

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Application of Southern California Edison Company (U338E) for a Commission Finding that its Procurement-Related and Other Operations for the Record Period January 1 Through December 31, 2010 Complied with its Adopted Procurement Plan; for Verification of its Entries in the Energy Resource Recovery Account and Other Regulatory Accounts; and for Recovery of \$25.613 Million Recorded in Three Memorandum Accounts.

A.11-04-001  
(Filed April 1, 2011)

**REPLY BRIEF  
OF THE DIVISION OF RATEPAYER ADVOCATES  
(PUBLIC VERSION)**

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## **I. INTRODUCTION**

Pursuant to Rule 13.11 of the Commission's Rules of Practice and Procedure and by order of the Administrative Law Judge, the Division of Ratepayer Advocates (DRA) submits this post hearing Reply Brief on Southern California Edison's (SCE) above referenced Application. This Reply Brief will address SCE's Opening Brief and Pacific Gas & Electric Company's (PG&E) Opening Brief regarding the following subset of contested issues in this proceeding: (1) whether SCE satisfied the Commission's least-cost dispatch mandate to use the most cost effective mix of resources, and thereby minimize costs to ratepayer for the 2010 Record Period, (2) the reasonableness of SCE's requested recovery of certain post-2006 costs recorded in the Mohave Balancing Account (MBA), and (3) DRA's recommendation that the Commission order SCE to both address internal auditing of utility-retained generation (URG) in SCE's ERRA Compliance Application for the 2012 Record Period, as well as complete a comprehensive audit of two URG facilities (SONGS and Big Creek) during the 2012-13 Record Periods.<sup>1</sup>

## **II. DISCUSSION**

### **A. EVIDENTIARY STANDARDS AND BURDENS OF PROOF**

SCE's Opening Brief mischaracterizes the applicable burden of proof in this proceeding generally, as well as the standard of proof applicable to the specific contested issues.<sup>2</sup> Specifically, SCE asserts that its ultimate burden of proof is based on a "preponderance of the evidence" standard,<sup>3</sup> and that the burden is on DRA "to produce sufficient evidence to support its disallowance recommendation." Regarding this alleged burden on DRA, SCE cites the following Commission language:

[W]here other parties propose a result different from that asserted by the utility, they have the burden of going forward

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<sup>1</sup> The following issues, while not addressed in this Reply Brief, were addressed in DRA's Opening Brief and prior pleadings in this proceeding: (1) DRA's recommendation that the Commission defer \$204 million of SCE's CAISO 2010 Net Market Cost pending a showing of reasonableness of such costs, (2) the reasonableness of SCE's requested recovery of a \$1.2 million Mountainview availability incentive payment, and (3) DRA's recommendation that the Commission defer \$789,000 for 2010 Mountainview Emission Credits for consideration in SCE's ERRA compliance case for the record year 2011.

<sup>2</sup> See SCE Opening Brief, pp. 4-5.

<sup>3</sup> SCE Opening Brief, p. 4.

to produce evidence, distinct from the ultimate burden of proof. The burden of going forward to produce evidence relates to raising a reasonable doubt as to the utility's position and presenting evidence explaining the counterpoint position.

(SCE Opening Brief, p. 4 citing *Re Pacific Bell* (1987) 27 CPUC 2d 1, 22: D.87-12-067.)

According to SCE, DRA's disallowance recommendations in the instant proceeding "[lack] the evidentiary support necessary to support its burden of production."<sup>4</sup> SCE misstates the applicable burden and standard of proof in several respects.

SCE fails to recognize the burden of proof of reasonableness never shifts from the utility, and that burden must be met by the standard of "clear and convincing evidence," not a "preponderance of the evidence" as SCE states. The instant proceeding is categorized as ratesetting. The Commission's charge is to ensure that all rates demanded or received by a public utility are just and reasonable; "no public utility shall change any rate ... except upon a showing before the Commission, and a finding by the Commission that the new rate is justified."<sup>5</sup> Thus, in ratemaking applications, the burden of proof is on the applicant utility.<sup>6</sup>

In a 1980 decision, the Commission stated what has become a frequently quoted position on the burden of proof:

Of course the burden of proof is on the utility applicant to establish the reasonableness of energy expenses sought to be recovered. We expect a substantial affirmative showing by each utility with percipient witnesses in support of all elements of its application.<sup>7</sup>

In a later ratemaking proceeding, the Commission confirmed:

...the fundamental principle involving public utilities and their regulation by governmental authority that the burden rests heavily upon a utility to prove it is entitled to rate relief and

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<sup>4</sup> SCE Opening Brief, p. 5.

<sup>5</sup> *Application of Pacific Gas and Electric Company* (2000) D. 00-02-046, p. 36, 2000 Cal. PUC LEXIS 239.

<sup>6</sup> *Re Energy Cost Adjustment Clauses* (1980) 4 CPUC 2d 693, 701; D.92496.

<sup>7</sup> *Re Southern California Edison Company* (1983) 11 CPUC 2d 474, 475; D.83-05-036.

not upon the Commission, its Staff, or any interested party or protestant, such as TURN, to prove the contrary.<sup>8</sup>

The Commission has noted that there is no distinction between types of ratemaking cases with respect to the utility's burden of proof:

The inescapable fact is that the ultimate burden of proof of reasonableness, whether it be in the context of test-year estimates, prudence reviews outside a particular test year, or the like, never shifts from the utility which is seeking to pass its costs of operations onto ratepayers on the basis of the reasonableness of those costs.<sup>9</sup>

The Commission has also specified the standard of proof that must be met by the utility:

... it is [the utility's] direct showing that must provide the clear and convincing evidence. Without establishing that basis, [the utility] will not have met its burden of proof.<sup>10</sup>

To meet the “clear and convincing evidence” standard of proof, “... the applicant must produce evidence having the greatest probative value.”<sup>11</sup> As the Commission further explained, clear and convincing evidence is “proof by evidence that is clear, explicit and unequivocal; that is so clear as to leave no substantial doubt; or that is sufficiently strong to demand the unhesitating assent of every reasonable mind.”

Finally, the Commission recently confirmed that the burden is on the utility:

As the Applicant, SCE must meet the burden of proving that it is entitled to the relief it is seeking in this proceeding. SCE has the burden of affirmatively establishing the reasonableness of all aspects of its application. Intervenors

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<sup>8</sup> *Application of Pacific Gas and Electric Company* (2000) D.00-02-046, p. 36, 2000 Cal. PUC LEXIS 239 citing *Re Pacific Bell* (1987) 27 CPUC 2d 1, 21, D.87-12-067. Moreover, in footnote 7 of D.00-02-046 the Commission emphasized that “[it] stated in D.87-12-067 that ‘[t]he longstanding and proper rule is set forth in D.90642 at 2 CPUC 89, 98-99 and requires that the utility meet its burden by clear and convincing evidence. To meet this burden we have specified that ‘. . . the applicant must produce evidence having the greatest probative force.’ (D.87.12-067, 27 CPUC2d 1, 19.)” (emphasis added).

<sup>9</sup> Opinion Regarding Proposed General Rate Increase (2004) D.04-03-034, p. 7, emphasis added.

<sup>10</sup> Opinion on Southern California Edison Company's Test Year 2006 General Rate Case Increase Request (2006) D.06-05-016, p. 7, emphasis added.

<sup>11</sup> *Application of Pacific Gas and Electric Company* (2000) D.00-02-046, pp. 36-37, 2000 Cal. PUC LEXIS 239.) Any doubts “...must be resolved against the party upon whom rests the burden of proof.” (*Application of PT&T Co. for A General Rate Increase* (1970) 2 CPUC 2d 89, 98-9, D.90462.)

do not have the burden of proving the unreasonableness of SCE's showing.<sup>12</sup>

Accordingly, as the Applicant in this ratesetting proceeding, SCE has the burden of proving by clear and convincing evidence that it dispatched its energy in a least-cost manner pursuant to the Standard of Conduct (SOC) 4 mandate, that its requested relief for the Mohave Balancing Account is reasonable, and that its operation of its owned generation facilities is reasonable. As evidenced by the record and detailed below, SCE has failed to provide clear and convincing evidence to meet this requisite initial burden. Accordingly, there is no "shift" of burden onto DRA, and DRA's recommendations should be adopted based on SCE's failure to make this *prima facie* showing.

Even assuming, *arguendo*, that DRA does carry a "burden of production" as referenced by SCE, which is entirely distinct from the ultimate burden of proof, the Commission has been clear:

The burden of going forward to produce evidence relates to raising a reasonable doubt as to the utility's position and presenting evidence explaining the counterpoint position. Where this counterpoint causes the Commission to entertain a reasonable doubt regarding the utility's position, and the utility does not overcome this doubt, the utility has not met its ultimate burden of proof.<sup>13</sup>

Again, DRA's recommendations should be adopted based on SCE's failure to make its requisite *prima facie* showing. Nevertheless, as demonstrated by the record and detailed below, DRA has presented evidence that clearly establishes more than a reasonable doubt as to whether SCE should be entitled recovery regarding the contested issues in this proceeding, and SCE has not overcome this doubt with any evidence.

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<sup>12</sup> See *In the Matter of the Application of California Water Company* (2003) D.03-09-021, p. 17, emphasis added.

<sup>13</sup> *Re Pacific Bell* (1987) 27 CPUC 2d 1, 22: D.87-12-067, emphasis added.

## **B. LEAST COST DISPATCH**

### **1. SCE's Least-cost dispatch for the 2010 Record Period was not pre-approved in SCE's previous year ERRA Compliance proceeding or in SCE's 2006 LTPP**

SCE's Opening Brief incorrectly alleges that its least-cost dispatch showing for the 2010 Record Period was pre-approved by DRA and the Commission in both SCE's 2009 ERRA Compliance proceeding (A.10-04-002), as well as SCE's approved 2006 Long-Term Procurement Plan (LTPP).<sup>14</sup> In a related argument, both SCE and PG&E appear to assert that SCE's description of its least-cost dispatch strategy and processes are alone sufficient to satisfy SCE's burden on this issue, and that the California Independent System Operator (CAISO), not SCE, is ultimately responsible for least-cost dispatch based on selection of bids received from market participants. These arguments lack merit.

