the scope of the proceeding, has never been judged to be just and reasonable, and there has been no effort to ensure rates are increased for a justifiable and reasonable purpose as the Commission is required to do by Sections 451 and 454. As such, the Decision's order to approve PRP resources here and require SCE to file an application subjecting the PRP to a reasonableness review for any incremental PRP procurements, is arbitrary and capricious, and an abuse of discretion.

[135] Decision, p. 12.

3. The Decision conflates Scoping Memo issues to reach a finding that is not within scope and is unsupported by the record

The Decision states "[w]e agree with SCE, to the extent that PRP RFO 2 resources are eligible and can contribute toward meeting the goals of existing Commission programs, we find that the PRP RFO 2 is supportive of those programs rather than duplicative of those programs."[136] In addition, Finding of Fact 12 states that "[m]any of the SCE RFO 2 PSAs support objectives that are consistent with existing Commission mandates, programs and procurements." Here, the Decision conflates two separate Scoping Memo issues (1) "Do the PSAs, collectively and individually, fulfill an existing procurement or local area need?"[137] and (2) "Why and how is the PRP RFO 2 not duplicative of other Commission mandates, programs, or procurement . . . ?"[138] As discussed above, the Decision arbitrarily combines these two scoping issues to effectively address neither. Instead, the Decision's discussion and Finding of Fact 12 addresses a separate and unrelated question that is not within scope – do the PRP RFO 2 resources support existing programs? Under *Edison*, the Decision's reliance on and resolution of an issue that is outside the scope of the proceeding constitutes a failure of the Commission to comply with its own Rules and a failure to proceed in the manner required by law.[139]

Moreover, the Decision's discussion and finding on this issue is unlawful in that it effectively alters the Scoping Memo without providing ORA due process in the form of notice and an opportunity to be heard.[140] Consistent with the Scoping Memo, ORA conducted a detailed analysis and presented substantial evidence to show that: (1) the 19 PSAs do not, collectively or individually, fulfill an existing procurement or local area need,[141] and (2) the PRP RFO 2 is duplicative of other Commission mandates, programs, and procurement.[142] The Decision's Finding of Fact 12 on the unrelated and out of scope issue – whether the 19 PSAs support (and are thus not duplicative) of existing programs – first appeared in the Alternate

[136] Decision, p. 35.

[137] Scoping Memo, Issue 3, p. 4.

[138] Scoping Memo, Issue 5, p. 5.

[139] Section 1757(a)(2).

[140] Section 1708.

[141] Exh. ORA-01C, pp. 2-1 to 2-15; see also, ORA Opening Brief, pp. 21-44.

[142] Exh. ORA-01C, pp. 3-1 to 3-18; see also, ORA Opening Brief, pp. 44-58.

Proposed Decision, after the record of the proceeding was closed.[143] Accordingly, ORA was denied sufficient notice of a change in the scope of the proceeding, and denied its right to place evidence on the record and litigate the merits of this newly introduced issue.

F. The Decision's other findings of fact, and a conclusion of law, are not supported by substantial evidence in light of the whole record, mischaracterize prior Commission decisions, and are not within the scope of the proceeding

In addition to the unsupported findings and lack of findings discussed above, several of the Decision's other findings, and a conclusion law, are also erroneous.

1. Finding of Fact 1

The Decision's Finding of Fact 1 states:

> SCE seeks approval of 19 PSAs totaling 125 MW supporting its second PRP, which SCE intends to launch within the J-S Region in the Los Angeles Basin, which was served by now retired OTC plants and SONGS, closure of which represented loss of approximately 7,000 MW of generation capacity.[144]

Finding of Fact 1 is erroneous because SCE is not seeking approval of the 19 PSAs supporting its "second PRP." SCE stated that it launched its PRP RFO 2 and then subsequently executed the 19 PSAs to support its PRP.[145] The finding incorrectly confuses the PRP RFO 2, (which is simply a procurement vehicle) with the PRP – SCE's internal pilot, which is outside the scope of the proceeding,[146] as detailed in Section E.1 above.

