

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298**FILED**05-27-10  
03:03 PM

May 27, 2010

Agenda ID #9521  
Quasi-legislative

## TO PARTIES OF RECORD IN RULEMAKING 06-04-009

This is the proposed decision of Commissioner Peevey. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov). Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Vieth at [xjv@cpuc.ca.gov](mailto:xjv@cpuc.ca.gov) and Commissioner Peevey's Chief of Staff Carol A. Brown at [cab@cpuc.ca.gov](mailto:cab@cpuc.ca.gov). The current service list for this proceeding is available on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

/s/ CHARLOTTE TERKEURST for KVC  
Karen V. Clopton, Chief  
Administrative Law Judge

KVC:tcg

Attachment

Decision PROPOSED DECISION OF COMMISSIONER PEEVEY (Mailed 5/27/2010)

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

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies.

Rulemaking 06-04-009  
(Filed April 13, 2006)

**DECISION GRANTING IN PART PETITION  
OF SOUTHERN CALIFORNIA EDISON COMPANY  
TO MODIFY DECISION 07-01-039**

**TABLE OF CONTENTS**

<b>Title</b>	<b>Page</b>
DECISION GRANTING IN PART PETITION OF SOUTHERN CALIFORNIA EDISON COMPANY TO MODIFY DECISION 07-01-039 .....	1
1. Summary .....	2
2. Background and Related Procedural History.....	3
2.1. Four Corners.....	3
2.2. Senate Bill 1368.....	4
2.3. Assembly Bill 32.....	6
3. SCE’s Petition for Modification, Related Filings and September 2, 2008 Proposed Decision .....	7
4. October 23, 2008 Ruling of Assigned Commissioner and Assigned ALJ.....	9
5. Discussion .....	11
5.1. Overview: Import of the New Information .....	11
5.2. Framework for Determining Recovery of Capital Expenditures at Four Corners .....	13
5.3. Content of SCE’s Petition .....	19
5.4. Timeliness of SCE’s Petition.....	21
6. Comments on Proposed Decision .....	21
7. Assignment of Proceeding.....	21
Findings of Fact.....	22
Conclusions of Law .....	23
ORDER .....	24

**DECISION GRANTING IN PART PETITION  
OF SOUTHERN CALIFORNIA EDISON COMPANY  
TO MODIFY DECISION 07-01-039**

**1. Summary**

This decision grants, in part, the petition of Southern California Edison Company (SCE) to modify Decision 07-01-039 regarding the obligation of Four Corners Generating Station Units 4 and 5 (Four Corners) to comply with the Emissions Performance Standard the decision adopts. While we deny SCE's request for a wholesale exemption for Four Corners, we authorize a partial exemption, limited to costs authorized under the co-tenancy agreements prior to 2012, and therefore, before the greenhouse gas rules issued by the California Air Resources Board pursuant to Assembly Bill (AB) 32 take effect.

Given the important role Four Corners has played and currently plays in SCE's energy supply portfolio, the long-term contractual commitments SCE has made to its co-tenants, and the limited time remaining under the contracts, we find that capital expenditures made prior to January 1, 2012 are recoverable in rates, subject to a showing of reasonableness. For capital projects of \$5 million or more, SCE's reasonableness showing must identify whether, based on industry standards, the project likely will extend the life of Units 4 or 5 beyond five years or some additional five-year increment and if so, why the project cost is warranted nonetheless. We direct SCE to make all reasonableness showings in the general rate case it will file later this year.

Because AB 32's new rules will be in effect on January 1, 2012, we cannot treat the period from 2012 through 2016 in the same way and must deny SCE's request to recover in rates any capital costs planned for Four Corners Units 4 or 5 in 2012 or later, if the related capital projects will increase the life of the

powerplant by five years or more. Consequently, we direct SCE to conduct a study on the feasibility of continuing to maintain its interest in Four Corners after the end of 2011 and in its upcoming general rate case, to report on its study and propose a course of action. SCE may not extend any of its existing co-tenancy agreements or enter into any new agreements concerning its ownership in Four Corners without first obtaining Commission approval.

Finally, we direct SCE to report in its upcoming general rate case on its remedial activities to ensure that its pleadings are complete, accurate, and fully explain the bases for its positions.

## **2. Background and Related Procedural History**

### **2.1. Four Corners**

Southern California Edison Company (SCE) holds a 48% co-tenancy interest in Units 4 and 5 of Four Corners Generating Station (Four Corners), a coal-fired, baseload electric generation facility located on the Navajo Reservation in northwestern New Mexico. The contractual term of the various co-tenancy agreements to which SCE is a signatory ends in 2016. SCE has five co-tenants: Arizona Public Service Company (APS), El Paso Electric Company, Public Service Company of New Mexico, Salt River Project Agricultural Improvement and Power District, and Tucson Gas & Electric Company. APS is the sole owner of Units 1-3.