#### **a) SCE's 2009 ERRA Compliance proceeding**

SCE attempts to argue that DRA "endorsed" SCE's 2010 Record Period least-cost dispatch strategy because DRA did not offer testimony on least-cost dispatch in SCE's 2009 ERRA Compliance proceeding. In support, SCE asserts that "SCE employed the same LCD 'strategy' for its dispatchable resources in the second half of 2009 [post-MRTU] that it did in 2010."<sup>15</sup> SCE's reliance on DRA's silence regarding least-cost dispatch in an unrelated proceeding is flawed in several respects and should be rejected. Most importantly, just as Public Utilities Code (PU Code) Section 1708 prevents any Commission from binding future Commissions, one DRA team's statement or silence on an issue in one proceeding does not bind a future DRA team's right to take a different or initial position on that issue in a different proceeding. The value of this principal is self-evident; utility regulation is dynamic, and ever-changing facts and circumstances require that the Commission and parties be allowed flexibility in the development of policy positions. DRA's silence on the issue of least-cost dispatch in SCE's unrelated 2009 ERRA Compliance proceeding cannot be construed as an implicit or explicit

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<sup>14</sup> See SCE Opening Brief, pp. 5-8.

<sup>15</sup> SCE Opening Brief, p. 5.

“endorsement” of SCE’s least-cost dispatch compliance for the instant 2010 Record Period proceeding. Similarly, DRA’s silence on this issue in SCE’s 2009 ERRA Compliance proceeding does not mean that SCE achieved least-cost dispatch in the 2010 Record Period simply because SCE may have used the same least-cost dispatch strategy for 2009. Finally, the fact that DRA did not analyze and comment on this issue in an unrelated prior proceeding does not constitute a waiver of DRA’s right to challenge SCE’s least-cost dispatch for the 2010 Record Period.

Next, SCE appears to argue that the Commission’s approval of SCE’s least-cost dispatch showing in SCE’s 2009 ERRA Compliance proceeding (D.11-10-002) constitutes an implicit approval of SCE’s least-cost dispatch showing for the instant 2010 Record Period. In support, SCE emphasizes the following Commission language in D.11-10-002:

SCE described in detail the strategies and processes it used after April 1, 2009 to implement the supply and demand bids. ... Based on the testimony of SCE and our review of the record, we conclude that all dispatch-related activities SCE performed during the Record Period complied with Commission orders and SCE’s procurement plan.<sup>16</sup>

According to SCE, this language “affirms that SCE followed appropriate LCD policy in 2010 (because it followed the same strategy as it did in the second half of 2009).”<sup>17</sup> However, the above language makes clear that the Commission’s least-cost dispatch determination in SCE’s 2009 ERRA Compliance proceeding was based on its “review of the record” in that proceeding. As noted by SCE, DRA did not submit testimony on the least-cost dispatch issue in the 2009 ERRA Compliance proceeding. In contrast, DRA’s Report and the evidentiary hearing in the instant proceeding demonstrate that SCE’s market-revenue based bidding of Mountainview failed to achieve least-cost dispatch due to inefficient utilization of the resource. SCE’s burden to comply with the SOC 4 least-cost mandate is an ongoing obligation, to be determined on an annual basis in the ERRA Compliance proceeding. Accordingly, the fact that the Commission approved of

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<sup>16</sup> SCE Opening Brief, p. 6, citing D.11-10-002, pp. 6-7, emphasis added by DRA.

<sup>17</sup> SCE Opening Brief, p. 6.

SCE's unopposed showing in the 2009 ERRA Compliance proceeding is irrelevant to whether SCE met its showing in the instant proceeding or any future ERRA Compliance proceeding. Finally, DRA notes again that PU Code Section 1708 prevents any Commission from binding future Commissions. SCE's argument that the Commission's 2009 ERRA Compliance decision implicitly or explicitly "affirmed" a finding that SCE achieved least-cost dispatch for the 2010 Record Period must be rejected.

**b) SCE's 2006 LTTP and AB 57**

Both SCE and PG&E assert that DRA's least-cost dispatch disallowance recommendation is either explicitly or implicitly inconsistent with Assembly Bill (AB) 57. A portion of AB 57 does eliminate after-the-fact reasonableness review of an IOU's actions if the IOU follows its Commission-approved procurement plan.<sup>18</sup> Specifically, SCE asserts that its approved 2006 LTTP "includes a discussion of compliance with LCD that is consistent with how SCE operated during the 2010 Record Period" and that "DRA does not claim that SCE did not follow its Commission-approved LTTP, which is the only standard SCE may be judged by in this ERRA compliance review."<sup>19</sup> SCE's Opening Brief quotes large portions of SCE's general least-cost dispatch process as described in SCE's 2006 LTTP. SCE seems to be arguing that its dispatch operations for the 2010 Record Period were sufficiently consistent with the language in its approved 2006 LTTP such that the Commission has pre-approved SCE's least-cost dispatch showing and methodology four years later, in the instant ERRA Compliance proceeding. In a related assertion, PG&E states that "DRA is arguing that after-the-fact SCE must demonstrate that its actual dispatch was least-cost dispatch" and that, contrary to AB 57, "DRA's implicit assumption is that if SCE cannot, or did not, make this after-the fact showing, certain costs should be disallowed."<sup>20</sup> As discussed below, these arguments ignore that DRA's analysis and disallowance recommendation

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<sup>18</sup> See SCE Opening Brief, pp. 6-8; PG&E Opening Brief pp. 5-6, citing PU Code Section 454.5(d)(3).

<sup>19</sup> SCE Opening Brief pp. 7, 8.

<sup>20</sup> PG&E Opening Brief, p. 6.

for least-cost dispatch in the instant proceeding are consistent with the Commission's clearly defined compliance review for least-cost dispatch pursuant to SOC 4.<sup>21</sup>

The Commission has clearly explained that, while SOC 4 is an upfront standard and an element of each IOU's procurement plan, "the utility bears the burden of proving compliance with the [SOC 4] standard set forth in its plan."<sup>22</sup> This language was added to each IOU's procurement plan to avoid "the dangers of this Commission agreeing to an interpretation of AB 57/SB 1976 that would remove our continuing oversight of utility operational performance and, thereby, remove the Commission's ability to meet its statutory requirement to assure 'just and reasonable' rates."<sup>23</sup> Furthermore, the Commission has clearly defined the IOUs' burden to demonstrate compliance with SOC 4's least-cost mandate relative to DRA's right to challenge the IOUs' showing on this issue:

The outcome or standard of review has been predetermined – that is the lowest cost. SCE must demonstrate that it has complied with this standard, by providing sufficient information and/or analysis in order for the Commission to verify that SCE's dispatch resulted in the most-cost-effective mix of total resources, thereby minimizing the cost of delivering electric services. Based on analyses of SCE's

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<sup>21</sup> SOC 4 states:

The utilities shall prudently administer all contracts and generation resources and dispatch energy in a least-cost manner. Our definitions of prudent contract administration and least-cost dispatch are the same as our existing standard.

(D.02-10-062, p. 52 and Conclusion of Law 11, p. 74.)

<sup>22</sup> D.02-12-074 (December Decision), p. 54 and Order 24; also see, D.05-01-054, p. 5; D.05-04-036, pp. 15-16. The Commission recently summarized the appropriate review of least-cost dispatch in SCE's 2009 ERRRA compliance proceeding as follows:

The question to be addressed in the ERRRA proceeding regarding least-cost dispatch is whether the utility has complied with this standard -- that is, (1) whether the utility has dispatched the dispatchable contracts under its control "when it is most economical to do so," (2) whether it has "disposed of economic long power and purchased economic short power in a manner that minimizes ratepayer costs," and (3) whether it has used "the most cost-effective mix of its total resources, thereby minimizing the cost of delivering electrical services."

(D.10-07-049, pp. 5-6, quoting D.02-12-074, Ordering Paragraph 24b.)

<sup>23</sup> December Decision, pp. 53-54. The 'just and reasonable rate' requirement is from PU Code Section 454.5(d)(1) and 454.5(d)(5).

showing and subsequent discovery, [D]RA or any other party may take the position that SCE did not fully comply with SOC 4. In such cases, we will judge the merits of the parties' positions and may impose disallowances and/or penalties.... Imposing a compliance process for least-cost dispatch under SOC 4, rather than a reasonableness review process, does not diminish our ability to ensure just and reasonable rates.<sup>24</sup>

...

[I]f [D]RA or another party can demonstrate that the utility 'has not dispatched resources in a least-cost manner, the Commission will review that evidence and make appropriate adjustments for non-compliance.'<sup>25</sup>

DRA's record findings and disallowance recommendation regarding SCE's failure to demonstrate achievement of last-cost dispatch are consistent with AB 57 and the Commission's above clearly defined standard of compliance review under SOC 4 for least-cost dispatch in an ERRA Compliance proceeding. Contrary to PG&E's assertion regarding AB 57, DRA is not arguing that "after-the-fact SCE must demonstrate that its actual dispatch was least-cost."<sup>26</sup> Neither DRA nor the Commission expects an IOU to demonstrate that the after-the-fact results of its dispatch reflected perfect foresight of the CAISO market. However, as indicated by DRA Witness Stueve and detailed in DRA's Opening Brief,<sup>27</sup> SCE has failed to meet its burden to make a showing that its chosen bidding strategy for Mountainview resulted in the most cost effective mix of total resources, thereby minimizing costs to ratepayers; such information/analysis is simply absent from SCE's application.

In contrast, DRA has provided record evidence to demonstrate that SCE's chosen strategy to (1) condition availability of Mountainview based on calculation of projected market-based revenues and self-estimated variable plant costs, and (2) bid Mountainview at prices that could not accurately reflect the resources true cost, resulted in underutilization of Mountainview, excessive CAISO charges, and avoidable market purchases from other resources in the CAISO market. As a result of these choices made

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<sup>24</sup> D.05-04-036, p. 26, citing D.05-01-054, pp. 14-15.

<sup>25</sup> D.05-04-036, p. 27, citing D.05-01-054, p. 16.

<sup>26</sup> PG&E Opening Brief, p. 6.

