



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA

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Order Instituting Rulemaking to Integrate )  
Procurement Policies and Consider Long-Term )  
Procurement Plans. )  
)  
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Rulemaking 06-02-013  
(Filed February 16, 2006)

MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E)  
(1) TO STRIKE PORTIONS OF THE PREPARED DIRECT TESTIMONY OF  
R. THOMAS BEACH SUBMITTED ON BEHALF OF THE CALIFORNIA  
COGENERATION COUNCIL, AND THE PREPARED DIRECT TESTIMONY OF  
JAMES A. ROSS AND DONALD W. SCHOENBECK SUBMITTED ON BEHALF OF  
THE COGENERATION ASSOCIATION OF CALIFORNIA AND  
THE ENERGY PRODUCERS AND USERS COALITION, OR, IN THE ALTERNATIVE,  
(2) TO STAY FURTHER PROCEEDINGS RELATING TO SUCH TESTIMONY  
PENDING A FINAL DECISION IN RULEMAKINGS R.04-04-003 AND R.04-04-025

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DATED: April 9, 2007

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**I.**

**INTRODUCTION**

Pursuant to Rule 11 of the Commission’s Rules of Practice and Procedure, Southern California Edison Company (SCE) moves (1) to strike portions of the Prepared Direct Testimony of R. Thomas Beach on Behalf of the California Cogeneration Council, dated March 2, 2007 (2007 Beach Testimony), and the Prepared Direct Testimony of James A. Ross and Donald W. Schoenbeck on 2006 Long-Term Procurement Plans on Behalf of the Cogeneration Association of California and the Energy Producers and Users Coalition, dated March 2, 2007 (2007 Ross/Schoenbeck Testimony), or, in the alternative, (2) to stay further proceedings relating to such testimony pending a final decision in Rulemakings R.04-04-003 and R.04-04-025 (the Consolidated Proceedings). Specifically, the testimony appears at page 2, line 16 through page

22, line 14 of the 2007 Beach Testimony and page 2, line 14 through page 5, line 3 and page 5, line 7 through page 68, line 23 of Volume I of the Ross/Schoenbeck Testimony.

In the Consolidated Proceedings the parties litigated the same issues and the same witnesses addressed these issues in their prepared testimony, specifically,

1. the alleged efficiencies and societal benefits associated with investor-owned utilities' (IOUs) purchases of energy and capacity from cogeneration QFs;
2. the priorities energy and capacity from cogeneration QFs are entitled to and the incentives they should receive in the IOUs' long-term procurement plans (LTPPs);
3. whether alternatives to a long-term power purchase contract are viable alternatives for cogeneration QFs; and
4. whether customer generation departing load (CGDL) that utilizes cogeneration should be exempt from certain utility nonbypassable charges.

The Commission is actively considering and will resolve these issues in the Consolidated Proceedings. Following the submission of prepared testimony and briefs and extensive evidentiary hearings, these issues in the Consolidated Proceedings are now under submission.

SCE agrees with statements in the 2007 Beach Testimony that the decision in the Consolidated Proceedings may require modification of SCE's 2006 LTPP.<sup>1</sup> However, it is pointless to litigate in this proceeding the underlying substantive issues the parties have already litigated and the Commission is addressing in the Consolidated Proceedings. Once the Commission issues its decision in the Consolidated Proceedings, any time and effort the parties and the Commission have spent in addressing the same issues in this proceeding would have been duplicative and wasted. Re-litigation of the issues here would result in an unwarranted duplication of effort, impose unnecessary burdens on the Commission and the parties, and delay the outcome of this proceeding.

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<sup>1</sup> 2007 Beach Testimony at p. 2.

This rulemaking proceeding is an “umbrella proceeding” in which the Commission will address issues that do not warrant separate rulemakings and integrate the Commission’s efforts in other ongoing proceedings.<sup>2</sup> This proceeding was not designed to provide a forum for the parties to relitigate issues that are the subject of other procurement-related dockets. Yet that is precisely what the California Cogeneration Council (CCC) and the Cogeneration Association of California and The Energy Producers and Users Coalition (CAC/EPUC) have invited by submitting the 2007 Beach Testimony and the 2007 Ross/Schoenbeck Testimony. Accordingly, the portions of such testimony that pertain to issues the Commission will address in the Consolidated Proceedings should be stricken, or the Commission should stay further proceedings regarding such testimony pending the Commission’s final decision in the Consolidated Proceedings.