Unit 4 commenced commercial operation in 1969 and Unit 5, in 1970. Four Corners supplies SCE with approximately 720 megawatts (MW) of power per year. SCE calculates the value to its ratepayers of the potential loss of energy and capacity from Four Corners at approximately \$200 million per year.

## 2.2. Senate Bill 1368

Senate Bill (SB) 1368 (Stats. 2006, ch. 598), enacted in September 2006, directs the Commission, no later than February 1, 2007, to establish an interim greenhouse gas (GHG) emission performance standard (EPS) and to adopt rules to enforce this standard. By Decision (D.) 07-01-039, the Commission timely adopted the EPS and related rules, referred to as the Adopted Interim EPS Rules).<sup>1</sup>

As D.07-01-039 observes, SB 1368 specifies much of the design and implementation for the EPS and defines a number of key terms, including two particularly relevant here:

“Baseload generation” means electricity generation from a powerplant that is designed and intended to provide electricity at an annualized plant capacity factor of at least 60 percent.

....

“Long-term financial commitment” means either a **new ownership investment** in baseload generation or a new or renewed contract with a term of five years or more years, which includes procurement of baseload generation.”<sup>2</sup>

With reference to these terms, SB 1368 explicitly prohibits the Commission from approving a long-term financial commitment, and any load-serving entity (LSE) such as SCE from entering into one, unless the baseload generation supplied under that long-term financial commitment complies with the EPS.

---

<sup>1</sup> *Interim Opinion on Phase 1 Issues: Greenhouse Gas Emissions Performance Standard (2007)*, D.07-01-039; the Adopted Interim EPS Rules are found at Attachment 7.

<sup>2</sup> SB 1368, Section 2, codifying Pub. Util. Code § 8340 (subparts (a) and (j), respectively [as quoted here]) (emphasis added). SB 1368 does not define the term “new ownership investment.”

SB 1368 deems compliant with the EPS, and thereby expressly grandfathers, certain combined-cycle natural gas powerplants – those either operating or that hold an Energy Commission final permit to operate, as of June 30, 2007. SB 1368 does not grandfather other types of existing, fossil-fueled powerplants, such as Four Corners. Because SB 1368 does not define “new ownership investment,” the Commission had to define this type of long-term financial commitment in D.07-01-039 in order to determine the scope of what D.07-01-039 terms “covered procurements,” that is those transactions that trigger a need to demonstrate compliance with the EPS. As part of that task, the Commission had to consider how the EPS should apply to those existing fossil-fueled plants, not grandfathered, that an LSE owns and uses to serve its load, which D.07-01-039 refers to such plants as “retained generation.”<sup>3</sup>

D.07-01-039 concludes that powerplants not expressly grandfathered by SB 1368 fall within the scope of covered procurements whenever an LSE makes a new ownership investment, defined to include any LSE investment in retained generation that “is intended to extend the life of one or more units of an existing baseload powerplant for five years or more, or results in a new increase in the existing rated capacity of the powerplant. [fn omitted]”<sup>4</sup> D.07-01-039 reasons that this determination is necessary to uphold the integrity of SB 1368 by “... ensur[ing] that there is no ‘backsliding’ as California transitions to a statewide GHG emissions cap.”<sup>5</sup>

---

<sup>3</sup> D.07-01-039 at 5.

<sup>4</sup> D.07-01-039 at 5.

<sup>5</sup> D.07-01-039 at 24.

In opening comments on the proposed decision that the Commission ultimately adopted as D.07-01-039, SCE had expressed concern that this interpretation might impair its ability to comply with various agreements relating to its co-ownership of Four Corners, chiefly its obligations to make certain financial investments to maintain Four Corners through the end of the contractual term in 2016. SCE asked the Commission either to clarify that the EPS was inapplicable to contracts governing existing baseload power plants or to create an exemption for LSEs “that co-own existing generating plants with third parties with whom they have contractual obligations to pay for ongoing expenses.”<sup>6</sup>

D.07-01-039 does not grant the relief requested but states:

If SCE anticipates that the EPS will prevent it from complying with its contractual obligations at Four Corners, it should file an application or petition for modification, together with adequate supporting information, documentation, and analysis, and request appropriate relief.<sup>7</sup>

### **2.3. Assembly Bill 32**

Assembly Bill (AB) 32 (Stats. 2006, ch. 488), also enacted in September 2006 and known as the California Global Warming Solutions Act of 2006, establishes a comprehensive program to achieve quantifiable, cost-effective reductions of GHGs by 2020. Under AB 32, the California Air Resources Board (CARB) is charged to develop measures to achieve this goal. As particularly relevant here, AB 32 provides that CARB’s GHG rules and market mechanisms are to take

---

<sup>6</sup> Comments of Southern California Edison Company on the Proposed Decision of President Peevey and ALJ Gottstein, filed January 2, 2007 at 13.