<sup>27</sup> See e.g., discussion and evidence cited in DRA Opening Brief, pp. 44-47.

by SCE, the record demonstrates that SCE failed to satisfy the Commission's least-cost dispatch mandate to use the most cost effective mix of resources, and thereby minimize costs to ratepayer for the 2010 Record Period.

For the above reasons alone, the Commission should reject SCE's argument that its least-cost dispatch showing for the 2010 Record Period was pre-approved by the Commission via approval of SCE's 2006 LTPP.<sup>28</sup> The annual ERRA Compliance review is where SCE must meet its burden to demonstrate achievement of the Commission's least-cost mandate; satisfaction of this burden is the dispositive issue to be determined in the instant proceeding. Nevertheless, DRA notes that SCE's 2006 LTPP did not nor could not address the fundamental disputed issue regarding SCE's post-MRTU (2009) Mountainview bidding strategy in the CAISO environment; specifically, SCE's chosen strategy in the 2010 Record Period to (1) condition availability of Mountainview based on calculation of projected market-based revenues and self-estimated variable plant costs, and (2) bid Mountainview at prices that could not accurately reflect the resources true cost.<sup>29</sup> As SCE indicated, this market-revenue based bidding strategy was implemented as a "workaround" to address perceived limitations in the CAISO post-MRTU (2009) market environment. SCE of course did not own Mountainview until mid-2009, several years subsequent to approval of its 2006 LTPP. Finally, the fact that SCE articulated a general (pre-MRTU) plan in 2006 to achieve least-cost dispatch does not satisfy SCE's burden in the instant proceeding to "provide sufficient information and/or analysis in order for the Commission to verify that SCE's dispatch resulted in the most cost-effective mix of total resources"<sup>30</sup> for the 2010 Record Period. The Commission should reject SCE's argument that approval of its 2006 LTPP effectively rubber-stamped the utility's least-cost dispatch showing for subsequent ERRA Compliance review.

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<sup>28</sup> See SCE Opening Brief, pp. 5-8.

<sup>29</sup> Fn. 11 of SCE's Opening Brief recognizes that SCE's 2006 LTPP could not capture the post-MRTU Mountainview bidding strategy in dispute ("SCE's LCD execution during the 2010 Record Period was consistent in principle with the 2006 LTPP discussion, but specific post-MRTU market procedures necessarily differ..." [emphasis added]).

<sup>30</sup> See *supra*, fn. 24, emphasis added.

**c) The IOUs are responsible for compliance with the Commission’s least-cost mandate, while the CAISO simply awards energy and capacity by selecting from ‘least-cost-as-bid’ resources**

Both SCE and PG&E appear to assert that SCE’s description of its least-cost dispatch strategy and processes are alone sufficient to satisfy SCE’s burden on this issue, and that the CAISO, not SCE, is ultimately responsible for least-cost dispatch based on selection of bids received. For example, PG&E states that “SCE submitted evidence concerning its LCD strategy and processes, and explained that the CAISO, not SCE, ultimately made the dispatch decision based on least cost. [footnote omitted] This information is sufficient to demonstrate compliance with the Commission’s LCD requirements.”<sup>31</sup> Similarly, SCE argues that “if a URG resource does not clear the IFM, it is because it was not required to serve SCE or CAISO-area demand, as less costly resources were available. . . . [T]he market – not hindsight guesswork by DRA – selects the least-cost (*i.e.*, most economic) resource mix.”<sup>32</sup> These arguments demonstrate a fundamental misunderstanding of SCE’s least-cost dispatch obligation relative to the post-MRTU CAISO market.

Specifically, SCE and PG&E fail to recognize the distinction between (1) SCE’s burden to demonstrate that its chosen dispatch strategies and practices resulted in the most cost-effective mix of total resources, and (2) the CAISO’s process to dispatch resources based on ‘least-cost-*as-bid*’ by market participants. As noted in DRA’s Report and by DRA Witness Stueve at hearing, the CAISO awards energy and capacity by selecting from ‘least cost-*as-bid*’ resources from market participants, which does not necessarily equate to the Commission’s least-cost dispatch mandate.<sup>33</sup> Notably, the CAISO bid floor and ceiling for the Record Period ranged from a negative \$30/MWh up

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<sup>31</sup> PG&E Opening Brief, p. 6.

<sup>32</sup> SCE Opening Brief, p. 16.

<sup>33</sup> DRA-1-C, p. 2-12, emphasis added; RT, pp. 37-40; 83.

to \$700/MWh.<sup>34</sup> Market participants have choices in how they calculate bid prices, and how they present their resources to the CAISO market to recover startup and minimum load costs (e.g., designation of Registered vs. Proxy option) to achieve least-cost dispatch.<sup>35</sup> Accordingly, SCE's satisfaction of least-cost dispatch depends in part on whether SCE, through the calculation choices and resource designations it makes as part of its bidding strategy, presented its resources to the CAISO market appropriately and avoided unnecessary reliance on the CAISO markets. SCE Witness Watson acknowledged this requirement:

[O]ur demonstration of compliance with least-cost dispatch is made by how we put the resources to market and whether we behaved reasonably. So did we bid the resource appropriately? If we did these market workarounds we speak of, did we do those appropriately? That's how we demonstrate we have obtained least-cost dispatch.<sup>36</sup>

...

The Commission may examine SCE's procurement strategies (e.g., assess if SCE should have relied more or less on CAISO markets), and does so as part of its review of SCE's LCD activities in this ERRA review proceeding.<sup>37</sup>

As detailed in the record and DRA's Opening Brief, DRA asserts that in light of SCE's knowledge that the CAISO was unable to fully model CCGTs such as Mountainview, SCE could have appropriately self-scheduled more of Mountainview's output to achieve a reasonable resource capacity factor with certainty (e.g., 72.3% versus only 66.6% as achieved); a strategy that would have exposed less of Mountainview's output to the risks of bidding into both the integrated forward market (IFM) and real-time

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<sup>34</sup> DRA-1-C, p. 2-12.

<sup>35</sup> A recently released White Paper by the CAISO's Department of Market Monitoring *specifically* emphasizes that when market participants choose to elect the Registered Cost Option it means that the 'bid' can be up to twice a unit's actual costs. (*California Greenhouse Gas Cap and Generation Variable Costs*, February 10, 2012, p. 9.)

<sup>36</sup> RT, p. 27:7-15, emphasis added. Also see SCE-1-C, p. 5 wherein SCE states that compliance with the SOC 4 least-cost standard is based upon, among other objectives, "when scheduling, or submitting bids for, resources with the CAISO, the utility does so in a manner that gives the CAISO the opportunity to dispatch them in the most cost effective manner...."

<sup>37</sup> SCE-6-C, p. 14, emphasis added.

market (RTM) price volatility.<sup>38</sup> Instead, SCE’s underutilization of Mountainview due to minimal self-scheduling in 2010 resulted in stranded ratepayer costs;<sup>39</sup> while at the same time the incursion of **avoidable** Bid Cost Recovery (Uplift) charges.<sup>40</sup> Moreover, SCE’s “workaround” strategy presented Mountainview to the CAISO market with bid prices that did not reflect the resource’s true variable costs. Specifically, SCE’s bid prices were calculated based [REDACTED]

[REDACTED]. SCE not only captured ‘sunk’ fixed costs for Mountainview during the 2010 Record Period, [REDACTED]

[REDACTED].<sup>41</sup> As a result of non-true cost bids, SCE

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<sup>38</sup> SCE illustrates its “potential bidding response under a day-ahead load forecast of 10,000 MW \*assuming a [REDACTED]

<sup>39</sup> As SCE notes in its Rebuttal Testimony, which precisely articulates DRA’s point, “[f]ixed costs will be incurred by SCE’s customers regardless of what the plant produces...” (SCE-6-C, p. 9.) Therefore, ratepayers ‘pay’ for utility owned generation, and to not have that generation (in this case Mountainview) utilized in a cost-efficient, cost effective manner simply because SCE chose to bid versus appropriately self-schedule unnecessarily stranded an otherwise valuable ratepayer asset. In essence, as DRA Witness Stueve testified, ratepayers took a double hit during the 2010 Record Period. SCE not only had utility owned generation that it could have used more cost-efficiently, but SCE also made non-optimal market purchases following non-awards of Mountainview bids – effectively a ‘double hit’ for ratepayers. (See RT, pp. 58-59.)

<sup>40</sup> SCE-7-C, p.23,L02 / Ch. XII Line No. 9 shows that SCE incurred [REDACTED] million in CAISO Uplift charges overall for the 2010 Record Period; charges that could have been mitigated (lessened) if SCE had self-scheduled more of its resources.

<sup>41</sup> See FERC Docket No. ER04-316-000, pp. 11-12 (<http://www.ferc.gov/EventCalendar/Files/20040225130714-er04-316.pdf>). One of the reasons the FERC required SCE to file Form 1 using Uniform Systems of Accounts to calculate Fixed and Variable O&M Charges was because SCE attempted, and failed, to persuade FERC in its proposal for Mountainview as a PPA to assess and ‘include’ fixed index costs, adders, etc., that did not have a line item such as those of Uniform System of Accounts. On page 12, the FERC stated (emphasis added):

Our review of the proposed Fixed and Variable O&M stated rates indicates that such rates have not been shown to be just and reasonable and may result in unjust and unreasonable rates. Accordingly, we will reject these stated rates for Fixed and Variable O&M and require Mountainview to bill out, as part of this cost-based formula rate, the actual costs incurred, by FERC account number, for fixed and variable O&M expenses. We are not persuaded that the purported incentive to control these cost types with stated rates in intervals between Overhaul cycles is necessary or desirable. Mountainview has an obligation to operate the planned facilities in a prudent and least-cost manner. As such, the recovery of actual costs incurred for Fixed and Variable O&M expenses is appropriate. Accordingly, Mountainview must amend the

exposed Mountainview to suboptimal CAISO bid awards and costly underutilization, as well as **avoidable** CAISO charges and additional market purchases to make up for bids not awarded.<sup>42</sup> For all of the above reasons, DRA emphasizes that it was SCE’s dispatch choices in the 2010 Record Period, independent of the CAISO’s optimization based on least-cost-as-bid, which resulted in failure to use the most cost-effective mix of total resources and minimize costs to ratepayers. The Commission should reject SCE and PG&E’s implication that the CAISO market alone is responsible for the least-cost resource mix.

