

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



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In the Matter of Application of Southern
California Edison Company (U338E) for
Approval of Agreements to Sell Its Interests
in Four Corners Generation Station.

A. 10-11-010
(Filed November 15, 2010)

MOTION TO COMPEL DISCOVERY

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Dated: April 11, 2011

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In the Matter of Application of Southern California Edison Company (U338E) for Approval of Agreements to Sell Its Interests in Four Corners Generation Station.

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I. INTRODUCTION

Sierra Club brings this motion in response to Southern California Edison's ("SCE") objections and incomplete responses to a series of data requests that seek information related to the current condition of Units 4 and 5 of the Four Corners Power Plant ("FCPP"). More specifically, the disputed data requests ask for capability tests, inspection reports, remaining life assessments, cost-benefit analyses and availability studies for those two units. These data requests go to the heart of Sierra Club's interest in this case – whether SCE's proposed capital investments will extend the life or increase the rated capacity of those two units. Sierra Club cannot answer these questions without a clear understanding of the current condition and remaining life of those units. In other words, Sierra Club cannot know whether those investments will extend the "life" of a unit without knowing the current "life-expectancy" of that unit. Similarly, Sierra Club cannot know whether the investments will increase the generating capacity of the unit without knowing the current generating capacity and availability of that unit.

SCE's relevance-based objections completely ignore Sierra Club's primary interest in this case—to prevent negative environmental impacts from SCE's proposed capital investments in Units 4 and 5 of the power plant. Sierra Club is particularly interested in ensuring that those

investments comply with the CPUC's Emissions Performance Standard ("EPS") under SB 1368. The disputed data requests are not only relevant, but critical to this issue.

The final two discovery disputes result from incomplete responses to Sierra Club's requests for information on SCE's cost-benefit and future availability analyses. By this motion, Sierra Club seeks this complete responses to its requests on these subjects.

II. ARGUMENT

A. Compliance With Good Faith Requirements of Rule 11.3

In an attempt to resolve these disputes informally, counsel for Sierra Club and counsel for SCE conferred on two separate occasions; once on Friday, March 25, 2011, and again on Monday, March 28, 2011. As a result of those conferences, SCE agreed to provide additional information regarding its proposed capital investments. The most recent set of documents arrived on April 5, 2011. After having reviewed that additional information, some data requests remain in dispute. Sierra Club brings this motion to resolve these remaining disputes.

B. Disputed Data Requests

Under the CPUC 's Rule of Practice and Procedure, "any party may obtain discovery from any other party regarding any matter, not privileged, that is relevant to the subject matter involved in the pending proceeding, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence, unless the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence." Rule 10.1. California courts, which use an analogous standard, have construed the discovery statutes broadly, so as to uphold the right to discovery wherever possible. *Greyhound Corp. v. Sup. Ct* (1961) 56 Cal. 2d 355, 377-378.

SCE has objected to first four of the following discovery requests by claiming that they are not “reasonably calculated to lead to the discovery of admissible evidence.” As explained below, each of SCE’s objections lack merit. The remaining two discovery disputes involve incomplete answers to Sierra Club’s requests. Sierra Club hereby seeks complete responses.

Data Request 1.g.

Data request 1.g asks for “any and all capability tests for the unit as a whole for both Units 4 and 5 for the past five years.” SCE made the following objection to this request:

SCE objects to this data request on the grounds that is not reasonably calculated to lead to the discovery of relevant information. Historical “capability tests” data for Units 4 and 5 is unrelated to any issue in SCE’s Application, and would not otherwise assist the CPUC in determining whether SCE’s proposed sale of Four Corners is reasonable.

SCE’s objection ignores the applicability of SB 1368 to SCE’s request to make certain capital investments in the Four Corners Power Plant. More specifically, this data request is directly relevant to baseline, or existing, conditions at Units 4 and 5 of the Four Corners Power Plant. Existing conditions are not only relevant, but necessary, to fully understanding whether SCE’s proposed investments are life-extension projects and whether they may increase the rated capacity of the power plant. In fact, this is precisely the type of information routinely relied upon by experts and governmental agencies to determine the life-extension implications of a particular replacement or set of replacements. See Declaration of Robert Koppe (“Koppe Dec.”) at ¶¶ 6 and 7, submitted with this motion. If, for example, capacity is currently constrained, replacing certain equipment may have the effect of removing those constraints, increasing the capacity of the unit. *Id.* at ¶ 9.

Data Request 1.h

Data Request 1.h asks for “any and all reports on boiler inspections for Units 4 and 5 for the past five years.” SCE made the following objection to this request:

SCE objects to this data request on the grounds that it is not reasonably calculated to lead to the discovery of relevant information. Historical “boiler inspections” data for Units 4 and 5 is unrelated to any issue in SCE’s Application, and would not otherwise assist the CPUC in determining whether SCE’s proposed sale of Four Corners is reasonable.

This relevance-based objection ignores the applicability of SB 1368 to SCE’s request to make certain capital investments in the Four Corners Power Plant. More specifically, this data request is directly relevant to baseline conditions at Units 4 and 5 of the Four Corners Power Plant. These baseline, or existing, conditions are not only relevant, but necessary, to fully understand whether SCE’s proposed investments are life-extension projects. In fact, this is precisely the type of information routinely relied upon by experts and governmental agencies to determine the life-extension implications of a particular replacement or set of replacements. Koppe Dec. at ¶¶ 6 and 7.

