

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Application 14-11-012  
(Filed November 21, 2014)

Application of Southern California Edison Company  
(U338E) for Approval of the Results of Its 2013 Local  
Capacity Requirements Request for Offers for the  
Western Los Angeles Basin.

**OPENING COMMENTS OF ENERNOC, INC., ON  
PROPOSED DECISION AND ALTERNATE PROPOSED DECISION ON  
SOUTHERN CALIFORNIA EDISON COMPANY LOCAL CAPACITY  
REQUIREMENTS REQUEST FOR OFFERS FOR WESTERN LA BASIN**

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On October 6, 2015, a Proposed Decision of Administrative Law Judge (ALJ) DeAngelis (PD) and an Alternate Proposed Decision of Commissioner Florio (APD), each “Approving, In Part, Results of Southern California Edison Company [SCE] Local Capacity Requirements [LCR] Request for Offers [RFO] for the Western La Basin Pursuant to Decisions [D.] 13-02-015 and 14-03-004,” were mailed in Application (A.) 14-11-012 (SCE LA Basin). EnerNOC, Inc., (EnerNOC) respectfully submits these Opening Comments on both the PD and APD. These Comments are filed and served pursuant to Rule 14.3 of the Commission’s Rules of Practice.

**I.  
THE PD AND APD DO NOT MEET THE LEGAL OR PROCEDURAL  
STANDARDS FOR LAWFUL, SOUND DECISIONMAKING,  
AND NEITHER SHOULD BE ISSUED AS WRITTEN.**

Based on the applicable law and facts in this application, one conclusion is inescapable: SCE’s 2013 LA Basin LCR RFO was an abysmal failure for Demand Response, one of the two top Preferred Resources in the “Loading Order,” which applies to all energy procurement and for which a mandated level of Preferred Resources (550 MWs) was to have been procured by SCE in its LA Basin LCR RFO, but was not.<sup>1</sup> Neither the procedural approach of separate applications nor changing attribution by SCE as to “product type” was able to disguise the fact that, of 113 “indicative offers” that SCE received for DR products in both its Western LA Basin (A.14-11-012) and Moorpark (A.14-11-016)<sup>2</sup> combined,<sup>3</sup> SCE selected *no* contracts with

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<sup>1</sup> PD, at pp. 13-14; APD, at pp. 13-14. D.14-03-004, one of the two “procurement directives” authorizing SCE LA Basin LCR RFO, mandated procurement of “a minimum of 550 MW of Preferred Resources,” of which SCE was *at least* 99 MWs short. (PD, at pp. 8-9; APD, at pp. 8-9.)

<sup>2</sup> The procurement at issue in A.14-11-016 was authorized by D.13-02-015, one of the two “procurement directives” also at issue here.

“Demand Response,” as defined by the Loading Order. In this regard, the PD and APD confirm that contracts, totaling 75 MWs, selected in the LA Basin RFO, which were first labeled by SCE as “demand response” and then changed by SCE in its rebuttal testimony to have been “distributed generation” all along,<sup>4</sup> (1) do “not constitute Demand Response”<sup>5</sup> and (2) are “not Preferred simply because it functions as Distributed Generation.”<sup>6</sup>

Based on the APD’s exclusion of these 75 MWs of DG contracts from approval, the SCE’s Preferred Resources procurement deficit increases from the 99 MWs conceded by SCE in its application<sup>7</sup> to a total of *at least* 174 MWs. But, in fact, the shortfall in that procurement is actually even greater. Specifically, A.14-11-012, the PD, and the APD all erroneously credit 264 MW of storage procured by SCE against a combined preferred resources and storage minimum procurement requirement of 600 MW, when storage is not a preferred resource and had its own procurement target of a minimum of 50 MW.<sup>8</sup> SCE’s exceedance of its minimum storage procurement requirement by 214 MW does not offset its preferred resources procurement requirement.

Therefore, SCE’s shortfall in its Preferred Resources minimum procurement is actually 388 MW or 71% of the mandated total. Yet, neither the PD nor the APD views this to be a significant failure of the RFO process, a conclusion with which EnerNOC strongly disagrees as a matter of fact and law.

The express purpose of EnerNOC using its limited resources to actively and continuously participate in this application, as well as A.14-11-016, through data requests, testimony, cross-examination, and briefs, was to contribute to the record and this Commission’s understanding of why the SCE’s LCR RFOs failed for Demand Response and what corrective measures should, in turn, be adopted in procuring DR resources.<sup>9</sup> Yet, the Scoping Memo issues designed to elicit

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<sup>3</sup> SCE would not publicly disclose in either A.14-11-012 or A.14-11-016 the precise number of DR offers submitted by LCR sub-area (Western LA Basin and Moorpark).

<sup>4</sup> Ex. SCE-6, at pp. 12-13 (SCE (Bryson)). This testimony confirms that SCE knew from the beginning that the resource at issue in these offers was Distributed Generation (DG) and that the only connection with Demand Response was that SCE had acceded to the “creative solution” offered by the bidder (NRG Energy) to use the DR pro forma contract to procure these DG resources since SCE did not have a pro forma contract specific to DG. (*Id.*, at p. 13.)

<sup>5</sup> APD, at p. 16.

<sup>6</sup> PD, at p. 16.

<sup>7</sup> PD, at p. 9; APD, at p. 9.

<sup>8</sup> EnerNOC Opening Brief, at pp. 13-16.

<sup>9</sup> EnerNOC Opening Brief, at pp. 2-4; Ex. EnerNOC-1, at pp. 8, 11-14 (EnerNOC (Tierney-Lloyd)).

and address those shortcomings and the record demonstrating the unreasonableness of SCE LCR RFO process for DR resources are wholly ignored in both the PD and APD. By failing to acknowledge either these issues or that record, especially in combination with SCE's mandated Preferred Resources procurement deficit, the PD and APD err by wrongly concluding that SCE either "reasonably" or "substantially" complied with D.13-02-015 and D.14-03-004.<sup>10</sup> Both the PD and APD, in turn, compound those errors by failing to require SCE to conduct residual procurement necessary and specific to meeting its Preferred Resources procurement mandate and to do so in a manner that corrects for the mistakes of its 2013 LCR RFOs, especially for preferred DR Resources.