<sup>7</sup> D.07-01-039 at 46.

effect and become legally enforceable by January 1, 2012. This date is earlier than 2016, the end of the contractual term of the various Four Corners co-tenancy agreements. While D.07-01-039 takes note of AB 32, it expressly declines to “prejudge or predetermine what approach may be established in the context of our Procurement Incentive Framework [Phase 2 of this docket] or under the statewide GHG emissions limit envisioned under AB 32.”<sup>8</sup>

### **3. SCE’s Petition for Modification, Related Filings and September 2, 2008 Proposed Decision**

On January 28, 2008, SCE filed the instant petition for modification (petition) of D.07-01-039.<sup>9</sup> The petition acknowledges that SCE’s general rate case (GRC) filing for Test Year 2009, Application 07-11-011, includes a request for authority to recover \$178,593,000, which represent SCE’s share of certain capital expenditures at Four Corners. SCE argues that D.07-01-039 could be construed to prevent SCE from fulfilling its financial obligations as a co-owner of Four Corners and that moreover, “[i]f SCE does not pay its share of such expenditures, it will not receive power from Four Corners, but will remain liable for unpaid costs.[fn omitted]”<sup>10</sup> SCE also contends that as a minority owner, its “financial obligation with regard to Four Corners is not one over which it has much discretion or choice.”<sup>11</sup> Therefore, SCE asks the Commission to revise D.07-01-039 “... to find that financial contributions required under preexisting

---

<sup>8</sup> D.07-01-039 at 115.

<sup>9</sup> *Petition for Modification of Decision 07-01-039 of Southern California Edison Company* (Petition). On February 13, 2008, SCE filed an amended petition, which corrects some minor errors but does not modify the substance of the request.

<sup>10</sup> Petition at 3.

<sup>11</sup> Petition at 8.

contractual obligations for generating units owned jointly with third parties are not 'covered procurements' under the EPS."<sup>12</sup> More specifically, SCE proposes that the Commission modify the provision defining what constitutes a new investment in covered procurements (Rule 3(1)(c) of the Adopted Interim EPS Rules) and create the following exemption.

Except for financial contributions required by existing contractual agreements (effective prior to January 25, 2007), new investments in the LSE's own existing non-Combined-cycle Gas Turbine (CCGT) baseload power plants that are: (1) designed and intended to extend the life of one or more units by five years or more, (2) result in a new increase in the rated capacity of the powerplant, or (3) designed and intended to convert a non-baseload plant to a baseload plant ....<sup>13</sup>

The following parties filed responses: the Division of Ratepayer Advocates (DRA), the Western Power Trading Forum (WPTF), the Independent Energy Producers Association, and jointly, the Natural Resources Defense Council (NRDC), Union of Concerned Scientists, The Utility Reform Network, Environmental Defense Fund, Center for Energy Efficiency and Renewable Technologies and Western Resource Advocates. Although these responses disagree on whether investments in Four Corners should be exempt from the EPS, all agree that SCE's petition seeks too broad a modification. Though SCE's reply does not suggest any language revisions, it reiterates that SCE's singular objective is to obtain an exemption for Four Corners throughout the remainder of the contractual term.

---

<sup>12</sup> Petition at 5.

<sup>13</sup> Petition at 8-9, as amended [proposed modification underlined].

A proposed decision, filed on September 2, 2008, recommended that the Commission deny the petition as overbroad but find that SCE's requested capital expenditures for Four Corners Units 4 and 5 (in SCE's then-pending 2009 GRC) are not subject to the EPS -- and therefore are recoverable -- because they do not fall within D.07-01-039's definition of new ownership investment. D.07-01-039 states that the term is not meant to apply to "every replacement of equipment or addition of pollution control equipment."<sup>14</sup> The proposed decision reasoned, therefore, that the term encompasses "major refurbishments, such as those for repowering an existing powerplant" but not the requested capital expenditures for Units 4 and 5.<sup>15</sup> The proposed decision relied in part on SCE's representation of its contractual liability to its Four Corner's partners to make the expenditures and its limited decisionmaking role, as well as SCE's GRC prepared testimony. While the proposed decision recommended that SCE be authorized to recover the requested capital expenditures, it also recommended that the Commission direct SCE to conduct a study and report within six months on whether SCE should continue to maintain its interest in Four Corners after December 31, 2011.

#### **4. October 23, 2008 Ruling of Assigned Commissioner and Assigned ALJ**

On October 23, 2008, the Assigned Commissioner and the assigned Administrative Law Judge issued a joint ruling to withdraw the September 2, 2008 proposed decision, enter additional documents into the record, require a report by SCE to explain why the information in the additional documents had

---

<sup>14</sup> D.07-01-039 at 52.