2. Finding of Fact 2

The Decision's Finding of Fact 2 states:

> In D.14-03-004, the Commission stated support for the concept of the PRP as promising both as a way to meet LCR needs and as a laboratory for innovation regarding preferred resources.[147]

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[143] The fact that parties had an opportunity to comment on the Alternate Proposed Decision does not satisfy the due process required by Section 1708. At minimum, ORA was denied the opportunity to issue discovery, provide testimony for the evidentiary record, cross-examine witnesses, and brief this issue.

[144] Decision, Finding of Fact 1, p. 39.

[145] Exh. SCE-01, pp. 5:9 to 10:9.

[146] Decision, p. 3, 12.

[147] Decision, Finding of Fact 2, p. 40.

Finding of Fact 2 misrepresents the Commission's overall determination of the PRP. Although D.14-03-004 did find that the "[PRP] is a promising concept[,]"[148] the Commission also found that "[the PRP] is not being proposed by SCE at this time, therefore it is not possible now to make any determination about its viability or ability to meet LCR needs in the LA Basin."[149] D.14-03-004 also stated "[w]e intend to take a close look at the [PRP] when SCE files its application."[150] To date, SCE has not submitted an application for approval of its PRP and SCE makes clear that it is not doing so here. As detailed in Section E.1, the PRP is not within the scope of the proceeding. Therefore, the Decision's finding regarding the PRP is legally erroneous because it is outside the scope of the proceeding[151] and not supported by the record evidence.[152]

3. Finding of Fact 3

The Decision's Finding of Fact 3 states:

> The Commission has endorsed California's Distributed Resources Action Plan to guide development and implementation of policy related to DERs, under which the PRP is listed as an existing DER sourcing mechanism.[153]

Finding of Fact 3 is inconsistent with the expressed function of the DER Action Plan. In adopting the DER Action Plan, the Commission stated that it will serve as a guidance document and "not to determine outcomes of individual proceedings."[154] Further, as detailed in Section E.1 above, Finding of Fact 3 is erroneous because it offers no value since its only relevance is the PRP, which is outside the scope of the proceeding.[155]

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[148] D.14-03-004, Finding of Fact 56, p. 129.

[149] D.14-03-004, Finding of Fact 57, p. 129.

[150] D.14-03-004, p. 66.

[151] Section 1757(a)(2).

[152] Section 1757(a)(4).

[153] Decision, Finding of Fact 3, p. 40.

[154] Distributed Energy Resources Action Plan: Aligning Vision and Action, p. 2, May 3, 2017 (emphasis added). The DER Action Plan identified a noninclusive list of DER sourcing mechanisms; not to confer reasonableness upon all actions taken within those mechanisms, but rather to identify areas where the Commission had considered DER procurements and policy.

[155] In its Opening Brief, SCE identified the DER Action Plan and argued that the PRP supports the "Vision Elements" and other policy objectives of the DER Action Plan. SCE requested that the Commission take blanket judicial notice of this section of its Opening Brief. [SCE Opening Brief, pp. 5-7.] In its Reply Brief, ORA objected because the PRP is not within the scope of this proceeding, as detailed in Section E.1, and the DER Action plan is not in the record of the proceeding. Moreover, ORA

4. Finding of Fact 10 and Conclusion of Law 2

The Decision's Finding of Fact 10 states:

> SCE forecasts 238-275 MW load growth in the J-S Region by 2020 based on its internal analysis.[156]

The Decision's Conclusion of Law 2 states:

> The resources sought under this PRP RFO 2 can meet load growth in the J-S Region.[157]

Finding of Fact 10 and Conclusion of Law 2 are not supported by the record. As detailed in Sections A and B above, the CAISO's 2018 and 2022 LCR studies concluded that there are no reliability deficiencies in the Western LA Basin. SCE's own internal analysis shows that the its forecast for the load at the Johanna and Santiago Substations has declined rapidly since 2014. To this point, Finding of Fact 10 misstates the record because SCE explained that it conducts an annual forecast for the load at the Johanna and Santiago Substations, and the forecasts look at 2022, not 2020. Furthermore, at no time did SCE testify that it provided a targeted procurement range. Rather, the 238-275 MW load growth figure in Finding of Fact 10 reflects SCE's 2015 forecast (275 MW) and SCE's 2016 forecast (238 MW). Finally, SCE testified that the 19 PSAs were unnecessary to meet a load growth at the Johanna and Santiago Substations because "load growth in the [J-S Region] would be satisfied by imports, so there is no reliability need for these resources."[158]