In this regard, it is not just, as the PD and APD claim, that SCE's "choices regarding the RFO were not perfect,"<sup>11</sup> but that those "choices" did *not* comply with SCE's Preferred Resources procurement mandate and that SCE's process for "choosing" its selected resources was not reasonable even, and especially given, "the circumstances at that time" related to DR resources.<sup>12</sup> The actual record related to the shortcomings of SCE's 2013 LCR RFO and its non-compliance with D.13-02-015 and D.14-03-004 cannot be ignored or simply used as part of a later, informal study of "lessons learned" by SCE or the staff.<sup>13</sup>

Perhaps more troubling, the APD, in addition to ignoring critical Scoping Memo issues, nevertheless elects to rely on a resolution and a "staff paper," not even in existence at the close of the record in this application<sup>14</sup> and issued in wholly separate and unconsolidated matters, as bases to reject certain contracts.<sup>15</sup> Yet, neither the APD nor the PD for that matter recognize a Commission decision, expressly relevant to and briefed here, establishing the impropriety of a performance requirement imposed as a condition of selection by SCE on Demand Response resources, despite it having been issued prior to and addressed in Reply Briefs here.<sup>16</sup>

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<sup>10</sup> PD, Ordering Paragraph (OP) 1, at p. 39; APD, OP 1, at p. 40.

<sup>11</sup> PD, Conclusion of Law (COL) 1, at p. 37; APD, COL 1, at p. 37.

<sup>12</sup> Id.

<sup>13</sup> Reporter's Transcript (RT) at 294 (SCE (Cushnie)); EnerNOC Opening Brief, at pp. 4, 20, 30-31; EnerNOC Reply Brief, at pp. 3, 12.

<sup>14</sup> Reply Briefs were filed on July 1, 2015; Resolution E-4728 was issued on July 23, 2015; the Staff Paper referenced in the APD at n. 47 was issued in a separate proceeding (R.13-09-011) on September 29, 2015. No ALJ Ruling was issued and no party requested that the record be re-opened to consider this resolution or staff paper.

<sup>15</sup> APD, at pp. 15-16.

<sup>16</sup> See, D.15-06-063, at p. 35 (rejecting a California Independent System Operator (CAISO) proposal for a 20-minute response for Demand Response); EnerNOC Reply Brief, at pp. 5, 10, 11.

The approaches used by both the PD and APD to this application do not represent sound decisionmaking, do not respect due process, and render actual party participation and the relevant record in a Commission proceeding null and void. Further, by failing to account for the complete absence of Demand Response Preferred Resources products in SCE’s RFO results and failing to require a specifically targeted residual procurement to address the Preferred Resources procurement mandate deficit in those results, the PD and APD further render the Commission’s decisions (D.13-02-015 and D.14-03-004) that provided SCE with its procurement authority moot and its stated commitment to the Loading Order and greenhouse gas (GHG) emissions reduction disingenuous at best.

Because both the PD and APD commit the same fundamental and fatal errors of process, law, and fact, and reach only slightly different conclusions, separate sets of comments on each are not required. The errors are the same in both and require a complete re-writing or alternate decision to meet the requirements of the law. Until those errors are addressed and corrected, both decisions are without legal foundation and neither should be issued.<sup>17</sup>

**II.**  
**BOTH THE PD AND APD ERR IN FAILING TO ADDRESS KEY, LITIGATED**  
**SCOPING MEMO ISSUES AND EVIDENCE DEMONSTRATING THE**  
**UNREASONABLENESS OF SCE’S RFO PROCESS FOR**  
**DEMAND RESPONSE PREFERRED RESOURCE PRODUCTS.**

The Assigned Commissioner’s Ruling and Scoping Memo issued in A.14-11-012 (SCE LA Basin) on March 5, 2015, included the following issues expressly “to be determined” in this application:

“4. Are the results of SCE’s 2013 LCR RFO for the LA Basin a reasonable means to meet the 1,900 to 2,500 MW of identified LCR need determined by D.13-02-015 and D.14-03-0[0]4,” [with] “consideration of the reasonableness of *at least* the following:”<sup>18</sup>

.....  
“(d) Did SCE’s RFO process limit certain resource bids from being considered? If so, were these limitations reasonable?”

“(e) Was the process used to develop the eligibility requirements reasonable?”

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<sup>17</sup> While EnerNOC does include Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs for both the PD and APD in Appendix A-1 and A-2, herein, these modifications require additional changes and additions to many of the discussion sections of both the PD and APD in support.

<sup>18</sup> Assigned Commissioner’s Ruling and Scoping Memo (Scoping Memo), at p. 4; emphasis added.

“(f) Did the process and outcome of any consultations between the California Independent System Operator [CAISO] and SCE impact resources requirements and contract selection? If so, was this impact reasonable?”<sup>19</sup>

The issues specified in (d), (e), and (f) were litigated and contested, as to law and fact in testimony, at hearings, and in briefs, especially for demand response (DR) resources.<sup>20</sup> Yet, neither the PD nor the APD address these issues or provide any recognition or evaluation of that record. In fact, the only statements in either the PD or APD that could even arguably be seen as remotely connected to these issues are two conclusionary sentences: (1) “SCE and the CAISO worked together to confirm that the location and characteristics of the procured resources would meet local capacity needs,”<sup>21</sup> and (2) “SCE worked collaboratively and diligently with stakeholders and bidders to remove potential obstacles that may have interfered with the ability of Preferred Resource service providers to contract with SCE.”<sup>22</sup> The first sentence is based solely on a citation to a simple introductory sentence in testimony of CAISO witness Millar, yet is used as a “Finding of Fact,” and the second sentence is given with no attribution at all.

These simple, single conclusionary statements do *not* equate in any way to addressing, “determining,” or resolving the *in-scope* issues of whether SCE’s RFO process “limit[ed] certain resource bids from being considered,” whether those “limitations were reasonable,” whether SCE’s process “used to develop eligibility requirements” was “reasonable,” and whether “the *process and outcome of any consultations* between the California Independent System Operator [CAISO] and SCE *impact[ed] resources requirements and contract selection,*” and whether that “*impact [was] reasonable.*”<sup>23</sup> It may be true that SCE and CAISO “worked together” to “confirm” between themselves certain resource characteristics, but that simple fact in *no way* addresses whether that “working together” was a “reasonable” “process,” whether its “impact” on specific resources, i.e., Demand Response, was reasonable, or whether the “eligibility” requirements used by SCE or its process of imposing such requirements on specific resources was reasonable. There is a significant and substantial record on all of these issues, which demonstrate how SCE’s process and its “consultations” with CAISO adversely impacted

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<sup>19</sup> Scoping Memo, at p. 4.

<sup>20</sup> See, EnerNOC Opening Brief, at pp. 8-30; EnerNOC Reply Brief, at pp. 1-16.

<sup>21</sup> PD, at p. 7, Finding of Fact (FOF) 4, at p. 33; APD, at p. 7, FOF 4, at p. 34.

