



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED

10-28-09

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In the Matter of the Application of
SOUTHERN CALIFORNIA EDISON
COMPANY (U338E) for Approval of
Transactions related to a Renewables Portfolio
Standard Replacement Agreement with
Mountain View Power Partners and the
Novation of a DWR Contract with Mountain
View Power Partners.

Application No. 09-09-015
(Filed September 22, 2009)

PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES

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October 28, 2009

In the Matter of the Application of SOUTHERN CALIFORNIA EDISON COMPANY (U338E) for Approval of Transactions related to a Renewables Portfolio Standard Replacement Agreement with Mountain View Power Partners and the Novation of a DWR Contract with Mountain View Power Partners.

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I. INTRODUCTION

Pursuant to Rule 2.6 of the California Public Utilities Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) hereby submits its Protest to Southern California Edison's (SCE) Application for Approval of Transactions related to a Renewables Portfolio Standard (RPS) Replacement Agreement with Mountain View Power Partners and the Novation of a Department of Water Resources (DWR) Contract with Mountain View Power Partners (A. 09-09-015). In this application, SCE is seeking approval of and cost-recovery for eight separate transactions related to the renewable energy output of Mountain View Power Plant (MVPP).

DRA recommends that this proceeding be categorized as ratesetting and that it be subjected to a schedule that allows ample time for review of the multiple transactions submitted for approval, as well as the RPS policy implications raised by these transactions. At this time, DRA believes that hearings will be necessary.

Furthermore, given the recent passage of SB 695, there may no longer be an urgent need to remove DWR from its role of procuring energy on behalf of Investor Owned Utilities (IOUs). In SB 695 (Public Utilities Code § 327) the Legislature made clear that the prohibition on Direct Access could only be lifted by the state Legislature,

and further authorized the Commission to allow a limited version of Direct Access for retail customers only. Thus, the Commission’s goal in Rulemaking R.07-05-025 of removing DWR from its role in supplying power in order to facilitate the re-opening of Direct Access, is less pressing and should allow for adequate review and vetting of the instant application.

II. ISSUES TO BE ADDRESSED

The following preliminary (but not all-inclusive) issues related to A.09-09-015 should be included in the scope of this proceeding:

1. Consistency with Commission policy on Renewable Energy Credits (RECs).

SCE requests Commission approval of, and cost recovery for, an Amended and Restated Letter Agreement Concerning the Purchase and Sale of Renewable Attributes between SCE and MVPP (also known as the Letter Agreement).¹ The Commission must determine whether this Letter Agreement, and the underlying transactions are consistent with the Commission’s rules regarding unbundled REC transactions. Under the current RPS rules, SCE is not authorized to enter into an unbundled REC transaction for the purposes of RPS compliance.² DRA recommends that consideration of this issue be included within the scope of this proceeding.

2. Ensuring that the Letter Agreement and underlying transactions for which SCE seeks cost recovery are RPS compliant.

In its report, the Independent Evaluator (IE) highlights a concern with SCE’s Letter Agreement. The IE explains: “MVPP’s obligations to deliver and SCE’s obligation to pay for the renewable attributes (Green Attributes as defined in Decision 08-08-028) under the Letter Agreement differed based on whether WREGIS could be used as the mechanism for accounting for the transfer of the renewable attributes to SCE.” Under certain conditions, the IE continues, the Letter Agreement may have required SCE to purchase attributes which are not RPS compliant.

¹ A. 09-09-015, p. 5.

² D.06-10-019, Ordering Paragraph 23. “Transactions using unbundled energy credits, as defined in today’s decision, for RPS compliance should not be allowed at this time.”

DRA recommends that the Commission include this issue within the scope of this proceeding. The Commission should not provide cost recovery for any transaction that did not result in RPS-compliant bundled renewable energy.

3. Impact of the CPUC’s Executive Director denying concurrence that an Amendment made to the DWR-MVPP contract was immaterial.

In July of 2009 the DWR amended its contract with MVPP. The amendment allowed DWR to purchase bundled renewable energy from MVPP (whereas the original contract conveyed only energy exclusive of green attributes). Consistent with Water Code Section 80110, DWR requested that the CPUC’s Executive Director concur with DWR’s assessment that this contract amendment was immaterial.³ The Executive Director denied that concurrence on September 18, 2009 and, as a result, the contract amendment stalled.⁴

In its Report on the MVPP Transactions⁵, the Independent Evaluator states, “it is not completely clear to the IE what the impact of the Executive Director’s denial is on the Novation Agreement and the Replacement Agreement.” DRA agrees and recommends that the scope of this proceeding include an opportunity to consider what, if any, impact the Executive Director’s denial has on the MVPP Transactions.

III. PROPOSED CATEGORY

DRA agrees with SCE that this Application should be categorized as a “rate-setting” proceeding, under Rule 1.3(e) of the Commission’s Rules of Practice and Procedure.

IV. NEED FOR HEARINGS

DRA believes that this Application will require hearings so that an evidentiary record is created with regard to the reasonableness of SCE’s transactions. In this first application for a novation of a DWR contract, the Commission will be facing questions

³ July 29, 2009 Memo from DWR to Paul Clanon, Executive Director, CPUC

⁴ September 18, 2009 Memo from Paul Clanon, Executive Director, CPUC to DWR

⁵ Report of the Independent Evaluator on the Application of Southern California Edison Company for Approval of Transactions Relating to a Power Purchase Agreement with Mountain View Power Partners, Prepared by Merrimack Energy Group, Inc. and New Energy Opportunities, Inc. (October 2009).

of first impression. DRA believes that the current application may be more controversial than it initially appears owing to the complex ratepayer and REC policy issues raised by the underlying transactions.

V. SCHEDULE

DRA proposes the following schedule in order to allow sufficient time to review each of the eight transactions, analyze the impacts on ratepayers, and review the transactions for consistency with the Commissions unbundled REC policies.

With the above reasons in mind, DRA proposes that SCE’s proposed schedule be amended as follows:

Milestone	SCE Proposal	DRA Proposal
Application Filed	September 22, 2009	September 22, 2009
Daily Calendar Notice	September 23, 2009	September 28, 2009
Protests and Responses	October 23, 2009	October 28, 2009
Reply to Protests and Responses	November 2, 2009	November 4, 2008
Prehearing Conference	N/A	November 18, 2009
Intervenor Testimony	N/A	December 16, 2009
Concurrent Rebuttal Testimony	N/A	December 21, 2009
Evidentiary Hearings	N/A	January 11, 2010
Opening Briefs	N/A	January 25, 2010
Reply Briefs	N/A	February 1, 2010
Proposed Decision	December 15, 2009	February 26, 2010
Comments on Proposed Decision	January 4, 2010	March 18, 2010
Reply Comments on Proposed Decision	January 11, 2009	March 25, 2010
Decision	N/A	April 8, 2010

Respectfully submitted,

/s/ CHARLYN HOOK

Charlyn Hook

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of each document
“**PROTEST OF DIVISION OF RATEPAYER ADVOCATES**” in

A. 09-09-015 by using the following service:

E-Mail Service: sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on October 28, 2009 at San Francisco, California.

/s/ ANGELITA MARINDA
Angelita Marinda

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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A.09-09-015

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