## 2. SCE’s bids for Mountainview did not reflect the resources true cost

SCE’s Opening Brief asserts that during cross-examination “DRA witness Stueve admitted that SCE engaged in cost-based, not revenue based, bidding.”<sup>43</sup> This statement is simply false. DRA Witness Stueve’s testimony at hearing, as well as the DRA Report, consistently assert that SCE chose the risky strategy to bid Mountainview at prices that could not accurately represent the resource’s true cost; specifically, SCE’s bid prices were based on prior market results and expected outcomes, *self-estimated* variable costs, and an administrative choice to present Mountainview to the CAISO market with election of the [REDACTED] cost option. For example, contrary to SCE’s false assertion, DRA Witness Stueve testified at hearing:

[SCE attorney Archer]: Are you saying that Edison overestimated its self-estimated variable cost when it used the [REDACTED] cost option?

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PPA to reflect this finding and include the specific FERC Account Nos. for Fixed and Variable O&M expenses.

In general, fixed costs are the costs for carrying capital for utility owned generation are recovered in rate base. The average 2010 on-peak wholesale electricity price for SP 15 was \$40.21. (Source: FERC Office of Market Enforcement, citing Platts 2010 data, <http://www.ferc.gov/market-oversight/st-mkt-ovr/som-rpt-2010.pdf> (p. 11).) A true cost-based bid for Mountainview would cover variable costs (operating expenses), which for the 2010 Record Period came to approximately **\$37.40/MWh**. (Source: [http://www.edison.com/images/cms\\_images/c7638\\_2010\\_FERC%20Form\\_1\\_CPUC\\_3846.pdf](http://www.edison.com/images/cms_images/c7638_2010_FERC%20Form_1_CPUC_3846.pdf) (p. 375 of 532).)

<sup>42</sup> For example, SCE incurred [REDACTED] million in CAISO Uplift charges for the 2010 Record Period. (SCE-7-C, p. 23, Line No.9.)

<sup>43</sup> SCE Opening Brief, p. 11.

[DRA Witness Stueve]: I'm saying that I do not believe it reflected at cost or, quote, unquote, "true cost."<sup>44</sup>

As stated above and detailed in DRA's Opening Brief, SCE's non-true cost bids for Mountainview 'fixed' additional costs into its self-estimated start up and minimum load bids and, as a result, exposed Mountainview to suboptimal CAISO bid awards and costly underutilization, as well as avoidable CAISO charges and additional market purchases to make up for bids not awarded.<sup>45</sup> Instead, SCE could have appropriately self-scheduled more of Mountainview's output to achieve a reasonable resource capacity factor with certainty (e.g., 72.3% versus only 66.6% as achieved); a strategy that would have exposed less of Mountainview's output to the risks of bidding into real-time market price volatility, and avoided a greater portion of the \$310.6 million in CAISO charges for which SCE seeks recovery for the 2010 Record Year. DRA has consistently stated that SCE's market-revenue based bidding of Mountainview resulted in costly inefficiencies and a failure to use the most cost-effective mix of total resources. SCE's mischaracterization of DRA's Witness Stueve's testimony at hearing should be disregarded.

### **3. Appropriate self-scheduling allows for recovery of a resource's variable costs**

SCE challenges the following testimony from DRA Witness Stueve at hearing:

There [are] ways to self-schedule to make sure you recover variable cost. And for example, Edison is in this business a long time, and Edison awards contracts to other suppliers at, say, three times the market clearing price if they produce and deliver energy or capacity at peak hours or during peak seasons. And DRA believes that Edison can do the analysis and appropriately self-schedule to capture variable costs, yes.<sup>46</sup>

According to SCE, this testimony is incorrect because a self-schedule is a price taker, and the market clearing price may be insufficient to cover the resource's variable costs.<sup>47</sup>

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<sup>44</sup> RT, pp. 78-79.

<sup>45</sup> See *supra*, fn. 42.

<sup>46</sup> RT, p. 81.

<sup>47</sup> SCE Opening Brief, pp. 14-15, fn. 35.

Similarly, SCE asserts that “it is not in the interest of customers for Mountainview to run if it is more expensive from a variable cost perspective than other resources available in the market.”<sup>48</sup> Finally, SCE threatens that DRA’s recommendation to appropriately self-schedule a larger portion of Mountainview’s output would result in uneconomic “dumping” of energy, “distorted market results,” and exposure to charges of “anti-competitive behavior” by the CAISO, FERC, or other market participants.<sup>49</sup> These arguments lack merit and mischaracterize DRA’s recommendation.

First, DRA Witness Stueve correctly stated that appropriate self-scheduling of Mountainview would allow SCE to recover the resources variable operating costs. Table 1 below represents a simplified hypothetical illustration of an example of appropriate self-scheduling over a 24-hour period to recover variable operating costs of a 500 MW combined cycle gas turbine (CCGT) resource with duct firing.

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<sup>48</sup> SCE Opening Brief, p. 13.

<sup>49</sup> SCE Opening Brief, p. 15.

**Table 1: Illustration of 24-Hour Self-Schedule to Cover Variable Costs**

A	B	C	D	E	F
Hour Ending (HE)	Market Clearing Price (MCP) (\$/MWh)	Megawatts (MW) Self-Schedule	"True"-Cost (\$/MWh)	Market Revenue (\$/HE) (B * C)	Variable Cost (\$/HE) (C * D)
1	3	160	37.50	480	6,000
2	10	160	37.50	1,600	6,000
3	15	160	37.50	2,400	6,000
4	25	300	37.50	7,500	11,250
5	25	300	37.50	7,500	11,250
6	50	300	37.50	15,000	11,250
7	30	400	32.00	12,000	12,800
8	30	400	32.00	12,000	12,800
9	35	400	32.00	14,000	12,800
10	35	400	32.00	14,000	12,800
11	42	500	42.00	21,000	21,000
12	42	500	42.00	21,000	21,000
13	42	500	42.00	21,000	21,000
14	55	500	42.00	27,500	21,000
15	65	500	42.00	32,500	21,000
16	65	500	42.00	32,500	21,000
17	100	500	42.00	50,000	21,000
18	55	500	42.00	27,500	21,000
19	50	500	42.00	25,000	21,000
20	35	400	32.00	14,000	12,800
21	35	300	37.50	10,500	11,250
22	35	160	37.50	5,600	6,000
23	20	160	37.50	3,200	6,000
<u>24</u>	<u>5</u>	<u>160</u>	<u>37.50</u>	<u>800</u>	<u>6,000</u>
	\$37.67 (Avg.)		\$38.04 (Avg.)	<b>\$378,580</b>	<b>\$334,000</b>

Table 2 below summarizes the Table 1 figures. *Importantly*, note in Table 2 that the 24-hour market revenue exceeds the variable cost by \$44,580 even though the average cost per megawatt hour \$38.04/MWh exceeds the average market-clearing price (MCP) of \$37.67/MWh.

**Table 2: Summary of Hypothetical Illustration of 24-Hour Self-Schedule to Cover Variable Costs**

(A) 500 MW Unit if at 100% Capacity for 1-day <sup>50</sup>	12,000 MW
(B) Illustrated 1-day Self-Schedule <sup>51</sup>	8,660 MW
(C) Capacity Factor <sup>52</sup>	71.67%
(D) Average Market Clearing Price (\$/MWh) <sup>53</sup>	\$37.67
(E) Average Cost (\$/MWh) <sup>54</sup>	\$38.04
(F) Total 1-day Market Revenue <sup>55</sup>	\$378,580
(G) Total 1-day Variable Cost <sup>56</sup>	\$334,000
(H) Market Revenue Covers Variable Cost <sup>57</sup>	\$44,580

<sup>50</sup> 500 MW \* 24hrs = 12,000 MW.

<sup>51</sup> (A) \* (C) = 8,600 MW.

<sup>52</sup> (B) / (A) = 71.67%. Notably, this capacity factor value is close to the 72.3% capacity factor that DRA's Report stated would have represented appropriate self-schedules of Mountainview for the 2010 Record Period. See DRA Opening Brief and cited evidence, p. 17 (footnotes to record evidence omitted here):

Mountainview's output under the SCE-MLV PPA in 2008 was at a capacity factor of 72.3%, whereas Mountainview's output under SCE utility-owned generation (UOG) for the 2010 Record Period was at a capacity factor of only 66.6%. Accordingly, under SCE's utility-ownership Mountainview performed at a lower capacity (5.6%) as compared to under the SCE Mountainview PPA. SCE ratepayers should expect SCE to self-schedule valuable utility-owned assets at appropriately higher output levels in the day-ahead market in order to offset real-time and high price energy market volatility and market place uncertainty, particularly in light of SCE's knowledge that the CAISO was unable to accurately model combined cycle resources such as Mountainview. It is reasonable for the Commission and ratepayers to expect that SCE could have achieved a Mountainview capacity factor as a UOG resource for the 2010 Record Period that was at least equal to the facility's 2008 capacity factor under SCE's PPA with MVL.

<sup>53</sup> Average of Table 1, Column B (Market Clear Price).

<sup>54</sup> Average of Table 1, Column D ("True" Cost).

<sup>55</sup> Sum of Table 1, Column E (Market Revenue).

<sup>56</sup> Sum of Table 1, Column F (Variable Cost).

<sup>57</sup> (F) – (G) = \$44,580.

As demonstrated in Table 1 and 2 above, SCE's Opening Brief argument, as well as SCE's simplified Table II-I hypothetical in Rebuttal Testimony, simply fail to account for longer periods (e.g., 24-hour versus 6-hours<sup>58</sup>); varied self-scheduling quantities (e.g., 160 MW during off-peak hours, 500 MW during peak hours<sup>59</sup>); and *varied* hourly market-clearing prices.

Overall, it matters 'when' and 'how much' SCE self-schedules over a period; not only a period of 24-hours such as in the Table 2 illustration above, but more importantly, over peak season to mitigate high hourly seasonal prices. SCE's Opening Brief and Rebuttal Testimony hypothetical do not account for the fact that appropriate self-scheduling of its resource during peak hours and peak season can help prevent upward pressure on market-clearing prices. If SCE and other market participants 'conditionally' offer power at other than true-cost – for example, only if a resource is [REDACTED] such as SCE's Mountainview strategy – then supply appears 'shorter' than it really is and demand appears urgent, thus escalating prices unnecessarily.