## II.

### **PROCEDURAL HISTORY**

In its April 1, 2004 Order Instituting Rulemaking, the Commission described R.04-04-003 as “the forum in which we consider, in a coordinated and integrated fashion, the key policies and programs which underlie our review of the investor owned utilities’ (IOUs) long-term procurement plans.”<sup>3</sup> The Commission undertook to review the IOUs’ proposed long-term procurement policies for both new and expiring QF contracts.<sup>4</sup>

On April 22, 2004, the Commission opened R.04-04-025 to resolve, among other things, short-run avoided cost (SRAC) pricing issues and long-run avoided cost forecasts and

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<sup>2</sup> *Order Instituting Rulemaking to Integrate Procurement Policies and Consider Long-Term Procurement Plans*, R.06-02-013, at p. 7 (February 16, 2006) (February 16, 2006 OIR).

<sup>3</sup> *Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning*, R.04-04-003, at p. 1 (April 1, 2004) (April 1, 2004 OIR).

<sup>4</sup> *Assigned Commissioners’ Ruling and Scoping Memo Consolidating R.04-04-003 and R.04-04-025, etc.*, at p. 2 (February 18, 2005).

calculations.<sup>5</sup> On February 18, 2005, the Commission consolidated R.04-04-003 and R.04-04-025 for the purpose of holding a joint evidentiary hearing.<sup>6</sup>

In the Consolidated Proceedings, CCC submitted the direct and rebuttal testimony of R. Thomas Beach on August 31, 2005 and October 28, 2005, respectively (2005 Beach Testimony). In that testimony Mr. Beach described the alleged efficiencies and societal benefits associated with cogeneration and asserted, among other things, that (1) IOUs should expand their portfolios for cogeneration resources consistent with the “loading order” set forth in the Commission’s Energy Action Plan II (EAP II) and the California Energy Commission’s 2005 Integrated Energy Policy Report (2005 IEPR), (2) the IOUs should be required to offer long-term contracts to new cogeneration QFs and those with expiring contracts, and (3) existing alternatives, such as participation in the IOUs’ procurement solicitations, are not viable options for cogeneration QFs.<sup>7</sup>

In the Consolidated Proceedings, CAC/EPUC submitted James A. Ross and Donald W. Schoenbeck’s corrected direct and rebuttal testimony on January 25, 2006 (2005 Ross/Schoenbeck Testimony). Messrs. Ross and Schoenbeck addressed the same issues as Mr. Beach and further contended that CGDL using cogeneration should be exempt from certain utility nonbypassable charges.<sup>8</sup>

The Commission conducted joint evidentiary hearings in the Consolidated Proceedings. The evidentiary hearings concluded in early 2006, and briefing was completed in March 2006. A draft decision has not yet been issued. As Mr. Beach acknowledges in his testimony in the present proceeding, the decision in the Consolidated Proceedings will “set forth the Commission’s long term policy for expiring and new QF resources as well as determine the appropriate avoided cost to be paid to these resources.”<sup>9</sup>

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<sup>5</sup> See *id.*, at p. 3.

<sup>6</sup> *Id.* at pp. 3-4, 6.

<sup>7</sup> See Table 1, below.

<sup>8</sup> See Table 2, below.

<sup>9</sup> 2007 Beach Testimony at pp. 15-16.

On December 2, 2005, the Commission issued D.05-12-009 in which it continued the interim relief provided in D.04-01-050 for QFs with expired or expiring contracts. Therefore, the IOUs were ordered to enter into five-year SO1 contracts with QFs with contracts that expired or will expire between January 1, 2006 and the time a decision concerning QF policy and pricing is issued.

