

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



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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)

**CALIFORNIANS FOR RENEWABLE ENERGY, INC. (CARE)
REHEARING REQUEST FOR DECISION 12-06-022**

Pursuant to Rule 16.1 of the California Public Utilities Commission (CPUC or Commission)'s Rules of Practice and Procedure, Californians for Renewable Energy, Inc. (CARE), requests rehearing of Decision (D.) 12-06-022 issued on June 27, 2012. This rehearing request is timely because the rehearing request is due within 30 days of the day that the decision is issued and this request is within 10 days of issuance; so the implementation of this Decision should be stayed at least 60 days.

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I. INTRODUCTION

Decision 12-06-022 issued on June 27, 2012 states “[i]n this application, Southern California Edison Company seeks approval for a series of transactions related to the renewable energy output of the Mountain View Power Partners, LLP facility, a 66.6 megawatt wind project located in Palm Springs, California. The transactions involve applicant’s procurement of renewable energy from January 1, 2008 through September 30, 2011. We grant the requested approvals.”[At P. 1]

The following table summarizes the substantive features of the underlying power purchase agreement (“PPA”). See Confidential Appendix B to Advice Letter 2306-E filed on December 31, 2008 and Advice Letter 2306-E-A filed on April 8, 2009 for a detailed discussion of contract price, terms, and conditions:

Generating facility	Type	Term (Years)	Capacity (MW)	Energy (GWh)	Contract Delivery Date	Location
MVPP	Wind, existing	10	66.6	220	October 1, 2011	San Gorgonio Pass, CA

Mountain View Power Partners (“MVPP”) is wholly owned by AES Corporation (AES). The MVPP facility is an existing wind facility located in the San Gorgonio Pass area near Palm Springs, CA. The project was originally developed and constructed by SeaWest WindPower, Inc. The facility consists of 111 Mitsubishi 600 kW wind turbine generators and first began commercial operation in September 2001.

The power produced by the MVPP was under contract to the California Department of Water Resources (DWR) through September 30, 2011; which is now expired. This DWR contract was allocated to SCE by Commission decision, D.02-09-

053. The MVPP contract took effect after the expiration of the DWR contract on October 1, 2011 pursuant to Resolution E-4248 issued June 18, 2009. The Decision is a post hoc rationalization of the Commission's prior Resolution issued through an Advise Letter process CARE was not a Party to in 2009.

II. GROUNDS FOR REHEARING: FACTUAL, LEGAL AND/OR TECHNICAL ERRORS

A. There are substantial excluded facts in Section 2.1., Brief History [at P. 2]; “In January 2001, the legislature passed emergency legislation in response to the 2000/2001 California energy crisis.^[1] That legislation authorized the California Department of Water Resources (DWR) to make electricity purchases for investor-owned utility (IOU) retail customers. This was necessary because IOUs were not financially able at the time to make those purchases. In September 2002, we allocated the energy and capacity benefits of 41 DWR power purchase contracts to IOU customers. (Decision (D.) 02-09-053, Ordering Paragraph (OP) 1.) One such contract was between DWR and MVPP (referred to herein as the DWR Contract). We apportioned the benefits and costs of the DWR Contract to the customers of SCE. The DWR Contract conveyed energy and capacity to DWR, but did not include the renewable energy credits”

This is in error because the underlying contract exceeds the 2008 avoided cost and therefore can not be shown to be “just and reasonable” with or without bundling of the renewable energy credits (“RECs”) associated with the MVPP PPA.

¹ Assembly Bill 1, First Extraordinary Session (Keeley, Stat. 2001, ch. 4).

B. There are substantial excluded facts of law in Section 3.3. regarding the lawfulness of the approval of these Buy-Out and Letter Agreements. The Decision states “CARE also argues that the REC price is unreasonable when compared with Commission-established avoided costs. We do not agree. The agreements we consider here are voluntary, bilaterally-negotiated RPS transactions. We review them in the same way we review other voluntary, bilaterally-negotiated RPS procurement. (D.09-06-050, OP 7.) For all the reasons stated above, we find that the Buy-Out and Letter Agreements are just and reasonable. This includes an assessment that the price is reasonable compared to the price of viable alternatives SCE did not need to procure given the purchase of RPS-eligible MVPP electricity ^[2]”. [P. 12]