Note in Table 1, Column A above that for hours ending (HE) 1-5, and 22-24 the resource would be considered 'out of the money' (i.e., difference between Column E 'market revenue' and Column F 'variable cost'). In other words, the variable costs (Column F) exceed the market revenue (Column E) for the very early and very late hours of the day. Significantly, however, over the 24-hour period the total market revenue (Column E, \$378,580) exceeds variable cost (Column F, \$334,000) by \$44,580. Again, SCE fails to understand that it matters at what hour and at what quantity a resource is self-scheduled. Note the peak-hour difference during HE 14-19 when maximum capacity provides maximum value.

Figures 1 and 2 below show graphically the same data as in Tables 1 and 2; the hour by hour varied megawatts self-scheduled ranging from 160 MW in the low demand early morning and late evening hours, increasing up to 500 MW maximum during high

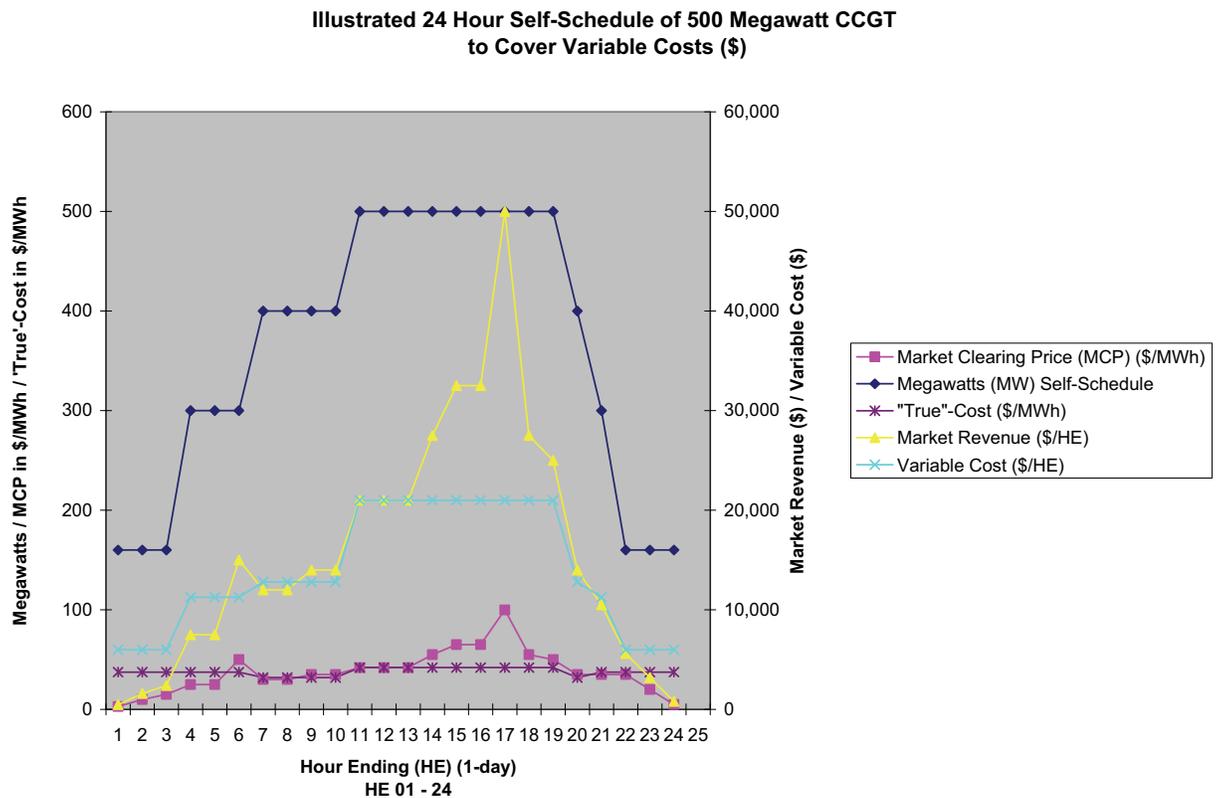
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<sup>58</sup> See SCE -6-C, p. 11 wherein SCE's self-scheduling hypothetical only uses a 6-hour period.

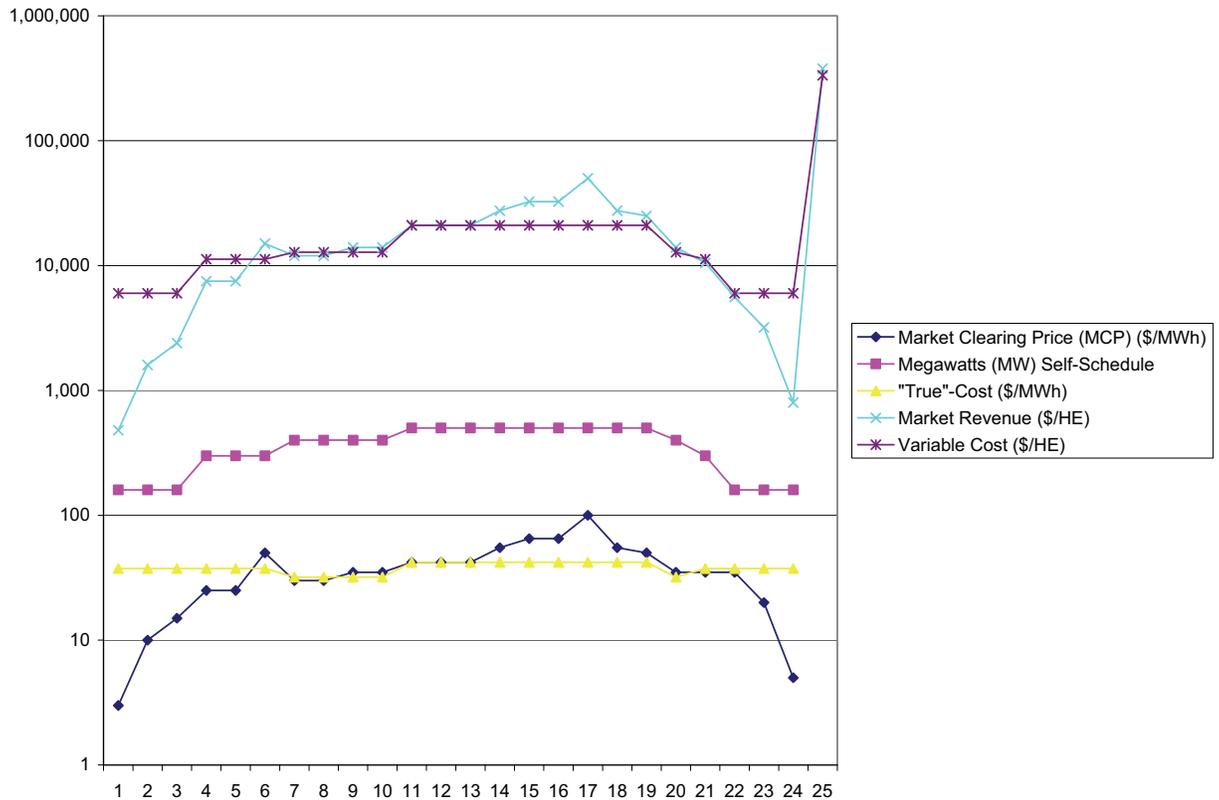
<sup>59</sup> See SCE-6-C, p. 11 wherein SCE's hypothetical assumes a resource that is either on at full output (500 MW) or off (0 MW).

demand hours. Admittedly, variable cost at times exceeds market revenue during off-peak hours; however, as noted previously, market revenue can far exceed variable cost during high demand hours. Self-scheduling in an appropriate manner can make use of a valued ratepayer asset (i.e., Mountainview) without “dumping” energy or causing undue system stress. As demonstrated in Figure 1 and 2, by self-scheduling at 160 MW in the early morning hours the unit would be ready to ramp up come morning ‘rush-hour,’ gradually peaking to maximum output of 500 MW.

**Figure 1: Illustration of 24-Hour Self-Schedule to Cover Variable Cost**



**Figure 2: Illustration of 24-Hour Self-Schedule to Cover Variable Cost**



The above Tables and Figures clearly demonstrate what DRA Witness Stueve testified to and stated at the hearing in response to SCE’s cross examination; “DRA believes that Edison can do the analysis and appropriately self-schedule to capture variable costs.”<sup>60</sup> It is simply disingenuous for SCE to claim otherwise. In fact, SCE chose specifically to [REDACTED] its 200 MW hydro pumped storage unit, Eastwood, precisely for the reasons the utility said it ‘bid’ Mountainview; to account for CAISO market software limitations.<sup>61</sup> [REDACTED] Eastwood did not prevent Edison from recovering its variable costs for the Record Period.<sup>62</sup> Moreover, [REDACTED]

<sup>60</sup> RT, p. 81.

<sup>61</sup> SCE-6-C, Appendix A (SCE DR Response), pp. A-2 to A-3 (“[REDACTED]”); also see RT, p. 60 (DRA Witness Stueve stated that “DRA did not have an issue with the outcome of how [SCE] approached CAISO market limitations on another resource. We believe Edison achieve a more than appropriate capacity factor and utilization of another resource.”).

<sup>62</sup> See *supra*, fn. 61; see generally SCE-1-C, pp. 34-37 (e.g., “SCE’s Eastwood pumped storage facility was operated in a prudent and reasonable manner for the Record Period.” [p. 34] “Although it requires more energy for pumpback than is gained from the resultant generation, pumping is done during off-peak

Eastwood resulted in a more than appropriate capacity factor (historically referenced), which is one reason dispatch of Eastwood is not contested by DRA for the 2010 Record Period, whereas SCE's inefficient dispatch of Mountainview is in dispute.

Finally, regarding SCE's assertion that appropriate self-scheduling could lead to charges of "anti-competitive behavior," DRA emphasizes that the CAISO tariff allows self-scheduling; it is not anti-competitive in that a self-scheduled resource is a price-taker.