On February 16, 2006, the Commission opened this rulemaking proceeding.<sup>10</sup> “This proceeding’s centerpiece will be the review and adoption of long-term plans.”<sup>11</sup> This proceeding is the successor to R.04-04-003 and R.01-10-024, and is an “umbrella proceeding” in which the Commission will “consider, in an integrated fashion, all of the Commission’s electric resource procurement policies and programs, including implementation of directives from other procurement proceedings.”<sup>12</sup> The Assigned Commissioner directed the IOUs to file their 2006 LTPPs, which would be an amalgamation and update of their most recently approved short-term procurement plans and LTPPs and the Commission’s procurement-related decisions to date.<sup>13</sup>

### III.

**THE COMMISSION’S CONSIDERATION OF THE 2007 BEACH TESTIMONY AND  
THE 2007 ROSS/SCHOENBECK TESTIMONY IN THIS PROCEEDING WOULD  
REQUIRE RELITIGATION OF THE SAME ISSUES PRESENTLY UNDER  
SUBMISSION IN THE CONSOLIDATED PROCEEDINGS**

In the 2007 Beach Testimony and 2007 Ross/Schoenbeck Testimony, the witnesses make the very same arguments and address the very same issues, sometimes using the very same language, as they did in their 2005 testimony in the Consolidated Proceedings. Tables 1 and 2 illustrate the overlap:

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<sup>10</sup> February 16, 2006 OIR.

<sup>11</sup> *Id.* at p. 13.

<sup>12</sup> *Assigned Commissioner’s Ruling and Scoping Memo on the Long-Term Procurement Phase of R.06-02-013* at p. 3 (September 25, 2006).

<sup>13</sup> *Id.* at pp. 12, 15, 17.

**TABLE 1**

Beach Testimony

<b>Issue</b>	<b>2007 Beach Testimony (page:line)</b>	<b>2005 Beach Testimony (D = Direct; R = Rebuttal) (page:line)</b>
1. Do the IOUs' proposed long-term procurement policies and practices comply with the priorities established in EAP II, the 2005 IEPR, Commission decisions and state policy regarding cogeneration?	2:16-29, 6:12-11:10	D17:20-19:9, D61:11-63:16, R3:1-5:21, R6:18-7:19
2. What are the societal benefits of cogeneration energy and capacity?	2:30-3:11, 3:14-6:20, 15:1-22:14	D8:10-18:14, D60:22-63:3, R3:1-6:17, R47:15-48:22
3. What requirements should the Commission impose on the IOUs to provide an incentive for new or expanded cogeneration facilities?	10:25-11:10, 14:4-23	D57:1-60:21, D61:11-63:16, D66:1-80:20, R53:14-54:9
4. Are alternatives to providing a long-term contract for cogeneration QFs viable?	11:11-14:23	D57:1-60:21, D63:17-74:13, R46:6-47:14, R50:2-53:13

**TABLE 2**

Ross/Schoenbeck Testimony

<b>Issue</b>	<b>Ross/Schoenbeck 2007 Testimony (Vol. I) (page:line)</b>	<b>2005 Ross/Schoenbeck Testimony (D = Direct; R = Rebuttal) (page:line)</b>
1. Do the IOUs' proposed long-term procurement policies and practices comply with the priorities established in EAP II, the 2005 IEPR, Commission decisions and state policy regarding cogeneration?	2:14-22, 3:18-4:33, 5:7-13:9, 17:3-24:6, 26:18-31:17, 46:1-47:2, 68:14-23	D3:9-16, D4:16-17, D4:24-26, D6:2-13, D8:11-12:20, D19:21-22:2, D86:15-89:2, D94:3-95:13, D96:22-97:2, R2:9-3:2, R3:6-5:18, R6:7-23:4, R30:6-34:21
2. What are the societal benefits of cogeneration energy and capacity?	2:23-3:16, 4:15-21, 4:35-38, 17:3-7, 27:6-12, 31:20-46:9	D3:17-21, D6:29-7:5, D13:13-19:20
3. What requirements should the Commission impose on the IOUs to provide an incentive for new or expanded cogeneration facilities?	13:12-16:5, 17:8-23, 23:5-24:6, 28:18-31:17, 46:1-68:23	D4:20-26, D6:2-13, D20:1-20, D37:15-38:13, D86:17-89:2, D92:6-93:20, D94:3-95:13, D96:22-97:2, R4:35-5:18, R31:19-32:17
4. Are alternatives to providing a long-term contract for cogeneration QFs viable?	16:6-15, 24:7-26:17	D5:10-16, D20:21-22:2, D27:14-38:13, R3:22-33, R8:16-9:10, R13:12-23:4
5. Should cogeneration CGDL be exempt from certain nonbypassable charges?	4:40-5:3, 47:1-68:5	D92:6-93:20, D96:29-97:2