The Decision’s claim that these are “bilaterally-negotiated RPS transactions” is misplaced because the MVPP PPA results from SCE’s 2008 solicitation for renewable bids, which was authorized by D.08-02-008; not a bilaterally-negotiated contract. The fact is that the MVPP PPA has an administratively determined price in violation of PURPA’s must take and must interconnect requirements. The fact is that SCE, as a matter of standard operating procedure, denies small generators bilateral contracts. Bilateral contracts are exclusive to Large Generators, as are competitive solicitations. Competitive solicitations open to bidders from 1-20MW’s (with some developers bidding multiples of projects) is in violation of 18 C.F.R. §292.304(a)(1)(ii) “Not discriminate against ... small power production facilities.” CARE’s co-Plaintiff SFUI, as a small

² CARE’s comparisons, even if relevant (which they are not), are not persuasive. For example, CARE compares the TREC price cap (\$50 per MWh) to a price paid by Pacific Gas and Electric Company (PG&E) for as-delivered capacity (which CARE says is \$6.29/MWh). (June 9, 2011 Reply Brief at 6.) CARE fails to demonstrate that comparing the TREC price cap with an as-available capacity price is meaningful. Further, even if the price comparison is relevant (which it is not), CARE fails to explain why a price paid by PG&E is a reasonable measure for a transaction that involves SCE.

power production facility of 1.5/3MWs, could not be competitive against the Large power production facilities. Apples to oranges on a megawatt basis. The fact is it is discriminatory.³

Purportedly⁴ “SCE has demonstrated that the MVPP Transactions meet each of the standards set by the Commission for bilateral contracts – they are prudent and reasonable in comparison to other RPS procurement options and compare favorably to proposals received in SCE’s 2008 RPS solicitation. In particular, the MVPP Transactions’ renewable premium is highly competitive as compared to the renewable premiums from SCE’s 2008 RPS solicitation.[] The MVPP Transactions’ price is also significantly less than the average price of bids received in SCE’s 2008 solicitation, less than the average price of the bids on SCE’s 2008 solicitation short list, and less than the average price of SCE’s executed contracts in 2008.[] Moreover, the MVPP Transactions’ price is less than the 2007 and 2008 market price referents (“MPRs”) and a Commission-approved agreement between MVPP and SCE for the bundled renewable energy from the MVPP Facility that will begin starting in October 2011.[] The MVPP Transactions also have significantly higher viability than most proposals in SCE’s 2008 RPS solicitation because the MVPP Facility is operational and delivering power.[]”

But PURPA’s “Must Purchase” provisions, 18 C.F.R. §292.303(a)(1) and (2), and “Obligation to Interconnect” provisions, 18 C.F.R. §292.303(c)(1) and (2), are being skirted when non-existent bilateral contracts and impossible competitive bidding solicitations are the only entrances to the electric market for Small Generators. The

³ CARE invokes it’s standing herein to bring a Petition for Enforcement before the FERC against the CPUC approval of the MVPP PPA [including RECs] including in behalf of CARE’s members who are QFs including but not limited to Robert Sarvey and Michael Boyd individually or through their living trusts.

⁴ SCE Opening Brief at pp. 17-18.

“Must Purchase” and “Obligation to Interconnect” were PURPA’s orders that the utilities were to take energy and capacity from QFs at any time that a QF presented itself to a utility company; not one time per year, not under a competitive solicitation.

The renewable energy output of the Mountain View Power Partners, LLP facility, a 66.6 megawatt wind project, is wholesale energy; whose sales are subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission (“FERC”); not the CPUC. These RPS contracts utilize a market price referent (MPR) based on a 500 MW combined cycle gas turbine power plant’s operational characteristics. Additionally these contracts bundle the REC, netting zero actual value for the REC itself. The Federal Energy Regulatory Commission found in 2011 that the CPUC’s MPR contracts violate the Public Utility Regulatory Policies Act of 1978 (PURPA)⁵ because such projects are not tiered by size and type of energy resource. In *CPUC vs. SCE et al.*, 134 FERC ¶61,044 (Issued January 20, 2011), Docket No.(s) EL10-64-002 and EL10-66-002, at P.6 and P.7 FERC describes a “multi-tiered” avoided cost rate. And at P.32 both “incremental” and “next marginal unit of generation” are used.