<sup>22</sup> PD, at p. 11; APD, at p. 11.

<sup>23</sup> Id.



Demand Response,<sup>24</sup> yet none of that evidence and legal argument is ever addressed by either the PD or APD.

A “Scoping Memo” is the foundation of every litigated proceeding at the Commission and is designed to preserve a sound decisionmaking process and the due process rights of all participating parties. Thus, the Commission has held that “it is the Commission’s *responsibility* that *all* issues in the scoping memo be addressed” and that “*all aspects*” of the issues identified within the scope of a proceeding will be resolved.<sup>25</sup> In fact, the Commission has no more “right or privilege to pick and choose whether a scoping memo issue should be resolved” than parties do.<sup>26</sup> These requirements have even more force and effect where, as here, the PD and APD both order a “close” to A.14-11-012, meaning that there is no intention to issue any other decision on these issues in this proceeding.<sup>27</sup>

As Commissioner Sandoval recently observed: (Sandoval Dissent, at p. 1 (D.15-05-051)).

“The Assigned Commissioner’s Scoping Memo creates the universe of issues the proceeding *is* to examine, building a scaffold that supports due process and reasoned decision-making. The Scoping Memo *apprises* the parties and the public of what’s at stake in the proceeding by specifying the issues the proceeding will examine, the topics on which the parties should comment in the briefs and arguments, and subjects for which they should submit evidence.”<sup>28</sup>

In turn, Commission decisions must “reach issues in the proceeding’s scope” and must do so “based on evidence in the record of that proceeding.”<sup>29</sup>

In this case, SCE claimed in its Opening Brief that the Commission should grant A.14-11-012 since “no party ha[d] broad- based objections to the contracts SCE selected through the LCR RFO,” other than “a subset of contracts” identified as the “NRG DG contracts.”<sup>30</sup> This limited view of A.14-11-012, however, is *not* the one adopted by the Scoping Memo, which includes issues, like those noted above, that extend far beyond the merits of any individual contract. The Scoping Memo put this application on course to examine whether SCE’s RFO process and results as a whole complied with all applicable orders and were conducted

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<sup>24</sup> EnerNOC Opening Brief, at pp. 22-30 and EnerNOC Reply Brief, at pp. 3-12, both citing extensively to the record in this proceeding in support.

<sup>25</sup> D.14-12-024, at pp. 15-16.

<sup>26</sup> D.14-12-024, at p. 16.

<sup>27</sup> PD, at p. 40; APD, at p. 41.

<sup>28</sup> D.15-05-051, Dissent of Commissioner Sandoval, at p. 3.

<sup>29</sup> *Id.*, at p. 1.

<sup>30</sup> SCE Opening Brief, at pp. 2-3.

reasonably and in a manner that did not adversely impact any resource type, especially Preferred Resources.<sup>31</sup>

Thus, regardless of the merits of any individual contract, the Scoping Memo allowed consideration of, and a record was *developed in response* to that Scoping Memo, that, along with applicable law, demonstrated all of the following. This summary, with citations to EnerNOC's briefs that include detailed supporting references, is offered here since repeating all of that record analysis and legal argument would far exceed the page limitations for Comments on a Proposed or Alternate Proposed Decision. In sum:

- (1) SCE did not procure the minimum required capacity for Preferred Resources,<sup>32</sup>
- (2) SCE procured gas-fired generation (GFG) and other technologies over preferred resources (a) in violation of the Loading Order,<sup>33</sup> (b) pursuant to a "procurement plan" that was not developed through a public and transparent process with expert, stakeholder input and did not ensure procurement in compliance with D.13-02-015 and D.14-03-004,<sup>34</sup> and (3) in reliance on an "RFO" process that did not appropriately identify, value, or account for the attributes and financial risks attendant to DR, including uncertainties in Resource Adequacy (RA) and market integration rules for DR, or appropriately apportion those risks between SCE and DR sellers,<sup>35</sup>
- (3) SCE acted confidentially in concert with CAISO to impose unsupported, burdensome performance requirements on DR after-the-fact of bidding,<sup>36</sup> making DR performance obligations required in SCE's 2013 LCR RFO a moving target, beyond the knowledge or input of market participants, and directly at odds with Commission orders (D.15-06-063),<sup>37</sup> and
- (4) SCE failed to appropriately apportion the risks related to uncertainty surrounding DR wholesale market participation and the changing operational requirements and contract terms applicable to DR resources between SCE and DR Sellers.<sup>38</sup>

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<sup>31</sup> Scoping Memo, at pp. 3-4. See also, EnerNOC Reply Brief, at p. 3.

<sup>32</sup> EnerNOC Opening Brief, at pp. 9-10, EnerNOC Reply Brief, at pp. 15-16, with supporting citations.

<sup>33</sup> EnerNOC Opening Brief, at pp. 10-17; EnerNOC Reply Brief, at pp. 7-9, with supporting citations.

<sup>34</sup> EnerNOC Opening Brief, at pp. 17-19; EnerNOC Reply Brief, at pp. 6-9, with supporting citations.

<sup>35</sup> EnerNOC Opening Brief, at 21-22; EnerNOC Reply Brief, at pp.3-6, with supporting citations.

<sup>36</sup> EnerNOC Opening Brief, at pp. 22-25; EnerNOC Reply Brief, at pp. 9-12, with supporting citations.

<sup>37</sup> EnerNOC Opening Brief, at pp. 21-22; 27-30; EnerNOC Reply Brief, at p. 4, with supporting citations.

<sup>38</sup> EnerNOC Opening Brief, at pp. 27-30; EnerNOC Reply Brief, at pp. 5-6, with supporting citations.

Together, these deficiencies in SCE's RFO process resulted in no DR capacity being selected by SCE, which contributed to an overall shortfall in preferred resources procurement in its 2013 LCR RFO.<sup>39</sup> This is not simply an "imperfect" result, but, especially in combination with SCE failing to meet its minimum, mandated Preferred Resources procurement, it is a "*non-compliant*" outcome that must be acknowledged and corrected through specific orders that are part of any decision "closing" this application.