It is not the purpose of R.06-02-013 to relitigate issues that are already the subject of R.04-04-003/R.04-04-025. This is merely an “umbrella proceeding” in which the Commission’s role will include “implementation of directives from other procurement proceedings.”<sup>14</sup> “[A]ny problems concerning goals or targets established in other Commission proceedings will be addressed and resolved in the appropriate proceeding -- not this proceeding.”<sup>15</sup>

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<sup>14</sup> *Id.* at p. 3.

<sup>15</sup> *Id.* at pp. 17-18.

In opening R.04-04-003, the Commission also described that proceeding as an “umbrella” proceeding for other pending related proceedings.<sup>16</sup> The Commission stated that by coordinating the various proceedings, it intended “to facilitate the exchange of information among and between the parties and decision makers in these proceedings . . . , *avoid duplicative or unnecessary record building among the various proceedings, and promote consistent and optimal decisionmaking outcomes.*”<sup>17</sup> In the present umbrella proceeding, the Commission should also exercise its authority to avoid “duplicative or unnecessary record building.”

Mr. Beach observes in his 2007 testimony that the IOUs’ 2006 LTPPs “reflect only the utilities’ positions in the Commission’s pending proceedings on QF policy and pricing matters, R.04-04-025 / R.04-04-003.”<sup>18</sup> Of course, this is entirely appropriate unless and until the Commission provides guidance in those dockets that it has adopted some other position, and it is not surprising that the Beach Testimony and the Ross/Schoenbeck Testimony also continue to advocate CCC’s and CAC/EPUC’s positions in the Consolidated Proceedings. As Mr. Beach correctly stated in his 2007 testimony, however, “[t]o the extent that the Commission adopts policies in R. 04-04-025 / R. 04-04-003 that are different from the utilities’ positions, their LTPPs will need to be modified accordingly.”<sup>19</sup> SCE agrees. Therefore, revisiting the same issues in this proceeding would necessarily require duplicative and unnecessary record building and substantial expenditures of time and effort. Once a decision is issued in the Consolidated Proceedings, the efforts expended in this proceeding to address the same issues would become moot.

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<sup>16</sup> April 1, 2004 OIR at p. 9.

<sup>17</sup> *Id.* at p. 9 (italics added).

<sup>18</sup> 2007 Beach Testimony at p. 2. Messrs. Ross and Schoenbeck join in this assessment. 2007 Ross/Schoenbeck Testimony, Vol. I, at pp. 13, 22.

<sup>19</sup> 2007 Beach Testimony at p. 2. See also *id.* at p. 14:18-23.

IV.

**CONCLUSION**

For the foregoing reasons SCE submits that the designated testimony addressing issues that are already the subject of the Coordinated Proceedings should be stricken or, in the alternative, proceedings concerning such testimony should be stayed pending a decision in the Consolidated Proceedings.

Respectfully submitted,

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Dated: April 9, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of the MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) (1) TO STRIKE PORTIONS OF THE PREPARED DIRECT TESTIMONY OF R. THOMAS BEACH SUBMITTED ON BEHALF OF THE CALIFORNIA COGENERATION COUNCIL, AND THE PREPARED DIRECT TESTIMONY OF JAMES A. ROSS AND DONALD W. SCHOENBECK SUBMITTED ON BEHALF OF THE COGENERATION ASSOCIATION OF CALIFORNIA AND THE ENERGY PRODUCERS AND USERS COALITION, OR, IN THE ALTERNATIVE, (2) TO STAY FURTHER PROCEEDINGS RELATING TO SUCH TESTIMONY PENDING A FINAL DECISION IN RULEMAKINGS R.04-04-003 AND R.04-04-025 on all parties identified on the attached service list. Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this **9th day of April 2007**, at Rosemead, California.

/s/ Robin Taylor  
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**R.06-02-013**

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