5. Finding of Fact 13

The Decision's Finding of Fact 13 states:

> The SCE RFO 2 PSAs will help support grid modernization and the state's environmental goals.[159]

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asserted that judicial notice of this section of SCE's Opening brief is not appropriate under the Evidence Code because it includes opinions and arguments (e.g., SCE's assertion that the PRP "supports" the DER Action Plan) that are the subjects of dispute or would be the subject of dispute if they were within scope and litigated. [ORA Reply Brief, pp. 21-22.] Thereafter, neither ALJ Miles or the Commission issued a ruling on SCE's request for judicial notice; nor did SCE file a motion requesting leave to reopen the record to introduce the DER Action Plan. Accordingly, the Decision's Finding of Fact 3 errs by relying on the DER Action Plan, which is not in the record.

[156] Decision, Finding of Fact 10, p. 40.

[157] Decision, Conclusion of Law 2, p. 41.

[158] Evidentiary Hearing Reporter's Transcript, August 24, 2017, p. 17:20-23.

[159] Decision, Finding of Fact 13, p. 41.

Finding of Fact 13 is not supported by the record evidence and is inconsistent with other determinations in the Decision. As the Decision acknowledges,[160] SCE's Amended Testimony summarizes the entirety of issues and associated record evidence that addresses "grid modernization" and "the state's environmental goals" in this proceeding. Specifically, SCE states:

> SCE's principal purpose for launching the PRP RFO 2 was to support the PRP endeavor. An equally motivating objective was to procure preferred resources through the PRP RFO 2 to support other important State-led endeavors that focus on the emerging, modernized grid, including the EPIC Investment Plan's IGP and at least two DRP demonstration projects.
>
> Perhaps most importantly, SCE's procurement of preferred resources for the J-S Region is reasonable and in the best interest of customers because it supports the State's important and ambitious environmental and energy policies, including those embodied in the Assembly Bill (AB) 32's and Senate Bill (SB) 32's Greenhouse Gas (GHG) Cap-and Trade Program, Renewables Portfolio Standard (RPS), SB 327 and SB 350, and the Loading Order.[161]

Each of the items that SCE points to is either out of scope, unsupported by the record evidence, or was explicitly left unresolved by the Decision, and therefore lacks record evidence to support the Decision's finding.

First, as detailed in Section E above, the PRP is outside the scope of the proceeding and, under *Edison*, the Decision's reliance on the PRP constitutes a failure of the Commission to comply with its own Rules under *Edison* and a failure to proceed in the manner required by law.[162] Accordingly, the Decision errs to the extent it relies on the PRP to support its finding that

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[160] Decision, pp. 6-7 echoes SCE's Amended Testimony (SCE-01C, p.2:12-24), stating:

> SCE states that, while its principal purpose for launching the PRP RFO is to support the PRP endeavor, an equally motivating objective is to procure preferred resources to support other important State-led endeavors that focus on the emerging modernized grid including the Electric Program Investment Charge (EPIC), Integrated Grid Project (IGP) and at least two Distribution Resources Plan (DRP) demonstration projects.
>
> …
>
> SCE concludes that procurement of preferred resources to address incremental load growth for the J-S Region is reasonable and in the best interest of customers because it supports the State's environmental and distributed energy resources goals.

[161] Exh. SCE-01C, p. 2:12-24.