In summary and as detailed in DRA's Opening Brief, SCE could have appropriately self-scheduled more of Mountainview's output to achieve a reasonable resource capacity factor with certainty (e.g., 72.3% versus only 66.6% as achieved); a strategy that would have exposed less of Mountainview's output to the risks of bidding into both the integrated forward market (IFM) and real-time market (RTM) price volatility.<sup>63</sup> Instead, SCE's underutilization of Mountainview due to minimal self-scheduling in 2010 and bidding at prices that did not represent the resources true cost, resulted in stranded ratepayer costs<sup>64</sup> and the incursion of **avoidable** Bid Cost Recovery (Uplift) charges.<sup>65</sup> This underutilization and associated **avoidable** costs are indicative of SCE's failure to achieve least-cost dispatch for the 2010 Record Period.

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hours at a much lower cost of energy than during subsequent generation done at on-peak hours. This results in a very positive economic benefit for ratepayers." [p. 35, fn. 38])

<sup>63</sup> SCE illustrates its "potential bidding response under a day-ahead load forecast of 10,000 MW (assuming a [REDACTED] forecasting error) and day-ahead price forecast of [REDACTED] (assuming a [REDACTED] forecasting error):" (SCE-1-C, p. 7.)

<sup>64</sup> As SCE notes in its Rebuttal Testimony, which precisely articulates DRA's point, "[f]ixed costs will be incurred by SCE's customers regardless of what the plant produces..." (SCE-6-C, p. 9.) Therefore, ratepayers 'pay' for utility owned generation, and to not have that generation (in this case Mountainview) utilized in a cost-efficient, cost effective manner simply because SCE chose to bid versus appropriately self-schedule unnecessarily stranded an otherwise valuable ratepayer asset. In essence, as DRA Witness Stueve testified, ratepayers took a double hit during the 2010 Record Period. SCE not only had utility owned generation that it could have used more cost-efficiently, but SCE also made non-optimal market purchases following non-awards of Mountainview bids – effectively a 'double hit' for ratepayers. (See RT, pp. 58-59.)

<sup>65</sup> SCE-7-C, p.23,L02 / Ch. XII Line No. 9 shows that SCE incurred [REDACTED] million in CAISO Uplift charges overall for the 2010 Record Period; charges that could have been mitigated (lessened) if SCE had self-scheduled more of its resources.

### III. MOHAVE BALANCING ACCOUNT AUDIT

#### A. **DRA’s recommendation that the Commission recognize the early write-off of both plant, and the associated capital additions, in addition to the reduction in the AFUDC, is within the scope of this Proceeding.**

The Assigned Commissioner’s Ruling and Scoping Memo issued in this proceeding on August 17, 2011 stated that “the issues listed by SCE and DRA are within the scope of this proceeding.”<sup>66</sup> The issues listed by SCE in its Application included:

(3) all other SCE activities subject to Commission review in this ERRA Review proceeding complied with applicable Commission decisions and resolutions.<sup>67</sup>

DRA included in its list of issues in its protest to SCE’s application:

whether the entries in the ERRA are reasonable; ... and, whether the entries in the “other regulatory accounts” were appropriate, correctly stated, and in compliance with relevant Commission decisions and resolutions.<sup>68</sup>

As explained in pages 48 to 55 of DRA’s Opening Brief, recovery from Mohave Balancing Account (“MBA”) was limited to only the “actual costs that are determined to be reasonable by the Commission.” The Commission did not limit its reasonableness review in D.06-05-016 (or D.09-03-025). In OP. 9 of D.06-05-016, the Commission states:

9. At an appropriate time, after the permanent status of Mohave is determined, SCE shall file an application seeking a final determination of the reasonableness of the costs recorded to the Mohave balancing account.

This application is SCE’s attempt to fulfill that requirement. It is antithetical to SCE’s request to the Commission to now argue that DRA’s challenge to their request is somehow “beyond the proper scope of this proceeding.” As DRA noted in its Opening Brief:

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<sup>66</sup> *Assigned Commissioners Ruling and Scoping Memo*, A.11-04-001, August 17, 2011, p.4.

<sup>67</sup> SCE Application, p. 2.

<sup>68</sup> *Amended Protest of the Division of Ratepayer Advocates*, A.11-04-001, May 9, 2011, p.5.

This ERRA case is where the issue is being litigated since it has never been litigated prior to this year. Further, neither D.06-05-016 nor D.09-03-025 state that SCE would be allowed a rate of return through 2016 on the Mohave plant. In fact, by specifically adopting a balancing account and requiring SCE to make a showing of reasonableness as to the need for and extent of, all costs recorded in the balancing account, the Commission clearly contemplated that some or all of the costs incurred after the 2006 decision might not be necessary or reasonable.<sup>69</sup>

If this review is beyond the scope of the proceeding, then the Commission should ensure that SCE does not recover any costs in the MBA until it files an application that meets the requirements of D.06-05-016.

**a) SCE incorrectly speculates that the Commission can't reconcile the treatment of Mohave in its 2012 GRC with DRA's recommendation in this ERRA case.**

SCE argues that “adopting DRA’s proposal will potentially conflict with the imminent decision in SCE’s pending 2012 GRC.”<sup>70</sup> There is no basis for SCE’s argument that the Commission cannot reconcile the treatment of SCE’s earnings on its net investment on Mohave in this case and SCE’s request in the 2012 GRC. SCE’s assertion is simply not true.

DRA is recommending the Commission use the accrued balance in the MBA to offset the net investment by SCE in Mohave and authorize the early write-off of both plant and capital additions.<sup>71</sup> After the Commission does so, the MBA can continue to exist, and any decision in the 2012 GRC proceeding regarding the amount associated with the MBA will continue to be recorded to the account. After the Commission determines the reasonableness issues raised in this proceeding, then the MBA will simply be adjusted consistent with the manner in which the issues are adjudicated. The balance in the MBA will simply be based on the amounts properly recorded in that account,

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<sup>69</sup> DRA Opening Brief, p. 53 (citation omitted).

<sup>70</sup> SCE Opening Brief at p. 25.

<sup>71</sup> DRA-1, Chapter 7.

which, of course, will be the subject of a future reasonableness review after final decommissioning of the plant is completed.

SCE is trying to manufacture a “potential” conflict where none actually exists or could exist and SCE’s argument should be rejected.

**2. DRA’s recommendation is a fair division of risks and benefits**

DRA explained in its Opening Brief how prior Commission decisions have dealt with similar situations where plant that was no longer used or useful received no rate of return. Such treatment is fair to shareholders and ratepayers. By authorizing the early write-off the ratepayer still pays for all of the plant’s direct cost even though the plant did not operate as long as was expected. The shareholder recovers its investment but not any return on the undepreciated plant. The Commission should treat the Mohave plant in a manner similar to previous decisions related to plant that is no longer used and useful. It is fair to allow shareholders to recover their investments by utilizing over collected funds to amortize the effects of the write-off, and not allow them to earn any return on the undepreciated plant.

**a) SCE Failed to Explain How DRA’s Recommendation is “Grossly Unfair” to Shareholders**

SCE does not explain how DRA’s recommendation is “grossly unfair”<sup>72</sup> to shareholders. In fact, SCE fails to explain how DRA’s recommendation is in any way unfair. SCE misstates previous Commission decisions when it claims that the Commission “allowed SCE to continue to earn a return, even if the plant was no longer in service, as long as SCE acted prudently.”<sup>73</sup> What the Commission actually did was set up the MBA and require SCE to later show the reasonableness for the need for and amounts therein (including earnings).<sup>74</sup> By setting up a two-way balancing account and requiring future reasonableness review of the costs, instead of simply including the Mohave costs

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<sup>72</sup> SCE Opening Brief, p. 25.

<sup>73</sup> SCE Opening Brief, p. 25.

<sup>74</sup> See DRA Opening Brief, pp. 50-51 (quoting D.06-05-016, *mimeo* at pp. 19-20).

(and earnings) in general rates, the Commission specifically carved out those costs due to the “many uncertainties” involved with Mohave at that time. SCE would now have the Commission retroactively change the 2006 decision to cover their Mohave costs and profits. The Commission should not retroactively change the rules and should conduct the reasonableness review of the MBA contemplated in D.06-05-016.

**3. DRA’s Recommendation is good for SCE’s Customers**

SCE claims that “unwinding” the credit already provided to customers in order to undo transfer of the MBA overcollection to the Base Revenue Requirement Balancing Account (BRRBA) would somehow be bad for SCE’s customers. However, SCE fails to distinguish as to why any transfers to or from the BRRBA are somehow good or bad for customers. Given the operation of the BRRBA, it is not clear that unwinding the \$29.732 million overcollection would have any impact on customers. Certainly, SCE has failed to explain how unwinding the MBA transfers would have an impact on customers through rates or some other means. Further, SCE fails to explain why it believes that applying the overcollection to reduce the plant balance so no rate of return is earned is bad for SCE customers. DRA maintains, as shown in its testimony, that its recommendation for the Commission to recognize the early write-off of both plant, and the associated capital additions, in addition to the reduction to AFUDC, is in the best interest of ratepayers.

**4. DRA’s recommendation is consistent with Commission precedent, does not constitute Retroactive Ratemaking, and is required by previous Commission Decisions**

SCE renewed its objection to DRA’s testimony in its opening brief and sought to incorporate its Motion to Strike by reference into the brief. ALJ Roscow was correct to deny SCE’s Motion to Strike<sup>75</sup> and the Commission should summarily deny SCE’s attempt to inhibit DRA’s right to raise objections to its application. SCE is wrong on both the law and the facts.

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<sup>75</sup> RT, p. 6.

**a) There is no basis for SCE’s argument that a change in a balancing account subject to a reasonableness review is retroactive ratemaking.**

SCE argues that the Commission decisions in D.06-05-016 and D.09-03-025 authorize SCE to earn a full rate of return on ratepayer investment in the Mohave Generating Station (Mohave) in addition to recovering the costs and earning a return on the decommissioning reserve SCE established to amortize remaining costs associated with Mohave.