<sup>15</sup> Proposed Decision at 7.

not been included in the petition, and request comments on three questions.<sup>16</sup>

The joint ruling describes what had transpired, as follows.

After the PD [proposed decision] mailed, Energy Division staff requested and received full copies of the [various Four Corners co-tenancy and operating agreements] between SCE and its co-owners . . . as well as additional information on the capital expenditures listed in A.07-11-011. Upon review of this additional information, we have discovered several discrepancies that cause us to question whether the Petition should have been more comprehensive in its explanation of SCE's rights and obligations under its Agreements and whether this additional information would have led us to reach a different outcome than recommended in the PD.<sup>17</sup>

The joint ruling observes that some of the agreements contain provisions for unanimous consent for approval of capital expenditures, particularly those over \$5 million. Furthermore, some of the capital expenditure approvals were made after D.07-01-039 issued, though at the time SCE filed its petition, only a portion of the approximately \$178.6 million in capital expenditures had been approved under the various co-tenancy agreements. In light of the new information, the joint ruling requests comments on three questions, which we paraphrase as follows:

---

<sup>16</sup> The new evidence, attached to the joint ruling, consists of: (1) the Four Corners Project Co-Tenancy Agreement, Including Amendment No. 6; (2) the Four Corners Project Operating Agreement, Including Amendment No. 12 and Letter Agreement Dated December 29, 1969; (3) the Four Corners Units 4 & 5 Capital Improvements, Design and Construction Agreement; (4) email correspondence between Energy Division staff and SCE concerning follow-up questions on the capital expenditures and the Agreements; and (5) a list of the Four Corners Co-Owner-Approved Projects as of October 10, 2008.

<sup>17</sup> Assigned Commissioner and Administrative Law Judge's Ruling Entering Additional Information into the Record and Seeking Comments (Joint Ruling) at 3.

- Does the new information require a change in the proposed decision's conclusion that the capital expenditures at Four Corners do not fall under D.07-01-039's definition of new ownership investment?
- Should SCE be allowed to recover any of the requested capital expenditures for Four Corners?
- Are evidentiary hearings necessary and if they are, what issues must be addressed through hearings?

SCE filed a report addressing issues related to the content of its petition on November 6, 2008. Thereafter, parties filed comments on the three questions set out above; specifically, DRA, NRDC, SCE and WPTF filed comments on November 24, 2008 and reply comments on December 15, 2008.

## **5. Discussion**

### **5.1. Overview: Import of the New Information**

How, if at all, should the information that the joint ruling adds to the record affect an assessment of whether the capital expenditures at Four Corners do or do not fall under D.07-01-039's definition of new ownership investment? This question goes to the heart of whether the rationale set out in the September 2, 2008 proposed decision must be revised. We conclude that the new information requires revisions.

SCE contends that the new information does not affect what it characterizes as the September 2, 2008 proposed decision's correct determination that SCE should be authorized to recover all of the approximately \$178.6 in capital costs. SCE recognizes that the new information disturbs to some extent that proposed decision's reliance on SCE's contractual obligation to make the capital expenditures. But SCE argues the Commission could have authorized cost recovery solely as a policy matter – and should do so now. SCE presents its policy argument thus: (1) the Commission may exempt Four Corners from the

Adopted Interim EPS Rules by finding that none of the capital expenditures are new ownership investment, as that term should be understood, given that all of the expenditures have some reliability purpose; and (2) if the capital expenditures are not new ownership investment, whether or not they are contractually required becomes immaterial. SCE's comments urge the Commission to reach this policy conclusion and to defer determination of the reasonableness and necessity of each of the specific capital expenditures to the 2009 GRC. (At the time SCE filed its comments, the 2009 GRC was still pending).

DRA, NRDC, and WPTF all disagree with SCE. First, they do not share SCE's policy perspective. Unlike SCE, they believe that determining whether the Four Corner's capital expenditures are new ownership investment turns on factual assessments. Their comments set forth several rationales and recommended procedures, some of them overlapping, but they all argue that the Commission needs additional information in order to determine whether the capital expenditures do or do not constitute new ownership investment – and that the new information, together with the existing record, is insufficient to make that determination.

DRA, for example, argues that the SCE must provide more information about the approval process for past capital expenditures, in order to establish the degree to which it has exercised discretion over previous approvals. WPTF contends that the critical information still missing is the long-term viability of Four Corners. DRA and WPTF both agree that SCE should be prohibited from recovering capital expenditures that SCE approved after the Commission adopted D.07-01-039 and prior to the granting of any exemption.