[162] Section 1757(a)(2).

the "SCE RFO 2 PSAs" will support grid modernization and the state's environmental goals. This finding is not supported by substantial evidence in light of the whole record.[163]

Second, the Decision's finding cannot be supported by the EPIC Investment Plan's IGP and DRP demonstration projects (Demos C, D, and E) (collectively, Demos). In D.17-02-007, the Commission denied SCE's Demo E located in the J-S Region,[164] and SCE subsequently served its Amended Testimony[165] striking out its position that that the PRP RFO 2 resources will support Demo E. SCE's EPIC IGP and its Demo D share the same objectives and, therefore, the Demo D and IGP can be considered a joint project.[166] No party disputes this fact. ORA provided substantial evidence that demonstrates none of the 19 PSAs are needed to fulfill the objectives of SCE's DRP Demos and IGP.[167] Importantly, the Decision discusses the evidence on this issue but explicitly refuses to address whether any of the 19 PSAs support Demos C or D (and says nothing about support for EPIC IGP). Specifically, the Decision concludes:

> Though, the determination of whether the PRP RFO 2 Demo C and Demo D PSAs authorized here are eligible to be counted toward SCE's DRP goals need not be addressed here. The DRP proceeding, if appropriate, could address whether the PRP RFO 2 resources authorized here are consistent with DRP policies.[168]

In light of the Decision's refusal to address this issue, the Decision errs to the extent it arbitrarily and capriciously relies on SCE's DRP Demos or IGP to support its finding that the "SCE RFO 2 PSAs" will support grid modernization and the state's environmental goals.[169] This finding is

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[163] Section 1757(a)(4).

[164] D.17-02-007, Ordering Paragraph 14, p. 9.

[165] SCE's Amended Testimony was entered into the record as exhibit SCE-01.

[166] ORA Brief, p. 53, citing SCE-01C, p. 13:10-11.

[167] See discussion and evidence cited in ORA Brief, pp. 32-38. In addition, ORA provided substantial evidence that the objectives of the PRP RFO 2 are duplicative of the objectives the Commission established for the DRP Demo Projects. (See discussion and evidence cited in ORA Brief, pp. 51-55.)

[168] Decision, p. 32.

[169] Section 1757(a)(2). Notably, the Alternate Proposed Decision as originally issued contained discussion and Conclusions of Law stating that some of the 19 PSAs can support DRP Demos C and D. (See Alternate Proposed Decision, pp. 30-31, and Conclusions of Law 3 and 4, p. 35.) However, in response to ORA's comments on the Alternate Proposed Decision that this discussion and associated findings constituted legal error, the Alternate Proposed Decision was revised to remove the discussion and findings. (See Revised Alternate Proposed Decision, available at: http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M217/K838/217838819.pdf) Despite these deletions, the Revised Alternate Proposed Decision (as well as the adopted Decision) maintained the erroneous Finding of Fact 13 that the 19 PSAs will help support grid modernization and the state's

not supported by substantial evidence in light of the whole record.[170] In addition, the Decision also errs by failing to issue findings on the material and extensively litigated issue of whether the 19 PSAs support SCE's Demos C and D.[171]

Finally, the Decision's finding that the "SCE RFO 2 PSAs" will support the state's environmental goals, in particular, cannot be supported by reliance on SCE's vague reference to the general policies "embodied in the [AB 32's and SB 32's GHG] Cap-and Trade Program, [RPS], SB 327 and SB 350, and the Loading Order."[172] SCE claims that its PRP procurement will support these policies in several places in its testimonies;[173] however, these statements lack any substantive discussion or analysis of how the procurement is supportive of these policies.[174] SCE attempts to offer support for these statements, claiming that "The preferred resources SCE procured to meet expected load growth in the J-S Region through the PRP RFO 2 will help the State meet its environmental and DER goals and provide valuable information for the future by reducing the procurement of GHG emitting resources and enable greater use of DERs."[175] However, beyond SCE's stated "vision," the record contains no substantive evidence or analysis to support a finding that procurement of the 19 PSAs here would actually reduce future

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environmental goals.

[170] Section 1757(a)(4).

[171] Section 1757(a)(3).

[172] Exh. SCE-01C, p. 2:18-20.

[173] See e.g., Exh. SCE-01C, p. 2:16-24 and p. 13:15 to 14:2; Exh. SCE-02, p. 5:7-8 and Appendix A. For example, see SCE's Appendix A to its Supplemental Testimony. In that appendix, SCE very generally describes some of the objectives of the PRP and makes high level statements claiming the PRP RFO 2 resources will help meet those objectives, but fails to provide any support for its claims, including any detailed information about how the PRP RFO 2 resources specifically are necessary to meet those objectives. ORA provided ample evidence to rebut the claims made in Appendix A, as demonstrated throughout this rehearing application.