DRA disagrees. It is not a collateral attack on previous decisions nor is it retroactive ratemaking when DRA is simply asserting ratepayers’ rights that were clearly contemplated by the Commission in D.06-05-016 and D.09-03-025. The Commission explicitly reserved the right to review the costs SCE claimed. SCE’s cost recovery was limited to only the “actual costs that are determined to be reasonable by the Commission.”<sup>76</sup> Moreover, in authorizing the MBA in D.06-05-016 the Commission stated that

Due to the many uncertainties related to this issue, SCE’s request to establish a two-way balancing account is reasonable and will be adopted. SCE shall record its share of all Mohave O&M and capital related costs in the balancing account. Temporary rate recovery will be provided by the associated O&M expenses and capital-related costs adopted by this decision. Permanent recovery of costs, which may be higher or lower than the level adopted by this decision, will be based on the results of a future reasonableness review. By application, SCE shall make an affirmative showing of reasonableness on the need for, and extent of, all costs recorded in the balancing account.

As a general matter, the adoption of a two-way balancing account, with reasonableness review, should mitigate SCE’s concern that setting the revenue requirements at any level other than the continued operation scenario could hamper the ongoing efforts by SCE and other relevant parties to resolve the issues necessary to allow continued operations at Mohave

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<sup>76</sup> D.09-03-025, p. 276.

for the benefit of SCE's customers. No matter what revenue requirement level is set, SCE will ultimately only receive rate recovery for those costs that the Commission determines are reasonable. The only difference is that the balancing account may be over- or under-collected depending on what costs are included as part of this decision and what costs are ultimately found to be reasonable.

Rather than reducing the temporary shutdown scenario-related costs and imposing other conditions, as proposed by TURN, we are adopting the temporary shutdown costs projected by SCE and the two-way balancing account as proposed by SCE. Fine tuning the costs and procedures would be pointless unless we knew exactly when and under what conditions Mohave would return to operation. However, again, we are not prejudging the reasonableness of any of the costs. SCE must justify its actions in responding to whatever ultimately happens, whether it is continued operation, some form of temporary shutdown, or permanent shutdown. SCE must make a full reasonableness showing on its actions as well as on all costs booked to the two-way balancing account. Only costs found by the Commission to have been reasonably incurred will be permanently recovered in rates.<sup>77</sup>

The mere fact that SCE was authorized to establish a two-way balancing account does not necessarily mean the Commission should award payment to SCE for both its investment and simultaneous decommissioning of the facility. The MBA was a balancing account established subject to a reasonableness review and modification. Since SCE failed to make the proper adjustment/entry in the balancing account, DRA is proposing the Commission order it.

It is unreasonable for SCE to earn a return on a plant that is no longer used and useful. Mohave ceased commercial operations as a generation facility on December 31, 2005. A month after the Commission issued D.06-05-016, SCE announced plans not to move forward with its efforts to return Mohave to service. It is not reasonable or appropriate to include entries in the MBA that would require ratepayers to pay a return on a plant that is no longer used and useful. SCE itself cites D.09-03-025 for the proposition

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<sup>77</sup> D.06-05-016 at pp. 19-20.

that the MBA would be subject to reasonableness review.<sup>78</sup> The 2009 decision simply continues the MBA using a forecast of costs. It does not authorize any specific recovery of costs—which are subject to reasonableness review. This ERRA case is where the issue is being litigated since it has never been litigated prior to this year. The Commission should order that the plant be written off effective January 1, 2007.

Additionally, the Commission should disallow the placement of capital expenditures in rate base after January 1, 2007, as well as disallow any associated accrual of AFUDC after that date.

**b) SCE’s Motion to Strike attempts to inhibit DRA’s right to raise objections to the Application via Expert Witness Testimony**

ALJ Roscow denied SCE’s Motion to Strike DRA’s testimony regarding the MBA. SCE claims in its Opening Brief that ALJ Roscow “did not address” the merits of the motion.<sup>79</sup> However, ALJ Roscow did address the merits, saying he would “like to have that material in the record in this proceeding for the Commission to consider it in making its Decision.”<sup>80</sup>

Despite this ruling, SCE again attempts to challenge the Commission’s ability to consider the issues by renewing its motion in its Opening Brief.<sup>81</sup> As more fully explained in DRA’s Response to SCE’s Motion to Strike, which we incorporate herein, the law clearly requires the Commission to consider all information that is material to its decisions<sup>82</sup> and it would be an error to strike testimony germane to a question that was explicitly reserved in previous Commission decisions.

Further, SCE provides no support for its argument that DRA is prohibited from challenging the reasonableness or appropriateness of SCE’s entries to the ERRA through

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<sup>78</sup> SCE Motion to Strike, p. 8.

<sup>79</sup> SCE Opening Brief, p. 26.

<sup>80</sup> RT, p. 6.

<sup>81</sup> SCE Opening Brief, p. 26.

<sup>82</sup> Long established precedent holds that the Commission must “weigh the opposing evidence and arguments in order to ‘determine whether the rights and interests of the general public will be advanced by the prosecution of the enterprise’ . . . .” (*No. Cal Power Agency v. Public Utilities Com.* (1971) 5 Cal.3d 370, 379, quoting *Oro Electric Corp. v. RR. Com.* (1915) 169 Cal. 466, 475.)

expert witness testimony. Contrary to what SCE claims, DRA is not attacking the Commission's decision to include Mohave in rate base in SCE's 2006 and 2009 GRC proceedings as "unreasonable." DRA is proposing the appropriate disposition of the account and the appropriate recovery of costs—which were all subject to reasonableness review. The Commission noted in both D.06-05-016 and D.09-03-025 that the MBA would be subject to a reasonableness review.<sup>83</sup> SCE's challenge to DRA's testimony is simply an attempt to rewrite that requirement out of both of those decisions. DRA is simply asserting the rights of ratepayers that were contemplated by the Commission in setting up the MBA and subjecting SCE's entries to reasonableness review.

The value of having DRA's recommendation in testimony should provide the Commission with even more assurance to weigh the testimony accordingly because SCE (and the ALJ) could have cross-examined Mr. Waterworth on the reasons for his opinion. And, pursuant to long established precedent that the Commission must "weigh the opposing evidence and arguments in order to 'determine whether the rights and interests of the general public will be advanced by the prosecution of the enterprise'" (*No. Cal Power Agency v. Public Utilities Com.* (1971) 5 Cal.3d 370, 379, quoting *Oro Electric Corp. v. RR. Com.* (1915) 169 Cal. 466, 475.), it behooves the Commission to consider DRA's testimony put forth by its expert witness. Accordingly, SCE's renewal of its Motion to Strike made in its Opening Brief should be denied by the Commission.

#### **IV. UTILITY RETAINED GENERATION**

##### **A. The audit records and documents requested by DRA are necessary for proper Commission oversight of SCE and its operations**

SCE mischaracterizes DRA's recommendations related to audit planning.<sup>84</sup> As explained in DRA's Opening Brief, DRA is not seeking to direct the work of SCE's Audit Services Department (ASD).<sup>85</sup> DRA is simply proposing that it be one of the stakeholders consulted as part of the process of developing SCE's audit plan. Moreover, DRA is asking the Commission to establish a formal communication loop by having SCE

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<sup>83</sup> D.06-05-016, OP 9, p.382, and D.09-03-025, p.276.

<sup>84</sup> SCE Opening Brief, pp. 31-33.

<sup>85</sup> DRA Opening Brief, p. 64.

formally respond to any recommendations DRA makes so that DRA can understand how its “expectations” were addressed in the final audit plan. Finally, consistent with prior Commission decisions,<sup>86</sup> the Commission may direct utilities to conduct specific audits when circumstances warrant.

## **V. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **Findings of Fact**

1. SCE’s methodology for forecasting its ERRA revenue requirement has been reviewed and approved by the Commission on an annual basis in SCE’s ERRA Forecast proceedings.
2. To the extent that there are large variations in SCE’s forecast of its ERRA revenue requirement, these are usually driven by factors beyond SCE’s control, such as unexpected swings in the price of natural gas.
3. On April 1, 2009, the CAISO began implementation of the Market Redesign and Technology Upgrade, which substantially changed the least-cost dispatch processes of SCE and other utilities.
4. As of the close of the Record Period, SCE’s Energy Resource Recovery Account (ERRA) Balancing Account reflected \$3.2 billion in expenses and an over-collection balance of \$344.7.
5. As of the close of the Record Period, the Litigation Cost Tracking Account (LCTA) and the Project Development Division Memorandum Account (PDDMA) reflected a net under-collected balance of \$8.174 million (including franchise fees and uncollectibles).
6. A Ruling by the Administrative Law Judge issued on June 23, 2011 applied to SCE’s ERRA filing and ERRA filings by PG&E and SDG&E granted DRA’s Motion to bifurcate the MRTU issues from the 2011 ERRA Compliance Applications and consolidate those MRTU issues into a separate proceeding.
7. D.10-07-049 did not adopt DRA’s recommendation that SCE, PG&E, and SDG&E should not submit non-ERRA balancing and memorandum accounts

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<sup>86</sup> See, e.g., D.10-04-002 at OPs 5-6 (SCE 2009 ERRA Compliance decision ordering audit of SCE's MRTUMA).