NRDC begins by recognizing that the Four Corners joint ownership contract allows parties to avoid new investments upon change of law and that

D.07-01-039 requires LSEs to avoid new ownership investment. NRDC then argues that while SCE must act in good faith with respect to its partners, it also must prove (and has not) that the capital expenditures exclude investments that will extend the life of Units 4 or 5 by five years or more. NRDC argues that SCE still needs to show three things: a more complete description of the nature of the requested expenditures; a comparison of current investments with past ones, to establish that those now pending are not intended to extend plant life beyond five years; and “an analysis of the full costs of continued ownership given the current end-date for the ownership contract and the soon-to-be-instituted GHG emissions limit in California under AB 32.”<sup>18</sup>

Thus, while SCE and the parties have very different views of the import of the new information, none of them contends that the Commission may adopt the September 2, 2008 proposed decision without change.

## **5.2. Framework for Determining Recovery of Capital Expenditures at Four Corners**

Do the capital expenditures at issue fall within D.07-01-039’s definition of new ownership investment? Close review of the existing record, including the parties’ comments, leads us to conclude that this question has both policy and factual elements. Today’s decision resolves the policy aspects and refers the factual determinations to the general rate case that SCE will file later this year, since the existing record, including the new information, does not permit us to answer the factual questions fully.

---

<sup>18</sup> Comments of the Natural Resources Defense Council on the Additional Information on Southern California Edison Company’s Ownership Interest in the Four corners Generating Plant and Applicability of the Greenhouse Gas Emissions Performance Standard (NRDC Comments) at 4.

We begin by examining SCE's argument that recovery of all of the Four Corners capital expenditures may be authorized as a policy matter, if we simply find that none of them constitutes new ownership investment. SCE's petition also states:

Although D.07-01-039 does not clearly define the concept of life extension, the most reasonable interpretation is that investments trigger the EPS only if they are designed to and intended to extend the life of Four Corners beyond 2016, which is the terminal year of the Four Corners agreements.<sup>19</sup>

This is the basis for SCE's claim that none of the capital expenditures should be deemed to be new ownership investment. It also is at the core of SCE's contention that we should ask "... not how long any installed equipment included within any particular capital project might be expected to last, but rather whether the project is needed to enable Four Corners to continue reliably operating until 2016."<sup>20</sup> SCE points to the prepared testimony (and related workpapers) for its 2009 GRC as well as to a matrix attached to its comments that identifies each capital project for which SCE seeks cost recovery, describes the reason for the project, and summarizes SCE's basis for claiming the project should not be subject to the EPS. For example, the first capital project on the matrix is "HP Turbine & Controls Repl, U 5," which "Replaces & Upgrades Deteriorated Turbine components to sustain plant Reliability for remaining

---

<sup>19</sup> Comments of Southern California Edison Company on Assigned Commissioner and Administrative Law Judge's Ruling Entering Additional Information into the Record and Seeking Comments (SCE Comments on Joint Ruling), filed November 24, 2008 at 4.

<sup>20</sup> SCE Comments on Joint Ruling at 4.

duration of existing contracts governing plant ownership.”<sup>21</sup> Under the matrix column titled “Basis for EPS Non-Applicability,” SCE states:

(1) This project is not designed or intended to extend the life of one or more generating units beyond the remaining duration of existing contracts governing plant ownership. (2) This project does not increase the generator nameplate capacity of the plant/ Project restores and improves Unit MW gross output to approx. 815 MW from prior approx. 795 MW (generators nameplate rating is 818 MW). (3) The plant is already a base load plant.<sup>22</sup>

SCE uses very similar, generalized language to describe the “Basis for EPS Non-Applicability” for each project. The matrix lists over 150 separate projects, some 30 of which were identified after the 2009 GRC filing. While SCE stresses the link to reliability, it concedes that some capital expenditures may have dual purposes – not only maintenance, but ensuring that “Four Corners retains some residual value” should SCE subsequently divest its interest.<sup>23</sup>

It is true that D.07-01-039 distinguishes between major refurbishments, such as repowerings, which it identifies as new ownership investment, and much more limited equipment replacements, which it excludes. As D.07-01-039 explains, the Commission was “... looking for the best and most workable approach to identifying changes in an existing powerplant that would increase the expected level of GHG emissions from the facility over the long-term.”<sup>24</sup> Nothing in D.07-01-039 suggests a desire to reduce reliability by requiring the

---

<sup>21</sup> SCE Comments on Joint Ruling, Attachment A at 1.

<sup>22</sup> *Ibid.*

<sup>23</sup> Amended Petition at 3-4.