[174] SCE claims in Rebuttal Testimony that the "PRP goal is to collect critical and discrete information about DER performance. . . validating the California Independent System Operator's (CAISO's) long term transmission planning assumptions that DERs will perform as assumed. . . ." [Exh. SCE-03, p. 1:16-18.] Therefore, the Decision commits legal error by violating its own Rules by deciding issues beyond the scope of the proceeding and effectively altering the scope of the proceeding without proper notice which is prejudicial as argued in Section E. Moreover, SCE fails to provide any analysis to support is claims. As detailed in Section E.1, the PRP is outside the scope of this proceeding. In contrast, ORA provided exhaustive evidence demonstrating that current procurement already authorized by the Commission has achieved the same goal, and thus the PRP goal is duplicative of existing Commission procurement, programs, and goals. [Exh. ORA-01C, pp. 3-1 to 3-18; see also, ORA Opening Brief, pp. 44-58.].

[175] Exh. SCE-01C, p. 13:23-26.

procurement of GHG emitting resources or somehow enable use of additional DERs in the future.[176] In fact, in response to in to ALJ Miles's questions at the evidentiary hearing regarding SCE's "vision of the future" and where in the record that is supported, SCE conceded that "we identify some of the legislation that passed. But it is at a high level. We state what some of those objectives are, and this is essentially how we've captured it."[177] Section 1757(a)(4) requires that the Commission's findings be "supported by substantial evidence in light of the whole record."[178] SCE's vague and unsupported speculation regarding the ability of the 19 PSAs to support the state's environmental policies do not satisfy that standard, and the Decision errs to the extent it arbitrarily and capriciously relies on SCE's statements to support its finding that the 19 PSAs will support grid modernization and the state's environmental goals.[179]

G. The Commission's approval of the 19 PSAs results in rates that are not just and reasonable

The Decision's conclusion that the "19 PSAs are in the best interests of SCE ratepayers and SCE should be authorized to recover the costs of the PSAs in rates" constitutes a violation of

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[176] In its testimonies and briefs, SCE argues that the 19 PSAs executed under the PRP RFO will (1) demonstrate the ability to site locally preferred resources to offset the growing load in the J-S Region, driven by new commercial and residential development and business expansion; and (2) operationally integrate and manage DER as they potentially become more than 20% of the resources serving the J-S Region. SCE argues that it will demonstration will happen at the A-Bank substation level. [See, Exh. SCE-01, p. 2:6-10; Exh. SCE-02, Appendix A, p. A-10; SCE Opening Brief, pp. 16-17.] The Decision adopts SCE's position and states that "[w]e find the goal of the PRP RFO 2 to confirm the ability of preferred resources DERs, deployed in a highly localized manner, to offset load growth in the urban J-S Region is a unique and novel concept that is not specifically being pursued by any other Commission mandate, program, or procurement." [Decision, p. 35] The Decision errs because it decides issues beyond the scope of the proceeding. The goals that the Decision ascribes to the PRP RFO 2 are, in fact, the goals of the PRP, not the PRP RFO 2. [See, Exh. SCE-01, p. 2:5-10 and ; SCE Opening Brief, pp. 16-17]. In fact, SCE's testimony is clear on this point:

> More specifically, the PRP RFO 2 procurement will support two specific PRP objectives: (1) to determine whether locally-sited preferred resources will allow SCE to effectively manage or offset a forecasted load growth; and (2) if resources can be acquired and deployed down to the circuit level. [Exh. SCE-01, p. 6:4-6.]

As detailed in Section E.1, the PRP is outside the scope of this proceeding. Therefore, the Decision commits legal error by violating its own Rules by deciding issues beyond the scope of the proceeding and effectively altering the scope of the proceeding without proper notice which is prejudicial as argued in Section E.

[177] See Evidentiary Hearing RT, August 24, 2017, pp. 31:25 to 36:6.

[178] Section 1757(a)(4), emphasis added.

[179] Section 1757(a)(4); Section 1757(a)(2).