One deficiency, however, namely, the unreasonableness of SCE's and CAISO's "consultations," deserves additional attention here, especially given that both the PD and APD completely fail to acknowledge the circumstances and impact of those consultations on DR resources and that both SCE and CAISO have sought to manipulate the "record" on this issue long after the close of that record. Again, the Commission may have authorized SCE to "work with the ISO to *assess* the impacts of [preferred] resources to meet or reduce LCR needs."<sup>40</sup> But that direction did *not* authorize the actual approach used by SCE and CAISO in imposing unilaterally changed performance requirements on DR sellers after the DR bid submission deadline, without consultation with, or any advance notice to, any stakeholder or industry and without any Commission decision or CAISO tariff in support of that change.<sup>41</sup> That change was to reduce the one (1) hour response time required in the original DR LCR Pro Forma Agreement to a 20 minute response time in May 2014, months after the due date for bids.<sup>42</sup>

Not only did SCE concede that this reduction in response time to 20 minutes was not supported by any Commission decision,<sup>43</sup> but, before the due date of Reply Briefs, the Commission had issued D.15-06-063 in R.14-10-010 (Resource Adequacy (RA)) expressly *rejecting* such a *proposed* 20 minute response time for DR, *despite* CAISO's support for that proposal.<sup>44</sup> D.15-06-063 further confirms that no such 20 minute response time rule has ever been adopted by the Commission for DR previously and that several grounds exist to continue to

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<sup>39</sup> EnerNOC Reply Brief, at p. 2.

<sup>40</sup> D.13-02-015, at p. 125; emphasis added.

<sup>41</sup> EnerNOC Opening Brief, at pp. 22-25; see, RT at 262-264 (SCE (Chinn)); RT at 289 (SCE (Cushnie)); RT at 341 (CAISO (Millar)); Ex. EnerNOC-2 (Cross-Exhibit (SCE (Chinn)/CAISO (Millar)).

<sup>42</sup> EnerNOC Opening Brief, at pp. 24-25; see, RT at 261-264 (SCE (Chinn)); RT at 287-288, 289-290 (SCE (Cushnie)); Ex. EnerNOC-2 (Cross Exhibit (SCE (Chinn/Cushnie)).

<sup>43</sup> RT at 263-264 (SCE (Cushnie)).

<sup>44</sup> D.15-06-063, at p. 35.

reject a 20 minute local dispatch requirement for DR for 2016, including insufficient time to respond to such a rule change and “current market participation uncertainties.”<sup>45</sup>

EnerNOC fully briefed the findings and import of D.15-06-063 in this proceeding.<sup>46</sup> Further, given the APD’s reliance on a resolution (Resolution E-4728) that post-dated the submission of briefs in this proceeding to support its rejection of the NRG contracts,<sup>47</sup> D.15-06-063 issued prior to the due date for Reply Briefs is certainly also applicable here and dispositive of the impropriety of SCE imposing a 20 minute response time. Yet, it is never mentioned in briefs filed by CAISO and SCE or in the PD or APD.

But, the importance, yet dubiousness, of what CAISO and SCE joined to do is not lost on either and both have continued post-record efforts to seemingly justify their actions. Thus, in SCE’s Reply Brief, SCE sought to defend its actions by stating: “Similarly, the 20 minute response time requirement was applicable to all dispatchable resources.”<sup>48</sup> However, on August 28, 2015, SCE filed a Motion for Leave to Amend Reply Brief to “correct an inaccuracy” by asking that this sentence be “delete[d] ... in its entirety.”<sup>49</sup> Clearly, this statement was wrong, yet SCE claims that it was merely a “minor” inaccuracy that does “not materially impact the substance of SCE’s Reply Brief.”<sup>50</sup>

Nothing could be further from the truth. SCE’s contention regarding the imposition of a 20 minute response time on “all dispatchable resources” was not only wrong, but it was a central, and now confirmed to be an erroneous, justification by SCE that it had treated all resources alike, which it clearly did not. Instead, it is evidence, especially when combined with the record on the outcome of SCE’s consultations with CAISO, that an unreasonable, extra burden was imposed on DR, which D.15-06-063 makes clear should never have been required.

Perhaps more troubling are the ex parte efforts by CAISO to claim that it is seeking to impose the 20 minute response time after-the-fact of this whole RFO process. In this case, on October 19, 2015, CAISO filed a Notice of Ex Parte Communication *in this application* to provide “background information on a proposed revision request (PRR) to the CAISO’s Business Practice Manual (BPM) for Reliability to “clarify that demand response resources should be

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<sup>45</sup> D.15-06-063, at p. 35.

<sup>46</sup> EnerNOC Reply Brief, at 5, 10-12.

<sup>47</sup> APD, at p. 15.

<sup>48</sup> SCE Reply Brief, at p. 28.

<sup>49</sup> SCE Motion for Leave to Amend Reply Brief, at pp. 1-2.

<sup>50</sup> *Id.*, at p. 2.

available in 20 minutes to meet reliability standards.”<sup>51</sup> By its Notice of Ex Parte Communication, CAISO specifically references Findings of Fact in the PD claiming that “‘repurposing’ demand response encompasses modification in order to respond within 20 minutes to a first contingency event and thereby qualify as a local capacity area resource.”<sup>52</sup>

Seeking to use the PD here to support an action that CAISO is only *proposing* now and further suggesting that is “required” by the PD is outrageous circular logic and should be seen for the sleight-of-hand, violation of due process that it represents. Further, CAISO’s Notice of Ex Parte Communication fails to inform the Commission that this PRR action has been *opposed* by nearly all participating intervenors, including the Utilities, and was in fact placed “on hold in order to consider numerous stakeholder comments” on September 23, 2015 (PRR #854) and remains *suspended* today.

This history, especially where the above documents are now part of the formal file of this application, should be seen for what it is – that SCE and CAISO collaborated on DR performance requirements in a manner that had *no* support in law or fact and that created uncertainty and unreasonable barriers to DR participation in the 2013 LCR RFO. EnerNOC’s testimony and briefs fully demonstrate the factual and legal failings of the SCE solicitation for DR.<sup>53</sup> The Commission simply cannot ignore this record and must act to acknowledge that SCE’s RFO process, including its consultations with CAISO and their outcome, were unreasonable for DR resources and contributed to the complete absence of DR being selected in this procurement.

### III.

#### **BOTH THE PD AND APD ERR IN FAILING TO REQUIRE SCE TO CONDUCT A RESIDUAL PREFERRED RESOURCES PROCUREMENT NEEDED TO COMPLY WITH D.13-02-015 AND D.14-03-004 AND UNDERTAKEN IN A MANNER THAT CORRECTS MISTAKES IN ITS 2013 LCR RFO FOR DR RESOURCES.**

The record is clear: SCE did not comply with its Preferred Resources procurement mandate established by D.13-02-015 and D.14-03-004 and the MW deficit, if the APD’s rejection of the NRG contracts stands, is now 388 MWs, at least. Further, SCE’s approach to

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<sup>51</sup> CAISO Notice of Ex Parte Communication, at p. 1.