Boiler inspection reports provide information on the current condition of a coal-fired unit’s boilers. A boiler produces the steam that forces the turbine to spin, which generates electricity. It is important to note that the condition of the boilers thus directly impacts the electricity-generating capacity as well as the life of a particular unit. *Id.* at ¶ 10.

Data Request 1.i

Data Request 1.i asks for “remaining life assessments of each boiler (and any part thereof) for Units 4 and 5.” SCE made the following objection to this request:

SCE objects to this data request on the grounds that it is not reasonably calculated to lead to the discovery of relevant information. Data regarding boiler “life assessments” for Units 4 and 5 is unrelated to any issue in SCE’s Application, and would not otherwise assist the CPUC in determining whether SCE’s proposed sale of Four Corners is reasonable.

This relevance-based objection ignores the applicability of SB 1368 to SCE's request to make certain capital investments in the Four Corners Power Plant. More specifically, this data request is directly relevant to baseline conditions at Units 4 and 5 of the Four Corners Power Plant. These baseline, or existing, conditions are not only relevant, but necessary, to fully understanding whether SCE's proposed investments are life-extension projects. In fact, this is precisely the type of information routinely relied upon by experts and governmental agencies to determine the life-extension implications of a particular replacement or set of replacements. Koppe Dec. at ¶¶ 6 and 7.

A remaining life assessment of the power plant's boilers is clearly relevant to whether SCE's proposed capital investments are life-extension projects. If, for example, the remaining life assessments show that a particular piece of equipment only has another three years of life, the fact that the replacement extends that life by twenty years raises life-extension concerns. If, by contrast, the current life expectancy of that piece of equipment is already twenty years, the same replacement may not be life-extending. *Id.* at ¶ 11.

Data Request 1.j

Data Request 1.j. asks for "any and all inspection reports for the turbine generators for Units 4 and 5 for the past five years." SCE made the following objection to this request:

SCE objects to this data request on the grounds that it is not reasonably calculated to lead to the discovery of relevant information. Historical "inspection reports for the turbine generators" data for Units 4 and 5 is unrelated to any issue in SCE's Application, and would not otherwise assist the CPUC in determining whether SCE's proposed sale of Four Corners is reasonable.

This relevance-based objection ignores the applicability of SB 1368 to SCE's request to make certain capital investments in the Four Corners Power Plant. More specifically, this data request is directly relevant to baseline conditions at Units 4 and 5 of the Four Corners Power Plant. These baseline, or existing, conditions are not only relevant, but necessary, to fully

understanding whether SCE's proposed investments are life-extension projects. In fact, this is precisely the type of information routinely relied upon by experts to determine the life-extension implications of a particular replacement or set of replacements. Koppe Dec. at ¶¶ 6 and 7.

Inspection reports are a particularly useful tool for gauging the current condition of Units 4 and 5, and provide context for the proposed projects. *Id.* at ¶ 12. They are also relevant to the question of whether the SCE's proposed investments are "necessary to prevent the risk of an imminent safety hazard" or "necessary to continue basic operation" of the plant, both of which are elements to SCE's necessity showing under the CPUC's Four Corners EPS decision. Decision 10-10-016. Koppe Dec. at ¶ 12.

Data Request 1.a.vi.

Data Request 1.a.vi. requested "any and all cost-benefit analyses" associated with SCE's proposed 2012 capital expenditures. In response, SCE only provided cost-benefit analyses that compared the costs of doing a project with the cost of doing nothing. SCE's response appears to be incomplete. According to our expert, Mr. Robert Koppe, cost-benefit analyses generally include the cost other options, such as postponing the project. Koppe Dec. at ¶ 13. Sierra Club thus moves for a complete response to this request.

Data Request 1.b.

Data Request 1.b. requested "any and all forecasts of availability of Units 4 and 5 for the past five years as well as the underlying analyses for those forecasts." The availability of a unit is directly connected to its remaining life. In response to this request, SCE provided the results of its forecasts, but did not provide the "underlying analyses," for those results. "Underlying analyses" include the actual calculations and assumptions supporting those forecasts. According

to Mr. Koppe, this underlying information is critical to a full understanding of the issue of availability. Koppe Dec. at ¶ 14.

III. CONCLUSION

In light of the above, Sierra Club respectfully requests an order compelling SCE to provide complete responses to the above discovery requests.

Date: April 11, 2011

Respectfully submitted,

/s/ SUMA PEESAPATI
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CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City of Oakland, County of Alameda; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Earthjustice, 426 17th Street, 5th Floor, Oakland, CA 94612.

On April 11, 2011, I caused to be served a true copy of:

MOTION TO COMPEL DISCOVERY; DECLARATION OF ROBERT KOPPE IN SUPPORT OF SIERRA CLUB'S MOTION TO COMPEL DISCOVERY; [Proposed] ORDER GRANTING SIERRA CLUB'S MOTION TO COMPEL DISCOVERY

By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for A. 10-11-010.

By U.S. Mail – by placing it for collection and mailing, in the course of ordinary business practice, enclosed in a sealed envelope, with postage fully prepaid, addressed to all parties of record on the service lists for A. 10-11-010 who do not have an email address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this April 11, 2011 at Oakland, California.

/s/ JESSIE BAIRD
Jessie Baird

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