SCE and the Commission's obligations pursuant to Section 454 because the evidentiary record fails to show that authorizing a rate increase is justified. In *California Mutual Water Companies Association v. Public Utilities Commission of California*, 45 Cal.2d 152, 154 (1955), the court stated:

> [Section 454] provides as follows: 'No public utility shall raise any rate or so alter any classification, contract, practice, or rule as to result in any increase in any rate except upon a showing before the commission and a finding by the commission that such increase is justified.' It is not disputed that in the absence of a showing and finding referred to in the foregoing section the Public Utilities Commission is without power to authorize an increase in rates.

The Commission violated its obligation under Section 454 because the scope of this proceeding and the evidentiary record do not support a conclusion that rates should be increased to recover the costs of the 19 PSAs.

First, the record is clear that SCE launched its PRP RFO 2 and executed the 19 PSAs to meet the objectives of its PRP. SCE testified that its "principal purpose for launching the PRP RFO 2 was to support the PRP endeavor."[180] And, given the opportunity to defend the 19 PSA on the basis that they support an LCR requirement, SCE demurred. Instead, SCE declared that "the PRP RFO 2 contracts were not executed to meet a[n] LCR obligation, but rather to meet the PRP objectives."[181]

As detailed in Section E.1 above, the Scoping Memo in this proceeding makes it clear that the PRP is not within the scope of this proceeding.[182] It was SCE that objected to and prevailed in getting the PRP excluded from the scope of this proceeding.[183] In fact, ORA initially argued that the PRP should be within the scope of the proceeding so that the Commission and the public would be afforded the formal opportunity to look at the merits of the overall PRP and its objectives to determine if the costs of the 19 PSAs were justifiable.[184] SCE objected to its inclusion and stated that "[i]t is not seeking . . . Commission authorization to

[180] Exh. SCE-01, p. 2:12-13.

[181] Exh. SCE-03, p. 10:1-2.

[182] Scoping Memo, pp. 4-5.

[183] SCE Reply to ORA Protest, p. 2. See also, Prehearing Conference, Reporter's Transcript, February 23, 2017, pp. 16:27 to 17:1.

[184] ORA Protest, pp. 1-17

conduct [the PRP.]"[185] Having sustained SCE's efforts to prevent ORA from reviewing the PRP in this proceeding, neither SCE nor the Commission can now use PRP to justify a rate increase.

Further, the Decision makes it clear that, not only is the PRP outside the scope of the proceeding, but also that SCE has never brought the PRP to the Commission for review and, therefore, there is no foundation to concluded increasing rates to support the PRP is justified. As the Decision states, "[a]lthough SCE indicates that the PSAs for which approval are sought under this Application will support the multi-year PRP, SCE has not previously sought Commission approval for the PRP itself, and does not do so here."[186] The Decision goes on to state that the scope of this proceeding is "limited to the request for approval for the PSAs that were executed under [the PRP RFO 2.]"[187] Thus, the Commission's reliance on the PRP is not supported by the evidence and not within the scope of this proceeding. As such, the Decision did not make a finding that it is approving the 19 PSAs to support the PRP and that such support is reasonable. Therefore, the PRP is not a justifiable basis to authorize an increase in rates for the 19 PSAs.

Second, SCE testified that the two other primarily purposes for launching the PRP RFO 2 and executing the 19 PSAs are to support two DRP Demos and the EPIC IGP.[188] As discussed in Sections D and F.5 above, the Decision fails to make a finding on either the DRP Demos or the EPIC IGP. Instead, the Decision states that whether the PRP RFO 2 contracts are eligible to count towards the DRP Demos and are consistent with the DRP's policies could be addressed in the DRP proceeding, "if appropriate."[189] The Decision fails to make any determination on the EPIC IGP. Therefore, the Decision provides no finding to justify a rate increase to support the DRP Demos and EPIC IGP.

Third, SCE testified that the in-front-of-the meter (IFOM) energy storage PSAs may count towards the Energy Storage procurement target.[190] As detailed in Section D, the Decision fails to make a finding on the energy storage target issues. Instead, the Decision states that whether the IFOM energy storage PSAs count towards SCE's energy storage procurement target

[185] SCE Reply to ORA Protest, p. 2.