<sup>24</sup> D.07-01-039 at 52.

repair of all old parts, rather than replacement. But clearly, the overall objective of establishing the EPS in D.07-01-039 is to focus on

. . . new long-term financial commitments to electrical generating resources that will have major impacts on GHG emissions for many years to come. This enables us to prevent major LSE procurement ‘backsliding’ that will make future GHG reductions more difficult.<sup>25</sup>

D.07-01-039’s summary amplifies upon the need to prevent backsliding, as follows:

If LSEs enter into long-term commitments with high-GHG emitting baseload plants during this transition, California ratepayers will be exposed to the high cost of retrofits (or potentially the need to purchase expensive offsets) under future emission control regulations. They will also be exposed to potential supply disruptions when these high-emitting facilities are taken off line for retrofits, or retired early, in order to comply with future regulations.<sup>26</sup>

Redefining new ownership investment for Four Corners as broadly as SCE requests is problematic because it turns a blind eye to D.07-01-039’s express admonition against backsliding. January 1, 2012, the date that CARB’s AB 32 GHG rules will take effect, is fast-approaching. Among other things, questions about the costs for SCE and SCE’s ratepayers of the continued operation of Four Corners Units 4 and 5, whether beyond 2012 or beyond 2016, remain unanswered. While we cannot conclude on the present record that approving SCE’s request for a wholesale exemption for Four Corners would be sound, a

---

<sup>25</sup> D.07-01-039 at 35.

<sup>26</sup> D.07-01-039 at 3.

narrower policy exemption, limited to costs authorized under the co-tenancy agreements prior to 2012, does not raise the same concerns. Most critically, expenditures made before CARB's GHG emissions take effect in 2012 will not risk running afoul of the 2012 rules.

Therefore, we find it prudent to allow Four Corners Units 4 and 5 an exemption from the Adopted Interim EPS Rules for the period prior to January 1, 2012, given the important role the plant has played and currently plays in SCE's energy supply portfolio, the long-term contractual commitments SCE has made to its co-tenants, and the limited time remaining under the contracts.

Accordingly, subject to a showing of reasonableness, capital expenditures made prior to 2012 should be recovered in rates. For capital projects of \$5 million or more, SCE's reasonableness showing must identify whether, based on industry standards, the project likely will extend the life of Units 4 or 5 beyond five years, ten years, or some additional five-year increment.<sup>27</sup> The reasonableness showing for capital projects of \$5 million or more also should explain why the capital project is warranted nonetheless, given the impact on life extension. SCE should include its showing on the reasonableness of all capital expenditures prior to January 1, 2012 in the GRC it will file later this year.

We conclude that we cannot treat the period from 2012 through 2016 in the same way, since this four-year period occurs after CARB's AB 32 rules take effect. Accordingly, we should deny SCE's request to recover in rates any capital costs planned for Four Corners Units 4 or 5 in 2012 or later, if the related capital projects will increase the life of the powerplant by five years or more. While we

---

<sup>27</sup> We establish this \$5 million threshold because the co-tenancy agreements heighten the approval process for expenditures of this amount and greater.

recognize that SCE has certain legal obligations to its co-tenants, SCE does not appear to lack all recourse to modify those obligations in order to avoid conflict with AB 32. Further, as NRDC and other parties point out, as yet we have no record on the comparative costs to SCE and its ratepayers of SCE's various, potential options going forward (retrofit and continued operation, divestment, etc.).

Consequently, SCE should conduct a study on the feasibility of continuing to maintain its interest in Four Corners after the end of 2011. This study should include consideration of the following:

1. Estimated costs of future investments in Four Corners if SCE maintains its interest the powerplant, including estimated costs to bring Four Corners into compliance with the EPS.
2. Costs of GHG allowances or other GHG compliance costs beginning January 1, 2012, and thereafter, if SCE maintains its interest in Four Corners.
3. Cost impacts of selling SCE's interest in Four Corners either by December 31, 2011, or in 2016, when the present co-tenancy agreements terminate.

SCE should include a report on its study and propose a course of action in the GRC it will file later this year. Further, SCE should not extend any of its existing co-tenancy agreements or enter into any new agreements concerning its ownership in Four Corners without first obtaining Commission approval.

We believe this guidance, as expressed in the Ordering Paragraphs of today's decision, sufficiently modifies D.07-01-039 to provide clarity regarding the scope of the partial exemption for Four Corners. There is no need to revise the generically applicable Adopted Interim EPS Rules to include this narrow, partial exemption for Four Corners.