- in any ERRA proceeding, but that instead, these non-ERRA accounts should be combined together and submitted in a separate reasonableness review proceeding.
8. On August 17, 2011, the Assigned Commissioner's Ruling and Scoping Memo adopted the scope of issues DRA listed in its May 9, 2011 amended protest, and did not include MRTU-related issues based upon its June 23, 2011 Order.
  9. With respect to SCE's dispatch of its utility-owned Mountainview Generating Station (Mountainview), in its testimony DRA recommends disallowances of: (1) \$10.2 million for failing to adhere to the Commission's least-cost mandate to use the most cost effective mix of resources, and thereby minimize costs to ratepayer for the 2010 Record Period; and (2) \$1.2 million related to an availability incentive payment.
  10. DRA also recommends the Commission defer SCE's request to recover \$0.0789 million in emission credit costs for Mountainview to SCE's ERRA Compliance case for the record year 2011, and defer \$204 million of SCE's CAISO Net Market Costs of \$310.6 million dependent on SCE filing supplemental testimony to support its claim that these costs are reasonable in SCE's ERRA Compliance case for the record year 2011.
  11. With respect to SCE's need for recovery of certain costs recorded in the Mohave balancing account (MBA) after 2006 when the plant was deemed by SCE to be permanently non-operational, in its testimony DRA recommends the Commission order SCE to (1) Apply the December 31, 2010 over-collected balance of \$29.7 million and any post-2010 additional over-collection in the MBA to reduce the remaining unamortized net plant balance and any associated capital expenditures; (2) Direct SCE to recognize an early write-off of the Mohave plant effective January 1, 2007; and (3) Disallow \$6 million accrued in AFUDC incurred after 2006.
  12. Evidence shows that SCE failed to achieve the Commission's least-cost mandate to use the most cost effective mix of resources, and thereby minimize

- costs to ratepayer for the 2010 Record Period with respect to their management and oversight of the Mountainview facility.
13. Evidence shows that SCE should not be allowed to recover the Mountainview incentive payment of \$1.2 million.
  14. Reasonableness review of the 2010 Mountainview Emission Credits and \$204 million of \$310.6 million in CAISO 2010 Net Market Costs should be deferred to SCE's 2011 ERRRA Compliance and Reasonableness Review proceeding.
  15. Reasonableness review of SCE's request for recovery of costs recorded in a Mohave decommissioning reserve should be deferred until decommissioning activities are complete.
  16. Utility plant must be used and useful for the Commission to allow cost recovery.
  17. SCE determined in 2006 that the Mohave "plant could not be returned to service in sufficient time to render the necessary investments cost-effective for SCE's customers."
  18. Evidence shows that SCE failed to show that the amounts recorded in the MBA for the record period are reasonable and consistent with Commission decisions, or that capital expenditures for the projects completed are reasonable and recoverable.
  19. Evidence shows that SCE failed to show that there is any need for recovery of costs recorded in the MBA as required by D.06-05-016.
  20. DRA indicates that SCE reasonably operated all of its other fuel and generation activities.
  21. DRA's proposed methodology and calculation for its proposed LCD disallowances are reasonable.
  22. DRA's proposal for the Commission to direct SCE to recognize an early write-off of the Mohave plant effective January 1, 2007 is reasonable.
  23. DRA's proposal to apply the December 31, 2010 over-collected balance recorded in the MBA after 2006 when the plant was deemed by SCE to be permanently non-operational of \$29.7 million and any post-2010 additional

- over-collection in the MBA to reduce the remaining unamortized net plant balance and any associated capital expenditures is reasonable.
24. DRA's proposal that the Commission disallow \$6 million accrued in AFUDC incurred after 2006 is reasonable.
  25. The audit records and documents requested by DRA are necessary for proper Commission oversight of SCE.
  26. SCE should directly address its internal auditing of URG management, outage avoidance, outage mitigation, and associated fuel costs in SCE's ERRA Compliance Application for the 2011 Record Period.
  27. SCE should complete, during 2012-13 Record Periods, a comprehensive audit of two URG facilities: the SONGS facility (both units) and the Big Creek hydroelectric facilities (all units). These audits should be completed at the rate of one audit in each of the two Record Periods (2012 and 2013). These audits should include an evaluation of the adequacy and effectiveness of internal monitoring and control of the facility, with special emphasis on, among other things, operational planning, dispatch operations, preventive maintenance, outage planning, and outage mitigation.
  28. SCE should consider the expectations of DRA with respect to development of its internal audit plan in accordance with IIA Standards to consider the input of interested stakeholders.
  29. SCE should provide DRA a reasonable time, of no less than 30 days, to review and comment upon SCE's draft audit plan, and give due consideration to any comments provided by DRA on that plan, before final approval of any such audit plan.
  30. SCE should provide DRA with written comments as to how any DRA recommendations were incorporated or why they were not.
  31. DRA has not challenged SCE's Non-QF contract administration activities, including those related to RPS contracts.
  32. DRA has not challenged SCE's management and administration of its PURPA contracts.

33. DRA has not challenged SCE's administration of contracts during the Record Period.
34. With respect to the operation of ratemaking accounts, DRA reviewed all of the accounts and, in testimony, noted exceptions only for the PDDMA totaling \$134,875.
35. SCE has acknowledged the incorrect charges in the PDDMA, and will reverse the two errors totaling \$134,875.

### **Conclusions of Law**

1. SCE has the burden of affirmatively establishing the reasonableness of all aspects of its application.
2. SCE must produce clear and convincing evidence that is clear, explicit and unequivocal; that is so clear as to leave no substantial doubt; or that is sufficiently strong to demand the unhesitating assent of every reasonable mind to meet its burden of proof.
3. DRA must produce evidence explaining its disallowance recommendations.
4. SCE has not met its burden of proof to demonstrate the reasonableness of its actions related to the dispatch of Mountainview and the MBA after 2006.
5. DRA has met its burden of proof to support its recommended disallowances.
6. SCE has met its burden of proof to demonstrate the reasonableness of its actions in all other areas as described in testimony.
7. With the exception of Mountainview, dispatch-related activities SCE performed during the Record Period complied with Commission orders and SCE's procurement plan.
8. SCE failed to achieve the Commission's least-cost mandate to use the most cost effective mix of resources, and thereby minimize costs to ratepayer in a manner that complied with the Commission's adopted standard, SOC 4 for the 2010 Record Period with respect to their management and oversight of Mountainview.

9. SCE failed to show that there is any need for recovery of costs recorded in the MBA as required by D.06-05-016 and how absent such a showing they are allowed such a recovery under the law.
10. All other of SCE's fuel and generation operations were operated reasonably during the Record Period.
11. It is reasonable to use DRA's calculated difference in performance achieved under SCE ownership compared to Mountainview's performance under SCE's PPA with MVL in 2008 (underutilization of Mountainview) to determine a disallowance amount of \$10.2 million for the 2010 Record Period due to SCE's inefficient dispatch of Mountainview.
12. All aspects of SCE's contract administration during the Record Period were reasonable.
13. RPS costs incurred during the Record Period are recoverable.
14. Reasonableness review of \$204 million of SCE's requested \$310.6 million in CAISO 2010 Net Market Costs is properly deferred to SCE's 2011 Record Period ERRR Application where SCE must provide additional testimony to support its claim of reasonableness for these CAISO charge costs.
15. The operation of and entries presented by SCE in Exhibit SCE-2 are appropriate, correctly stated, and in compliance with Commission decisions, except as noted herein.
16. The amounts recorded in the LCTA are appropriate and SCE's request to recover 90% of the amount recorded in the LCTA is adequately supported and reasonable.
17. The amounts recorded in the ESMA are appropriate, correctly stated, consistent with Commission orders, and reasonably incurred.
18. The entries recorded in the RSMA are appropriate, correctly stated, and in compliance with prior Commission decisions.
19. SCE's MRTU expenses and associated revenue requirement are bifurcated from the 2011 ERRR Compliance Application and consolidated with the

MRTU issues raised in the Joint IOU Application for consolidated MRTU implementation costs review (A.12-01-014).

20. With respect to the PDDMA, after correcting the \$134,875 errors, SCE's showing is sufficient and meets its burden of proof obligations.
21. SCE's requested revenue increase of \$8.174 million (including FF&U) associated with the LTCA and PDDMA is reasonable.
22. SCE should request disposition of the Mohave Decommissioning Account after all costs and proceeds are known.
23. SCE's Motion to Strike DRA's Testimony is denied. The Commission should weigh the opposing evidence and arguments in order to determine whether the rights and interests of the general public will be advanced by the prosecution of the enterprise.

## **VI. CONCLUSION**

For the reasons stated herein, and in DRA's Opening Brief and previous filings in this proceeding, DRA requests that the Commission adopt the following recommendations:

For SCE's failure to dispatch its energy resources in a least-cost manner in 2010 Record Period:

- (1) \$10.2 million disallowance for SCE's inefficient market-revenue based dispatch of its utility-owned Mountainview Generating Station;
- (2) \$1.2 million disallowance for 2010 Mountainview Incentive Payments;
- (3) Defer \$789,000 for 2010 Mountainview Emission Credits for consideration in SCE's ECCRA compliance case for the record year 2011.
- (4) Defer \$204 million of \$310.6 million in CAISO 2010 Net Market Costs contingent upon SCE's filing of testimony in its 2011 Record Period ERRR Application to support of SCE's reasonableness claim.

Next, For SCE's failure to make an affirmative showing of reasonableness on the need for certain costs recorded in the Mohave balancing account after 2006 when the plant was deemed by SCE to be permanently non-operational:

- (1) Apply the December 31, 2010 over-collected balance of \$29.7 million and any post-2010 additional over-collection in the MBA to reduce the remaining unamortized net plant balance and any associated capital expenditures.
- (2) Direct SCE to recognize an early write-off of the Mohave plant effective January 1, 2007.
- (3) Disallow \$6 million accrued in AFUDC incurred after 2006.

Finally, SCE's application and prepared testimony failed to discuss its internal auditing of URG operations, either for fuel procurement or for outage management. It was only after reviewing SCE's responses to DRA's Data Requests that DRA was able to conclude that SCE intends to use an appropriate risk-based approach to develop its internal audit plan and identify individual audits that are to be performed.

Given the lack of information in SCE's application and prepared testimony regarding internal auditing of URG operations, either for fuel procurement or for outages management, DRA recommends that:

- (1) The Commission order SCE to directly address its internal auditing of URG management, outage avoidance, outage mitigation, and associated fuel costs in SCE's ERRA Compliance Application for the 2012 Record Period.
- (2) The Commission order SCE to complete, during 2012-13 Record Periods, a comprehensive audit of two URG facilities: the SONGS facility (both units) and the Big Creek hydroelectric facilities (all units). These audits should be completed at the rate of one audit in each of the two Record Periods (2012 and 2013). These audits should include an evaluation of the adequacy and effectiveness of internal monitoring and control of the facility, with special emphasis on, among other things, operational planning, dispatch operations, preventive maintenance, outage planning, and outage mitigation. DRA requests that the Commission require SCE to provide DRA a reasonable time, of no less than 30 days, to review and comment upon SCE's draft audit plan, and give due consideration to any comments provided by DRA on that plan, before final approval of any such audit plan. In addition, DRA requests that SCE provide DRA with written comments as to how any DRA recommendations were incorporated or why they were not.

Respectfully submitted,  
ROBERT HAGA  
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/s/ ROBERT HAGA

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