<sup>52</sup> *Id.*, at p. 2.

<sup>53</sup> Ex. EnerNOC-1, at pp. 10-14. (EnerNOC(Tierney-Lloyd)); EnerNOC Opening Brief, at pp. 21-30; EnerNOC Reply Brief, at pp. 9-12.

procurement of Preferred Resources, in particular, DR was seriously flawed and requires corrective measures.

In these circumstances, the PD and APD do *not* have record support either to conclude that SCE either “reasonably” or “substantially” complied with its “Preferred Resource procurement requirement in D.13-02-015 and D.14-03-004,” to find that SCE should be “relieved from any obligation” to procure this 388 MW deficit, or to allow SCE *discretion* as to how, when, or if it elects to “procure additional Preferred Resources.”<sup>54</sup> The Commission must require SCE to abide by the directives of its procurement authorization decisions and require SCE to correct for the factors that contributed to a failed solicitation for demand response resources.

EnerNOC, as it stated in its Opening Brief, would agree with SCE witness Cushnie that the 2013 LCR “RFO timelines” were not sufficient for many of the DR issues to be resolved and that “bid docs” would have been improved by “engag[ing] the industry to understand what their concerns might be with our pro forma agreements and then try to deal with those proactively.”<sup>55</sup> However, such statements only further prove that the Commission’s approval process for SCE’s procurement plan and SCE’s LCR RFO “process” itself were in fact *not* “successful, fair and reasonable” for DR bidders.

In these circumstances, the Commission simply must not issue a decision here that ignores the shortcomings of both SCE’s LCR RFO Process and its procurement results for DR resources, especially by approving those results and relegating such evidence to simply “lessons learned.” In fact, sadly, neither the PD nor APD even remotely promise to examine these shortcomings at any time, even as “lessons learned.”

It *is* important for the Commission to correct the deficiencies in the SCE 2013 LCR RFO for DR resources *now* since SCE is already on course to repeat these errors in its Preferred Resources Pilot (PRP), which, among other things, also requires a 20 minute response time for DR. This is especially problematic when the very resolution relied upon by the APD to reject the NRG contracts (Resolution E-4728) was the vehicle for authorizing the first Demand Response Auction Mechanism (DRAM) Pilot, inclusive of an applicable DR pro forma or standard contract that *excludes* such a requirement. The DRAM Pilot and related contract were the subject of

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<sup>54</sup> PD, at p. 18; APD, at p. 18.

<sup>55</sup> RT at 293 (SCE (Cushnie)).

multiple days of meetings among Staff, Utilities, and stakeholders to yield, with modifications adopted by Resolution E-4728, a procurement mechanism for DR that has broad support. This process was the very kind of planning that should have, but did not take place, in advance of SCE's 2013 LCR RFO.

Yet, given that there is a deficit in SCE meeting its Preferred Resources procurement mandate required by D.13-02-015 and D.14-03-004 of 388 MWs and that SCE is engaged in another RFO (PRP) where it has already imposed a response time rejected by the Commission for RA and DRAM purposes, the Commission must take corrective action now to dictate, at a minimum, how DR procurement should proceed. EnerNOC provided a detailed proposal for doing just that, which it repeats here again. The only modification it would make to this recommendation is that, for DR resources procured pursuant to the targeted Western LA Basin Preferred Resources Residual Procurement identified below, consideration can be given to using the pro forma contract adopted for the 2016 DRAM Pilot, referenced above.

Thus, as requested and supported in EnerNOC's Opening and Reply Briefs,<sup>56</sup> EnerNOC again urges the Commission in its final decision on A.14-11-012 to order all of the following:

1. The Commission should order SCE to procure a minimum of "preferred resources," as those resources are defined and included in the Loading Order and PU Code 454.5(b)(9)(C), in the amount of at least 388 MWs in the Western LA Basin ("Western LA Basin Preferred Resources Residual Procurement").
2. The Commission should order that the Western LA Basin Preferred Resources Residual Procurement is separate from and in addition to any resources SCE procures pursuant to its currently pending "Preferred Resources Procurement" (PRP) that has focused on a "preference for resources in the Johanna or Santiago sub-areas to support its PRP."<sup>57</sup>
3. The Commission should order that the Western LA Basin Preferred Resources Residual Procurement should not be conducted pursuant to or under the terms of the same non-transparent "LCR Procurement Plan" submitted by SCE to the Energy Division in 2013.
4. The Commission should order that SCE should file a separate Western LA Basin Preferred Resources Residual Procurement Plan to meet that procurement requirement in this application (A.14-11-012) with service on all parties to this proceeding and R.13-12-010

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<sup>56</sup> See: EnerNOC Opening Brief, at pp. 32-35; EnerNOC Reply Brief, at pp. 15-18.

<sup>57</sup> Ex. SCE-1, at p. 54 (SCE (Singh)).

and on all bidders in its 2013 LCR RFO, within a timeframe coordinated with the tasks identified in Item 6 below.

5. The Commission should order that the Western LA Basin Preferred Resources Residual Procurement Plan must definitively identify the following: (a) the preferred resource products to be procured; (b) the operational characteristics, attributes, and performance required to meet this residual procurement need consistent with existing Commission decisions; (c) the means of procurement (competitive solicitation or bilateral contracts); (d) the evaluation or cost-effectiveness criteria that will be applied; and (d) a timeline that will account for the status of Commission decisions on RA and CAISO market integration, including, but not limited, to Tariff Rule 24.
6. The Commission should order that SCE shall not undertake the Western LA Basin Preferred Resources Residual Procurement until (a) the Commission has addressed and resolved the shortcomings of 2013 LCR RFO process, which include a clear understanding of the resource obligations between the Commission and the CAISO and a determination that the issues around wholesale market participation of DR resources have been resolved in a manner to permit meaningful resource participation (including, but not limited to, a final decision on the supply-side integration working group report in R.13-09-011 (DR) and an order of the Federal Energy Regulatory Commission (FERC) approving the CAISO's Reliability Services Initiative (RSI)); (b) at least one Commission Workshop facilitated by the Energy Division has been publicly noticed and held for the purpose of SCE presenting its Western LA Basin LCR Residual Procurement Plan; (c) parties to this application and R.13-12-010 and participants in the Workshop have had the opportunity to file Opening and Reply Comments on the Plan in this Application; and (d) the Western LA Basin Preferred Resources Residual Procurement has been approved by a Commission decision issued after, and in consideration of, the Workshop and party comments.