### **5.3. Content of SCE's Petition**

As noted above, the October 23, 2008 joint ruling requires SCE to explain why the new information was not made a part of its petition. The joint ruling also requires SCE to respond to concerns that the petition as filed is misleading and to address whether the Commission should open an investigation into whether SCE's actions and omissions violated Rule 1.1 of the Commission's Rules of Practice and Procedure.<sup>28</sup> SCE's comprehensive response, which includes a report SCE commissioned from outside counsel, concludes that the totality of circumstances do not rise to the level of a violation of Rule 1.1.<sup>29</sup>

SCE's response concedes that the petition could have been clearer and states that the petition "does not meet the high standards for thoroughness and clarity that SCE sets for itself in our submissions to this Commission."<sup>30</sup> SCE adds:

... the Petition could have been more precise and complete in developing and explaining our position ... we do recognize our obligation to be clear and complete in our submittals to the Commission. SCE will take remedial action in light of the MTO finding to ensure that our pleadings are complete, accurate, and fully explain the bases for our positions. We sincerely apologize for the time and effort spent by the Commission in to review SCE's Four

---

<sup>28</sup> The joint ruling refers to Rule 1, which predated Rule 1.1; the language of the two does not differ in any material way.

<sup>29</sup> Response of Southern California Edison Company to Assigned Commissioner and Administrative Law Judge's Ruling Entering Additional Information Into the Record and Seeking Comments, including Appendix A, Report of Munger, Tolles & Olson LLP Regarding Review of Southern California Edison Company's January 28, 2008 Petition for Modification and Related Submissions in R.06-04-009 (SCE Response/MTO Report), filed November 6, 2008.

<sup>30</sup> SCE Response/MTO Report at 2.

Corners contractual obligations, and the concerns arising from that review with respect to the Petition.<sup>31</sup>

On balance, we concur with the assessment of SCE and its outside counsel. We find that assessment to be quite candid in a number of instances – for example, the MTO report, which identifies several problematic statements in the petition and reviews them against legal authority on the nature of a “misleading” statement, acknowledges that several are a close call. Given all of the circumstances here, including SCE’s public apology, its recognition of the need for remedial action, and its agreement to undertake such action, we conclude we will not pursue a formal investigation. However, SCE should report on its remedial activities in its forthcoming GRC filing. Among other things, SCE may wish to consult with San Diego Gas & Electric Company (SDG&E), which is preparing a professional responsibility class emphasizing Rule 1.1 as part of a settlement agreement the Commission approved in D.09-07-018.<sup>32</sup> The settlement agreement was negotiated to resolve allegations, which SDG&E denied, that SDG&E had committed a Rule 1.1 violation in connection with the Sunrise Powerlink transmission project. Under the terms of the settlement agreement, the professional responsibility class will use a third-party facilitator and will be offered in San Francisco to SDG&E personnel, Commission staff, and outside parties; it also will be offered internally at SDG&E. SCE may wish to explore whether the course could be provided internally at SCE, as well.

---

<sup>31</sup> *Id.* at 2-3.

<sup>32</sup> See Decision Approving Phase 3 Settlement of the Consumer Protection and Safety Division (2009), D.09-07-018, Attachment 1.

#### **5.4. Timeliness of SCE's Petition**

Rule 16.4(d) of the Commission's Rules of Practice and Procedure requires that a petition for modification be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition.

SCE's filed its petition several days beyond the one-year anniversary of D.07-01-039's effective date. SCE's amended petition explains that SCE incorrectly identified the effective date as January 29, 2007 (the date the decision was mailed), rather than January 25, 2007 (the date the decision was filed). As SCE has explained its error and states that it has remedied the defect in its tracking system and because the late filing has caused no harm, the petition is properly filed.

#### **6. Comments on Proposed Decision**

The proposed decision of the Commissioner in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.

#### **7. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner. On September 21, 2009, this proceeding was reassigned to ALJ Jean Vieth.

**Findings of Fact**

1. SCE owns a 48% co-tenancy interest in Four Corners and its rights and obligations with respect to Four Corners are stated in various co-tenancy agreements which terminate in 2016.
2. SCE requested authorization to recover \$178,593,000, its share of capital expenditures at Four Corners, as part of its general rate case for test year 2009 (A.07-11-011); that proceeding is now closed.
3. Four Corners makes up approximately 720 MW of SCE's resource portfolio.
4. CARB regulations pertaining to GHG emission limits and emission reductions measures will be operative on January 1, 2012.
5. Determining whether the capital expenditures for Four Corners fall within D.07-01-039's definition of new ownership investment has both policy and factual elements.
6. Given the important role Four Corners Units 4 and 5 have played and currently play in SCE's energy supply portfolio, the long-term contractual commitments SCE has made to its co-tenants, and the limited time remaining under the contracts, it is prudent to allow Four Corners a partial exemption from the EPS for capital expenditures made prior to January 1, 2012, subject to review for reasonableness.
7. The Four Corners co-tenancy agreements heighten the approval process for capital expenditures of \$5 million and greater.
8. For capital projects of \$5 million or more, where costs are incurred prior to January 1, 2012, SCE's reasonableness showing should identify whether, based on industry standards, the project likely will extend the life of Unit 4 or Unit 5 beyond five years or some additional, five-year increment. Where a life

extension by one or more five-year increments is likely, the reasonableness showing for capital projects of \$5 million or more also should explain why the capital project is warranted nonetheless.