State law requires electrical corporations to have tariffs and standard contracts for purchases of electricity from certain customers up to 20 MW (See § 2840 et seq. regarding combined heat and power). Federal regulations draw an important distinction between QFs at or below 20 MW and those above 20 MW but below 80 MW, including exemptions from the Federal Power Act for the smaller QFs, and certain assumptions about the smaller QFs limited ability to access competitive markets.⁶ PURPA was an

⁵ <http://www.law.cornell.edu/uscode/text/16/chapter-46>

⁶ 18 CFR 292.309(d)(1) establishes a rebuttable presumption that a QF with capacity at or below 20 MW does not have nondiscriminatory access to the wholesale electricity market. Also see 18 CFR 292.601 regarding certain exemptions from federal and state law for QFs at or below 20 MW.”

amendment to Federal Power Act (“FPA”), and by definition a Small Facility means one with a “production capacity of no more than 80 megawatts [“MW”]. *See American Paper Institute, Inc. v. American Electric Power Service Corp.*, 461 U.S. 402, 420 (1983).

FERC has issued orders which subdivide Small Facilities into (a) those with a production capacity of 20MW or less, *see* FERC Order No. 2006, “Standardization of Small Generator Interconnection Agreements and Procedures,” Summary; and (b) those with production capacity in excess of 20MW, but no more than 80MW, *see* FERC Order No. 2003, “Standardization of Small Generator Interconnection Agreements and Procedures, Summary & P.17. All of the facilities at issue in this case are over the 20MW threshold; but less than the 80 MW ceiling.

III. GROUNDS FOR REHEARING OF DECISION INCLUDING ERRORS OF FACTS AND CONCLUSIONS OF LAW

Grounds for rehearing of Decision 12-06-022 is as follows:

A. *Section 2.1 fails to address the following information regarding lawfulness of underlying DWR contract:* “According to publicly available information on the underlying 2002 DWR “Mountain View” contract on the DWR website⁷ at page 16 the “amended and restated confirmation letter shall confirm the Transaction agreed to on October 1, 2002 (the “Effective Date”) between PG&E Energy Trading-Power, L.P. (“Party A”) and California Department of Water Resources, acting solely under the authority and powers created by California Assembly Bill AB1-X, codified as Sections 80000 through 80270 of the Water Code (the “Act”), and not under its powers and responsibilities with respect to the State Water Resources Development System (“Party

⁷http://www.cers.water.ca.gov/pdf_files/power_contracts/mountain_view/092002_pge_et_amended_ppa.pdf

B”) regarding the sale/ purchase of the Product”. Also at page 16 the DWR contract states “Specified Units: Mountainview I Wind Project, having an estimated capacity rating of 44.4 MW consisting of 74 Mitsubishi MWT – 600 turbines located in Riverside County, California and Mountainview II Wind Project, having an estimated capacity rating of 22.2 MW, consisting of 37 Mitsubishi MWT – 600 turbines located in Riverside County, California (each, a “Project” and collectively, the “Projects”).” Finally at page 17 the contract states “Contract Price: \$57.00/MWh on and after the Effective Date. Party B shall be responsible for all charges applied to this Transaction by the CAISO except losses (which shall be paid by Party A in accordance the Contract Quantity section).”

SCE provide no evidence of compliance with and enforcement of 18 C.F.R. Section 292.302(b)(1), (b)(2) and (b)(3).⁸ PG&E [like SCE in the case here] maintains a website that tracks the As-Delivered Capacity Prices for Qualifying Facilities. The 2002 As-Delivered Capacity Prices for Qualifying Facilities⁹ shows that for 2002 “Period A – Summer (May through October)”; “Without Time-of-Delivery Metering” the “As-

⁸ “18 C.F.R. Section 292.302 (b) *General rule*. To make available data from which avoided costs may be derived, not later than November 1, 1980, June 30, 1982, and not less often than every two years thereafter, each regulated electric utility described in paragraph (a) of this section shall provide to its State regulatory authority, and shall maintain for public inspection, and each nonregulated electric utility described in paragraph (a) of this section shall maintain for public inspection, the following data: (1) The estimated avoided cost on the electric utility's system, solely with respect to the energy component, for various levels of purchases from qualifying facilities. Such levels of purchases shall be stated in blocks of not more than 100 megawatts for systems with peak demand of 1000 megawatts or more, and in blocks equivalent to not more than 10 percent of the system peak demand for systems of less than 1000 megawatts. The avoided costs shall be stated on a cents per kilowatt-hour basis, during daily and seasonal peak and off-peak periods, by year, for the current calendar year and each of the next 5 years; (2) The electric utility's plan for the addition of capacity by amount and type, for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding 10 years; (3) The estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy costs of each unit, expressed in cents per kilowatt hour. These costs shall be expressed in terms of individual generating units and of individual planned firm purchases.”