#### **IV. CONCLUSION**

For the reasons stated above and in its Opening Brief, EnerNOC urges the Commission not to issue either the PD or APD until their many errors, identified above, are corrected, and, consistent with the law and record applicable here, SCE is ordered to procure the deficiency in its mandated Preferred Resource procurement by a dedicated RFO, which also imposes and notices DR performance requirements consistent with Commission RA decisions and accounts



for uncertainty in the DR market. While correcting both the PD and APD requires multiple changes to both, EnerNOC has offered extensive revisions to the existing Findings of Fact, Conclusions of Law, and Ordering Paragraphs of both in Appendix A-1 (Proposed Decision) and Appendix A-2 (Alternate Proposed Decision) hereto that, at a minimum, are necessary to achieve that end.<sup>58</sup>

Obviously, however, all of these changes must be supported by a much more thorough consideration and “determination” on *all* of the Scoping Memo issues based on the complete record in this application that is absent from the PD and APD. As demonstrated herein, without these significant changes neither the PD nor the APD should be issued as written.

Respectfully submitted,

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<sup>58</sup> As stated in Appendix A-2, for the APD, EnerNOC recommends that all of the Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs included for the PD in Appendix A-1 should apply to the APD if adopted, in addition, to modifications specific to changes made by the APD to the PD as detailed in Appendix A-2.

## APPENDIX A-1

### **ENERNOC, INC. PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS FOR PROPOSED DECISION**

EnerNOC, Inc., propose the following modifications to the Findings of Fact, Conclusions of Law, and Ordering Paragraphs in the Proposed Decision mailed on October 6, 2015, in A.14-11-012 (SCE LA Basin), which approves, in part, the results of SCE's LCR RFO for the Western LA Basin.

Please note the following:

- A page citation to the PD is provided in brackets for each Finding of Fact, Conclusion of Law, or Ordering Paragraphs for which a modification is proposed.
- Added language is indicated by **bold type**; removed language is indicated by **bold strike-through**.
- A new or added Finding of Fact, Conclusion of Law, or Ordering Paragraph is labeled as "**NEW**" in **bold, underscored** capital letters. All **NEW** findings, conclusions, or ordering paragraphs follow at the end of those included in the PD.

#### **PROPOSED FINDINGS OF FACT:**

1. [33] ~~SCE issued this RFO pursuant to the procurement directives in T[t]wo~~ Commission decisions, D.14-03-004 and D.13-02-015, **provide and dictate the procurement authority for SCE's LCR RFO for the Western LA Basin .**

2. [33] The results of SCE's RFO issued pursuant to D.14-03-004 and D.13-02-015 are consistent with the CAISO's planning assumptions in the 2014-2015 transmission plan and support the safe and reliable operation of SCE's electrical service, **except to the extent that SCE, in consultation with CAISO, imposed performance requirements for Demand Response that have not been adopted for Resource Adequacy (RA) purposes by this Commission.**

4. [33] SCE and the CAISO worked together to confirm that the location and characteristics of the procured resources would meet local capacity needs, **but the results of their consultations to impose a 20 minute response time for Demand Response resources were not supported by either Commission decision or CAISO tariff.**

6. [33] The selected resources will effectively address two major reliability concerns for the Western LA Basin and San Diego **areas** and will address the residual need in the Western LA Basin.

7. [33] SCE seeks approval of contracts totaling approximately 1,883 MW of capacity. The results of SCE's RFO are approximately 17 MW short of the minimum procurement target set forth in D.14-03-004 and D.13-02-015 for capacity in the Western LA Basin area, **and 99 was 388 MW short in procurement of Preferred Resources, and failed to procure any Demand Response preferred resources.**

8. [34] SCE designed and conducted the LCR RFO based on a procurement plan approved by the Energy Division **for which there was no public review and no approval by the Commission, and based on ~~with~~ oversight alone** by an Independent Evaluator and review throughout the LCR RFO process **solely** by the Energy Division and SCE's Cost Allocation Mechanism Group.

9. [34] The Western LA Basin LCR RFO elicited a robust response from a broad range of resources capable of satisfying the Western LA Basin LCR need, **but that response was not borne out in ultimate resource selection, which excluded Demand Response resources and failed to meet the minimum procurement requirement of Preferred Resources mandated by D.14-03-004 and D.13-02-015.**

10. [34] The SCE RFO issued pursuant D.13-02-015 and D.14-03-004 **may have been was** reasonable **for certain resource types, but failed to include Demand Response resources, a preferred resource in the Loading Order and did not meet the minimum procurement requirement of Preferred Resources mandated by D.14-03-004 and D.13-02-015. and consistent with the law.**

11. [34] **While SCE can review updated grid reliability information to ensure grid reliability and reasonable costs [b]Before undertaking** additional procurement to meet, at

least, the Western LA Basin LCR minimum requirements, as set forth in D.13-02-015 and D.14-03-004, such review does not diminish nor excuse SCE's requirement to procure 388 MWs of Preferred Resources in compliance with those decisions ~~SCE should review updated grid reliability information to ensure grid reliability and reasonable costs.~~

12. [34] The results of the RFO were not fully reasonable based on the need to disapprove ~~, with the exception of~~ seven contracts, the failure of the RFO to procure Demand Response resources, and the failure of the RFO to meet the minimum procurement requirement of Preferred Resources mandated by D.14-03-004 and D.13-02-015, ~~reasonably comply with the RFO directive in D.14-03-004 and D.13-02-015.~~

13. [34] While results of the RFO, other than the seven contracts, can be approved here, SCE must still fulfill the minimum Preferred Resources procurement requirement established by ~~has satisfied the RFO requirement of~~ D.14-03-004 and D.13-02-015 through a preferred resources-targeted RFO, and, in doing so, ensure that performance requirements established for Demand Response are known in advance of that RFO, are consistent with Commission RA decisions, account for uncertainty in the DR market at this time, and use the DR Pro Forma Agreement or Standard Contract adopted for use in the Demand Response Auction Mechanism by Resolution E-4728 ~~need not issue an additional RFO pursuant to D.14-03-004 and D.13-02-015.~~

14. [34] ~~Additional procurement via other procurement mechanisms is needed to meet, at least, the minimum MW identified in D.14-03-004 and D.13-02-015 in the Western LA Basin.~~

17. [35] The specific attributions by resource type or product was not correctly stated in SCE's original application for ~~definition of what types of technologies constituted Preferred Resources, including Demand Response or Distributed Generation resources, was, perhaps, not fully vetted prior to SCE's RFO.~~

20. [36] SCE has only partially ~~reasonably~~ complied with RFO requirement in D.13-02-015 and D.14-03-004.