9. SCE has certain legal obligations to its co-tenants but does not appear to lack all recourse to modify those obligations in order to avoid conflict with AB 32.

10. SCE should conduct a study on the feasibility of continuing to maintain its interest in Four Corners after the end of 2011 and, in the test year 2012 general rate case it will file in 2010, should report on its study and propose a course of action.

11. Since the financial risks have yet to be determined, SCE should not extend any of its existing co-tenancy agreements or enter into any new agreements concerning its ownership in Four Corners without first obtaining Commission approval.

12. The totality of the circumstances, including SCE's public apology, its recognition of the need for remedial action, and its agreement to undertake such action, support our determination not to open a formal investigation into whether errors and omissions in SCE's petition reach the level of a violation of Rule 1.1 of the Commission's Rules of Practice and Procedure.

13. In the general rate case for test year 2012 that it will file in 2010, SCE should report on the remedial activities undertaken to ensure that its pleadings are complete, accurate, and fully explain the bases for its positions.

### **Conclusions of Law**

1. After January 1, 2012, SCE's ratepayers would be exposed to potential financial risks to bring Four Corners into compliance with the pollution control requirements established by CARB pursuant to AB 32; therefore, approving a

wholesale EPS exemption for Four Corners would be unsound, as would approving an EPS exemption for capital expenditures made after January 1, 2012.

2. Approving an EPS exemption for Four Corners for the period prior to January 1, 2012 is not subject to the financial risks identified in Conclusion of Law 1.

3. Any recovery in rates of capital expenditures for Four Corners made prior to January 1, 2012, should be subject to review for reasonableness, as further detailed in the Ordering Paragraphs.

4. SCE's test year 2009 general rate case (A.07-11-011) is closed and should not be reopened to review the reasonableness of the capital expenditures for Four Corners.

5. A fair reading of relevant legal authority supports our determination not to open a formal investigation into whether errors and omissions in SCE's petition reached the level of a violation of Rule 1.1 of the Commission's Rules of Practice and Procedure.

6. SCE has met the requirements of Rule 16.4(d), regarding the timeframe for filing a petition for modification; the petition is properly filed.

## **O R D E R**

**IT IS ORDERED** that:

1. Decision 07-01-039 is modified to grant a partial exemption from the Adopted Interim Emission Performance Standard Rules for the period prior to January 1, 2012, for Units 4 and 5 of the Four Corners Generating Station (Four Corners) such that Southern California Edison Company (SCE) may recover a yet to be determined portion of the \$178,593,000 capital expenditures for Four Corners subject to the following qualifications:

- a. Recovery in rates is subject to a showing of reasonableness in the general rate case for test year 2012 that SCE will file later in 2010;
  - b. For each capital project of \$5 million or more, SCE's reasonableness showing must identify whether, based on industry standards, the project likely will extend the life of Unit 4 or Unit 5 beyond five years or some additional five-year increment. If life extension by one or more five-year increments is likely, the reasonableness showing for a capital project of \$5 million or more also must explain why the project is warranted nonetheless.
2. Recovery in rates of capital costs for Units 4 and 5 of the Four Corners Generating Station forecasted to be made beginning January 1, 2012 and thereafter is denied.
3. Southern California Edison Company (SCE) must conduct a study on the feasibility of continuing to maintain its interest in Four Corners Generating Station (Four Corners) after December 31, 2011 and, in the general rate case for test year 2012 that SCE will file in 2010, must include a report on its study and a proposed course of action. The study must include consideration of the following:
- a. Estimates of the costs of future investments in Four Corners if SCE were to maintain its interest in Four Corners, including estimates of the costs to bring Four Corners into compliance with the Emission Performance Standard;
  - b. Costs of greenhouse gas allowances or other greenhouse gas compliance costs beginning January 1, 2012, and thereafter, if SCE were to maintain its interest in Four Corners; and
  - c. Cost impacts of selling SCE's interest in Four Corners either by December 31, 2011, or in 2016 (the end of the current co-tenancy agreements).
4. Southern California Edison Company must not extend any of its existing co-tenancy agreements or enter into any new agreements concerning its

ownership in Four Corners without first obtaining approval from this Commission.

5. Southern California Edison Company must report, in the general rate case for test year 2012 that it will file in 2010, on its remedial activities to ensure that its pleadings are complete, accurate, and fully explain the bases for its positions.

6. The petition to modify Decision 07-01-039 filed by Southern California Edison on January 28, 2008, as subsequently amended, is granted to the extent consistent with Ordering Paragraphs 1 and 2 and is otherwise denied.

7. Rulemaking 06-04-009 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated May 27, 2010, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

**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 to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

\*\*\*\*\*

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.