⁹ http://www.pge.com/includes/docs/pdfs/b2b/qualifyingfacilities/prices/2002_asdelcap.pdf

Delivered Capacity Price^[10]” is “0.00554” “\$/kwh” [or \$5.54/MWh]. This demonstrates the underlying contract exceeds the 2002 avoided cost in violation of PURPA and therefore can not be shown to be “just and reasonable”.

The fact that “DRA acknowledges^[11], approval of the Novation and Replacement Agreements executed as part of the MVPP Transactions “is consistent with the Commission’s policy on novating DWR agreements” is therefore irrelevant to “[w]hether The Terms Of The MVPP Novation And Replacement Agreement Are “Just And Reasonable” In Accordance With Public Utilities Code § 451, And The Principles For Review Of Contracts Set Forth In D.08-11-056” since the underlying contracts cost of \$57/MWh was more than ten times the 2002 avoided cost of \$5.54/MWh on October 1, 2002 when the contract was executed.”

B. Section 3.3. fails to address the following information regarding lawfulness of the approval of these Buy-Out and Letter Agreements should be changed to read as follows.

“The buy-out and letter agreements effectively “rebundle” the RECs with the energy SCE’s customers have received from the MVPP contracts, as authorized by D.11-12-052, OP 15. The agreements reasonably ensure that the output from the 66.6 MW MVPP facility (about 200,000 megawatt-hours (MWh) per year) may be considered for RPS compliance. *Please also Address the following* “But the FERC has found that “States, in creating RECs, have the power to determine who owns the REC in the initial

¹⁰ “The as-delivered capacity price is the product of three factors: capacity value, allocation factor, and capacity loss adjustment factor.”

¹¹ SCE Opening Brief at p. 18.

instance, and how they may be sold or traded; it is not an issue controlled by PURPA".¹² The QF program does not address RECs. Therefore to the degree RECs are bundled they violate PURPA.

The Decision is in error where it fails to address CARE's view as follows regarding the just and reasonableness of the underlying DWR contract and contracts entered in to by SCE subsequently authorized by the Commission; "CARE also contends that the price in the original DWR Contract (a 10-year contract starting in October 2001) is neither just nor reasonable, making the MVPP Transactions (energy, capacity, and RECs over 45 months starting January 1, 2008) unjust and unreasonable. SCE does not now ask for a Commission finding relative to the DWR Contract, and the Commission assigned the DWR Contract to SCE almost ten years ago. Therefore findings on the DWR Contract are moot, and therefore there is no need to reach a conclusion about the agreements before the Commission; that the Buy-Out and Letter Agreements are not just and reasonable; because to the degree RECs are bundled with energy, and capacity, they violate PURPA by devaluing the avoided cost paid.

The Decision is in error where it fails to Address the following "CARE also argues that the REC price is unreasonable when compared with Commission-established avoided costs. The agreements were not bilaterally-negotiated RPS transactions. (D.09-06-050, OP 7.) PG&E's 2008 As-Delivered Capacity Prices for Qualifying Facilities¹³ shows that for 2008 "Period A – Summer (May through October)"; "Without Time-of-Delivery Metering" the "As-Delivered Capacity Price¹" is "0.006292" "\$/kwh" [or

¹²<http://apps.americanbar.org/enviro/committees/renewableenergy/teleconarchives/111804/FERCdecision1.pdf> [at P.23] *American Ref-Fuel Company, Order Granting Petition for Declaratory Order*, 105 FERC 61,004 (2003), Docket No. EL03-133-000.

¹³ http://www.pge.com/includes/docs/pdfs/b2b/qualifyingfacilities/prices/2008_asdelcap.pdf

\$6.29/MWh]. Since this is strictly a state program operated outside FERC's wholesale ratemaking authorities the price SCE proposes be paid for those RECs exceeds the 2008 avoided cost in violation of PURPA and therefore can not be shown to be "just and reasonable" therefore. "For all the reasons stated above, the Buy-Out and Letter Agreements are not just and reasonable. This includes an assessment that the price is not reasonable because it exceeded the CPUC approved As-Delivered Capacity Price of 0.006292 \$/kWh [or \$6.29/MWh] applicable at the time."

On July 3, 2012, the Federal Energy Regulatory Commission ("FERC"), Washington D.C., published the following Notice:¹⁴ Docket(s): EL12-82-000; Description: Notice of Petition for Enforcement and Complaint re CALifornians for Renewable Energy, Inc et al v California Public Utilities Commission et al under EL12-82. CARE includes the Notice as Attachment 1.