**NEW FINDING OF FACT:** The SCE RFO failed to result in DR contracts, which is a Preferred Resource, co-equal with Energy Efficiency at the top of the Loading Order.

**NEW FINDING OF FACT:** There were several unresolved issues which affected the operational requirements of DR resources subject to the DR Rulemaking (R.13-09-011) and the CAISO's stakeholder processes at the time the SCE RFO was issued.

**NEW FINDING OF FACT:** SCE and CAISO engaged in non-public conversations after initial offers were submitted in the RFO and there determined, without bidder, regulatory, or stakeholder input or supporting Commission decision or CAISO tariff, that a 20-minute dispatch notification would be a required criterion for DR resources to be considered to meet local capacity requirements in the RFO.

**NEW FINDING OF FACT:** SCE counted the excess procurement for storage resources relative to the storage minimum procurement requirement against the Preferred Resources minimum procurement requirement, an action that was not consistent with the Loading Order or D.13-02-015 and D.14-03-004 and inappropriately understated the shortfall in SCE's Preferred Resources procurement.

**NEW FINDING OF FACT:** DR resource solicitations would benefit from more information being known as to the resource obligations before another solicitation is conducted, but also can consider use of the DR pro forma contract adopted for the Demand Response Auction Mechanism (DRAM) in Resolution E-4728.

#### **PROPOSED CONCLUSIONS OF LAW**

1. [37] ~~While~~ SCE's choices regarding the RFO were not perfect **nor fully reasonable**, as demonstrated by the record in this application, ~~and parties may point to certain area where better choices could have been made the choices made by SCE were reasonable~~ based on the directives of the Commission in D.13-02-015 and D.14-03-004 and the circumstances at that time **and for Preferred Resources, with additional corrections in procuring Demand Response, continue to require a further RFO targeted to those resources.**

2. [37] Based on the CAISO's local capacity requirement analyses, it is reasonable to find that the selected RFO resources will enhance the reliable operation of SCE's electrical service and support reliability of service; **however, the notification requirement that CAISO negotiated with the CAISO for DR resources is not supported by either CAISO Tariff or**

**CPUC Decision in the RA Proceeding and, therefore, should not have been a requirement for DR resources.**

3. [37] **With certain exceptions, such as the failure to procure the minimum capacity of preferred resources and the failure to procure any DR resources,** the results of the RFO reasonably comply with the procurement directives in D.14-03-004 and D.13-02-015.

4. [37] ~~It is reasonable to provide for additional time and analyses to assess the need for additional MW to meet LCR in the Western LA Basin before~~ **SCE should procure, at least, the minimum MW amounts set forth in D.14-03-004 and D.13-02-015 and should procure 388 MW of preferred resources, subject to remedying the reasons for the deficiency in the first place.**

7. [38] **SCE has only partially, reasonably complied with the RFO requirement in D.13-02-015 and D.14-03-004 but must still procure, at least, up to the minimum MWs of Preferred Resources set forth in D.13-02-015 and D.14-03-004 through an RFO process that corrects for errors in setting forth appropriate performance criteria for Demand Response Resources, accounting for uncertainty in the DR market, and relies on the DR pro forma or standard contract adopted for use for the Demand Response Auction Mechanism (DRAM) adopted in Resolution E-4728.**

**NEW CONCLUSION OF LAW: The Commission has not adopted a 20-minute notification requirement for DR resources to qualify to meet local capacity requirements and, in fact, has rejected this proposal in D.15-06-063.**

**NEW CONCLUSION OF LAW: CAISO does not require DR resources to meet a 20-minute notification requirement in its tariff.**

**NEW CONCLUSION OF LAW: Storage is not included in the Loading Order as a Preferred Resource and excess procurement of storage cannot be used to offset the minimum procurement obligation for preferred resources established in D.13-02-015 and D.14-03-004.**

## **PROPOSED ORDERING PARAGRAPHS**

1. [39] Southern California Edison Company (SCE) **only partially**, reasonably complied with the request for offer directives in Decisions 13-02-015 and 14-03-004. SCE shall procure **the shortfall of the Preferred Resources procurement mandated by ~~via other procurement mechanisms to meet, at least, the minimum procurement amounts designated in~~** Decision (D.)13-02-015 and D.14-03-004, **which totals 388 MWs, through a targeted Preferred Resources RFO, which, as to Demand Response resources, provides eligibility criteria that conforms to Commission decisions on DR and can consider use of the DR pro forma contract adopted for the Demand Response Auction Mechanism (DRAM) in Resolution E-4728.** All contracts presented are approved with the exception of Offers 447200- 447205 & 447250.

6. [40] Application 14-11-012 is **not** closed.

## APPENDIX A-2

### **ENERNOC, INC. PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS FOR ALTERNATE PROPOSED DECISION**

EnerNOC, Inc., propose the following modifications to the Findings of Fact, Conclusions of Law, and Ordering Paragraphs in the Alternate Proposed Decision mailed on October 6, 2015, in A.14-11-012 (SCE LA Basin), which approves, in part, the results of SCE's LCR RFO for the Western LA Basin.

**The following Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs for the APD focus only on those that have been changed by the APD from the PD.** Thus, all Findings of Fact, Conclusions of Law, and Ordering Paragraphs proposed by EnerNOC in Appendix A-1 for the PD should be applied and adopted if the APD is issued instead. However, for additional clarity, Appendix A-2 specifically addresses the findings, conclusions, and ordering paragraphs as changed by the APD from the PD and offers EnerNOC's proposed modifications to each below.

Therefore, for those Findings of Fact, Conclusions of Law, and Ordering Paragraphs specifically changed by the APD from the PD, please note the following:

- A page citation to the APD is provided in brackets for each *new* Finding of Fact, Conclusion of Law, or Ordering Paragraphs that the APD added to the PD and for which a modification is proposed.
- For APD changes to the PD that resulted in the removal of a finding, conclusion, or order, the language "**REMOVED FROM THE PD BY APD**" is used, with the proposed modification prefaced by the words: "**REINSTATED WITH PROPOSED MODIFICATIONS.**"
- Added language is indicated by **bold type**; removed language is indicated by **bold strike-through**.



- A new or added Finding of Fact, Conclusion of Law, or Ordering Paragraph is labeled as “**NEW**” in bold, underscored capital letters. All **NEW** findings, conclusions, or ordering paragraphs follow at the end of those included in the APD.