[186] Decision, p. 2.

[187] Decision, p. 12.

[188] Exh. SCE-01, p. 2:11-13.

[189] Decision, p. 32.

[190] Exh. SCE-01, pp. 76:18 to 77:6.

and are consistent with the Energy Storage Program policies will be handled in R.10-12-007, if appropriate.[191] Therefore, the Decision provides no finding to justify a rate increase to support the Commission's Energy Storage Program.

Finally, SCE testified that the 19 PSAs may contribute to its residual LCR requirement contingent upon the results of the CAISO's updated LCR studies. As detailed in Sections A and B above, the CAISO LCR studies concluded there is no LCR need, SCE declared it does not have an LCR need, ORA provided evidence there is no LCR need, and the Decision agrees there is no LCR need. Further, it is SCE's position, and record evidence makes clear, that procuring resources to meet an unneeded LCR need is burdensome and not in the best interest of its customers. Specifically, the record shows that SCE asserted:

> What is not consistent with the [LTPP] Track 1 and Track 4 decisions is advocating that even if the [CAISO] determines that there is no longer a long-term capacity need in the Western LA Basin, additional LCR MW should still be procured. This is the equivalent of procurement for the sake of procurement with no regard to the purpose of the Track 1 and Track 4 decision or for the costs that the resources would impose on SCE's customers . . . [S]hould the CAISO determine that a local capacity need no longer exists, then SCE, rightly, would be able to refrain from unnecessary procurement that would burden its customers.[192]

SCE and the Decision fail to identify a single justifiable reason for increasing rates based on the record evidence and the scope of the proceeding. Therefore, the Decision's conclusion that the "19 PSAs are in the best interests of SCE ratepayers and SCE should be authorized to recover the costs of the PSAs in rates" constitutes a violation of the Commission's obligation pursuant to Sections Section 454 to justify an increase in rates. Therefore, it is also inconsistent with the Commission's statutory obligation under Section 451 to ensure that all rates are just and reasonable.

IV. CONCLUSION

Section 1757(a)(4) requires that the Commission's findings be "supported by substantial evidence in light of the whole record."[193] In *The Utility Reform Network v. Public Utilities*

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[191] Decision, pp. 33-34. Note: R.10-12-007 has been closed since 2013. Its successor proceeding, R.15-03-011, has been closed since January 2018.

[192] Exh. ORA-01, App. D, p. 6 (A.14-11-012, Reply Comments of SCE on the Proposed Decision and Alternate Proposed Decision Approving, in Part, Results of Local Capacity Requirements Request for Offers for the Western Los Angeles Basin Pursuant to Decision 13-02-015 and 14-03-004).

[193] Section 1757(a)(4), emphasis added.

Commission, 223 Cal.App4th 945, 959 (2014) (*The Utility Reform Network*), the court stated that "[t]he 'in light of the whole record' language means that the court reviewing the agency's decision cannot just isolate the evidence supporting the findings and call it a day, thereby disregarding other relevant evidence in the record." The court further stated that "[r]ather, the court must consider all relevant evidence, including evidence detracting from the decision, a task which involves some weighing to estimate the worth of the evidence." (*The Utility Reform Network* at 959, citing *Lucas Valley Homeowners Assn. v. County of Marin* 233 Cal.App.3d 130, 141–142 (1991))

The Decision fails to objectively consider and act upon all material issues provided by the evidence and in the pleadings. Instead, the Decision isolates its review and consideration of the evidentiary record to a single issue – an LCR requirement.[194] However, SCE testified that it did not procure the 19 PSAs to contribute to that LCR requirement and it is a uncontradicted and well conceded fact that SCE does not have an LCR need in the Southwest portion of the Western LA Basin. The Decision is unlawful because the Decision disregards the substantial and uncontradicted facts and evidence to sustain its Findings and Conclusions of Law. For this reason, and the reasons stated above, ORA respectfully requests that the Commission grant rehearing of the Decision, and issue a decision that denies SCE's application.

Respectfully submitted,

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[194] Decision, p. 33.