The Respondents to CARE's Petition are; the California Public Utilities Commission ["CPUC"], a California state agency, established under the California State Constitution as an [purported] independent agency, charged with inter alia California energy policymaking and, by express terms of federal laws on which this Petition is based, express delegated federal regulatory enforcement; California Department of Water Resources California Energy Resources Scheduling Division ["DWR"]; Pacific Gas and Electric Company ["PG&E"], Southern California Edison Company ["SCE"]; the IOUs; California corporations that are the primary energy supplier for large portions of the State of California with ownership of a substantial portion of the power grid in their service areas and state enabled monopoly energy corporations acting collusively and in concert with CPUC, and the large energy supplier Mountain View Power Partners.

¹⁴ See FERC's Notice at: http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20120703-3038

“Section 210(h)(2) of the Public Utility Regulatory Policies Act of 1978 [“PURPA”] authorizes the Federal Energy Regulatory Commission [“FERC” or “Commission”] to enforce the requirements of PURPA, promulgated pursuant to Section 210(f), against a state regulatory agency. Petitioner Californians for Renewable Energy, Inc. [“CARE”], a corporation representing California based small scale energy companies, acting on behalf of its members, and Petitioners and CARE members Michael E. Boyd, Robert M. Sarvey, individually [all petitioners referred to collectively as “Petitioners”], hereby Petition to enforce the requirements of PURPA, promulgated pursuant to Section 210(f), against the California Public Utilities Commission [“CPUC”] and the California Department of Water Resources California Energy Resources Scheduling Division [“DWR”].” [Petition P. 1]

IV. CONCLUSIONS

The Federal Energy Regulatory Commission found in 2011 that the CPUC’s contracts violate the Public Utility Regulatory Policies Act of 1978 (PURPA)¹⁵ because such projects are not tiered by size and type of energy resource. On March 14, 2012, in Case 11-cv-04975-SJO (JCGx), the Honorable S. James Ortero, US District Judge issued an Order¹⁶ denying Defendant CPUC’s Motion to Dismiss Plaintiff Solutions For Utilities, Inc. (SFUI) finding they hadn’t established sufficient evidence that any of those contracts presented to the Court complied with PURPA. “In the instant Motion, the CPUC Defendants point to those contracts that they argue are PURPA compliant. (See Mot. 5-8.)¹⁷ SFUI responds that none of the contracts identified by the CPUC Defendants permits QFs to interconnect with utilities and obtain a rate for their electric energy equal

¹⁵ <http://www.law.cornell.edu/uscode/text/16/chapter-46>

¹⁶ <http://www.calfree.com/031114174136.pdf> at page 4.

to avoided cost. (Opp'n 11.) The Court cannot determine at this juncture whether the contracts identified by the CPUC Defendants actually comply with PURPA.”

Until such time as CPUC establishes for the US district court that it has any PURPA compliant contracts whatever; the CPUC can not approve any wholesale contracts outside of PURPA [i.e., no Novated DWR contract; no MPR contracts; no DLAP contracts; no CHP contracts; no so-called competitive bid contracts, none.]

For the reasons presented CARE respectfully requests rehearing be granted and the Application, be denied.

Respectfully submitted,



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July 3, 2012

Attachment 1
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

CALifornians for Renewable Energy, Inc.
Michael E. Boyd
Robert M. Sarvey

v.

Docket No. EL12-82-
000

California Public Utilities Commission
California Department of Water Resources
Pacific Gas and Electric Company
Southern California Edison Company
Mountain View Power Partners

NOTICE OF PETITION FOR ENFORCEMENT AND COMPLAINT

(July 3, 2012)

Take notice that on July 2, 2012, pursuant to section 210(h)(2) of the Public Utility Regulatory Policies Act of 1978 (PURPA), CALifornians for Renewable Energy, Inc., Michael E. Boyd, and Robert M. Sarvey (collectively Petitioner) filed a Petition for Enforcement requesting the Federal Energy Regulatory Commission (Commission) exercise its authority and initiate enforcement action against the California Public Utilities Commission, California Department of Water Resources, Pacific Gas and Electric Company, Southern California Edison Company, and Mountain View Power Partners (collectively Respondent) to ensure that PURPA regulations are properly and lawfully implemented by Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file

Attachment 1 continued

electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, DC. There is an “eSubscription” link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on July 23, 2012.

Kimberly D. Bose,
Secretary.

Verification

I am an officer of the Intervening Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 3rd day of July, 2012, at San Francisco, California.



Lynne Brown Vice-President
CALifornians for Renewable Energy, Inc.
(CARE)