**PROPOSED FINDINGS OF FACT:**

~~REMOVED FROM PD BY APD 11. Before additional procurement to meet, at least, the Western LA Basin LCR minimum requirements, as set forth in D.13-02-015 and D.14-03-004, SCE should review updated grid reliability information to ensure grid reliability and reasonable costs.~~ **REINSTATED WITH PROPOSED MODIFICATIONS:** 11. While SCE can review

**updated grid reliability information to ensure grid reliability and reasonable costs [b]Before undertaking** additional procurement to meet, at least, the Western LA Basin LCR minimum requirements, as set forth in D.13-02-015 and D.14-03-004, **such review does not diminish nor excuse SCE’s requirement to procure 388 MWs of Preferred Resources in compliance with those decisions** ~~SCE should review updated grid reliability information to ensure grid reliability and reasonable costs.~~

11. [APD 35] ~~12.~~ The results of the RFO **were not fully reasonable based on the need to disapprove, with the exception of the** seven contracts, **substantially comply with the procurement RFO directives in D.14-03-004 and D.13-02-015.**, the failure of the RFO to procure Demand Response resources, and the failure of the RFO to meet the minimum procurement requirements of Preferred Resources mandated by D.14-03-004 and D.13-02-015, ~~reasonably comply with the RFO directive in D.14-03-004 and D.13-02-015.~~

12. [APD 35] SCE has **not** substantially satisfied the procurement requirements of D. 14-03-004 and D.13-02-015, and is **not** relieved from the requirement to procure additional resources as part of the RFO required by D.14-03-004 and D.13-02-015, **in particular, that required to procure 388 MWs of Preferred Resources, which should be accomplished by a dedicated RFO for that purpose. However, SCE remains authorized to procure additional preferred resources under those decisions, or via other approved procurement mechanisms**

~~REMOVED FROM PD BY APD 13. SCE has satisfied the RFO requirement of D.14-03-004 and D.13-02-015 and need not issue an additional RFO pursuant to D.14-03-004 and D.13-02-015.~~ **REINSTATED WITH PROPOSED MODIFICATIONS:** 13. While results of the

RFO, other than the seven contracts, can be approved here, SCE must still fulfill the minimum Preferred Resources procurement requirement established by ~~has satisfied the RFO requirement of~~ D.14-03-004 and D.13-02-015 through a preferred resources-targeted RFO, and, in doing so, ensure that performance requirements established for Demand Response are known in advance of that RFO, are consistent with Commission RA decisions, account for uncertainty in the DR market at this time, and use the DR Pro Forma Agreement or Standard Contract adopted for use in the Demand Response Auction Mechanism by Resolution E-4728 ~~need not issue an additional RFO pursuant to D.14-03-004 and D.13-02-015.~~

~~REMOVED FROM PD BY APD: 17. The specific definition of what types of technologies constituted Preferred Resources, including Demand Response or Distributed Generation resources, was, perhaps, not fully vetted prior to SCE's RFO.~~ **REINSTATED WITH PROPOSED MODIFICATIONS:** 17. The specific attributions by resource type or product was not correctly stated in SCE's original application for ~~definition of what types of technologies constituted Preferred Resources, including Demand Response or Distributed Generation resources, was, perhaps, not fully vetted prior to SCE's RFO.~~

~~REMOVED FROM PD BY APD: 20. SCE has reasonably complied with RFO requirement in D.13-02-015 and D.14-03-004.~~ **REINSTATED WITH PROPOSED MODIFICATIONS:** 20. SCE has **only partially** ~~reasonably~~ complied with RFO requirement in D.13-02-015 and D.14-03-004.

**NEW FINDING OF FACT:** The SCE RFO failed to result in DR contracts, which is a Preferred Resource, co-equal with Energy Efficiency at the top of the Loading Order.

**NEW FINDING OF FACT:** There were several unresolved issues which affected the operational requirements of DR resources subject to the DR Rulemaking (R.13-09-011) and the CAISO's stakeholder processes at the time the SCE RFO was issued.

**NEW FINDING OF FACT:** SCE and CAISO engaged in non-public conversations after initial offers were submitted in the RFO and there determined, without bidder, regulatory, or stakeholder input or supporting Commission decision or CAISO tariff, that a 20-minute dispatch notification would be a required criterion for DR resources to be considered to meet local capacity requirements in the RFO.

**NEW FINDING OF FACT:** SCE counted the excess procurement for storage resources relative to the storage minimum procurement requirement against the Preferred Resources minimum procurement requirement, an action that was not consistent with the Loading Order or D.13-02-015 and D.14-03-004 and inappropriately understated the shortfall in SCE's Preferred Resources procurement.

**NEW FINDING OF FACT:** DR resource solicitations would benefit from more information being known as to the resource obligations before another solicitation is conducted.

**PROPOSED CONCLUSIONS OF LAW**

4. [APD 38] It is reasonable for SCE to proceed to develop a targeted RFO necessary to ensure procurement of 388 MWs of Preferred Resources in the Western LA Basin to ensure compliance with D.13-02-015 and D.14-03-004. ~~reasonable to provide for additional time and analyses to assess the need for additional MW of Preferred Resources to meet LCR in the Western LA Basin.~~

7. [APD 38] SCE has **not reasonably substantially** complied with its Preferred Resource procurement requirement in D.13-02-015 and D.14-03-004 and, as a result, is **not** relieved from its obligations of procuring the **any 388 additional MW of Preferred Resources** under D.13-02-015 and D.14-03-004. ~~However, SCE remains authorized to procure additional Preferred Resources under those decisions, or via other approved procurement mechanisms.~~

**NEW CONCLUSION OF LAW:** The Commission has not adopted a 20-minute notification requirement for DR resources to qualify to meet local capacity requirements and, in fact, has rejected this proposal in D.15-06-063.

**NEW CONCLUSION OF LAW:** CAISO does not require DR resources to meet a 20-minute notification requirement in its tariff.

**NEW CONCLUSION OF LAW:** Storage is not included in the Loading Order as a Preferred Resource and excess procurement of storage cannot be used to offset the minimum procurement obligation for preferred resources established in D.13-02-015 and D.14-03-004.

## **PROPOSED ORDERING PARAGRAPHS**

1. [APD 40] Southern California Edison Company (SCE) **only partially reasonably substantially** complied with the request for offer directives in Decisions 13-02-015 and 14-03-004. **SCE shall procure the shortfall of the Preferred Resources procurement mandated by Decision (D.)13-02-015 and D.14-03-004 through a targeted Preferred Resources RFO, which, as to Demand Response resources, provides eligibility criteria that conforms to Commission decisions on DR and can consider use of the DR pro forma contract adopted for the Demand Response Auction Mechanism (DRAM) in Resolution E-4728.** All contracts presented are approved with the exception of Offers 447200- 447205 & 447250.

6. [40] Application 14-11-012 is **not** closed.