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Agenda ID #14591
and
Alternate Agenda ID #14592
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 14-11-016:

Enclosed are the proposed decision of Administrative Law Judge Regina M. DeAngelis previously designated as the presiding officer in this proceeding and the alternate proposed decision of Commissioner Michel Peter Florio. The proposed decision and the alternate proposed decision will not appear on the Commission's agenda sooner than 30 days from the date they are mailed.

Pub. Util. Code § 311(e) requires that the alternate item be accompanied by a digest that clearly explains the substantive revisions to the proposed decision. The digest of the alternate proposed decision is attached.

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

Parties to the proceeding may file comments on the proposed decision and alternate proposed decision as provided in Pub. Util. Code §§ 311(d) and 311(e) and in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed [15] pages.

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Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ DeAngelis at regina.deangelis@cpuc.ca.gov and Commissioner Florio's advisor Charlyn Hook at charlyn.hook@cpuc.ca.gov. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ DOROTHY DUDA for
Karen V. Clopton, Chief
Administrative Law Judge

KVC: ek4

Attachment

**DIGEST OF DIFFERENCES BETWEEN
ADMINISTRATIVE LAW JUDGE DeANGELIS'S PROPOSED DECISION
AND THE ALTERNATE PROPOSED DECISION
OF COMMISSIONER FLORIO**

Pursuant to Public Utilities Code Section 311(e), this is the digest of the substantive differences between the proposed decision of Administrative Law Judge (ALJ) DeAngelis (mailed on January 11, 2016) and the proposed alternate decision of Commissioner Florio (also mailed on January 11, 2016).

The ALJ's Proposed Decision (PD) approves, with certain exceptions, the results of the request for offers conducted by Southern California Edison Company (SCE) pursuant to the Commission's directives in Decision (D.)13-02-015 issued in Rulemaking12-03-014. The PD denies the NRG Ellwood refurbishment project (and the associated energy storage project), while the alternate proposed decision of Commissioner Florio approves the Ellwood project (including the energy storage contract), on the basis that SCE had demonstrated an additional need outside of the D.13-02-015 need determination.

Both the ALJ's PD and the alternate proposed decision of Commissioner Florio defer review of the NRG Puente Project contract until completion of environmental review by the California Energy Commission.

ATTACHMENT

Decision **PROPOSED DECISION OF ALJ DEANGELIS** (Mailed 1/11/2016)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338E) for Approval of the Results of Its 2013 Local Capacity Requirements Request for Offers for the Moorpark Sub-Area.

Application 14-11-016
(Filed November 26, 2014)

DECISION APPROVING, IN PART, RESULTS OF SOUTHERN CALIFORNIA EDISON COMPANY LOCAL CAPACITY REQUIREMENTS REQUEST FOR OFFERS FOR MOORPARK SUB-AREA PURSUANT TO DECISION 13-02-015

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DECISION APPROVING, IN PART, RESULTS OF SOUTHERN CALIFORNIA EDISON COMPANY LOCAL CAPACITY REQUIREMENTS REQUEST FOR OFFERS FOR MOORPARK SUB-AREA PURSUANT TO DECISION 13-02-015

Summary

We approve of the results of the request for offers (RFO) conducted by Southern California Edison Company (SCE) pursuant to the Commission's directives in Decision (D.) 13-02-015 issued in Rulemaking 12-03-014,¹ with certain exceptions. Rather than approve the Puente Project today, we will complete our review of the Puente Project after the environmental review by the California Energy Commission. Additionally, we deny, without prejudice, the Ellwood contract, which was presented in this proceeding for approval although the contract was not part of the need determination in D.13-02-015. With these exceptions, SCE has reasonably complied with the requirement in D.13-02-015 to hold an RFO for the Moorpark sub-area. SCE shall, however, continue to procure via any procurement mechanisms to meet, at least, the minimum procurement amounts adopted in D.13-02-015. This proceeding remains open for further consideration of procurement in the Moorpark sub-area, including the Puente Project.

1. Procedural Background

D.13-02-015, issued on February 13, 2013, ordered SCE to procure, via a Request for Offers (RFO), a minimum of 215 megawatts (MW) and a maximum of 290 MW of electrical capacity in the Moorpark sub-area of the Big Creek/Ventura local reliability area (Moorpark sub-area) to meet identified

¹ R.12-03-014, *Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans* (March 22, 2012).

long-term local capacity requirements (LCR) by 2021.² The Commission found this LCR need existed, in large part, due to the expected retirement of the Ormond Beach and Mandalay once-through-cooling (OTC) generation facilities, which are both located in Oxnard, California.

For projects to be considered for this particular RFO, the projects had to meet certain minimum characteristics, including that the projects be incremental, i.e., new capacity.³ Other minimum requirements included that the projects qualify as Full Capacity Deliverability Status and delivery had to include the entire calendar year 2021.⁴ These minimum characteristics were established in D.13-02-015. This decision did not specify that SCE procure any specific resources types.

The Commission in D.13-02-015 ordered SCE to submit an LCR procurement plan to the Energy Division explaining how SCE would conduct this RFO.⁵ SCE submitted its initial LCR procurement plan on July 15, 2013. Energy Division approved a modified version of SCE's plan on September 4, 2013.⁶ SCE launched its LCR RFO on September 12, 2013.⁷

On November 26, 2014, SCE filed this Application for approval of the results of its 2013 LCR RFO for the Moorpark sub-area seeking approval of

² D.13-02-015 at 131 (OP 2).

³ Ex. SCE-1 at 14.

⁴ Ex. SCE-1 at 14.

⁵ D.13-02-015 at 133-134 (OPs 5-7).

⁶ SCE July 22, 2015 Opening Brief at 3.

⁷ Ex. SCE-1 at 4; SCE July 22, 2015 Opening Brief at 3.

11 contracts.⁸ The Application also seeks approval of one project that did not bid into the RFO.

A brief review of the 11 contracts follows: One of the contracts is a 20-year contract for gas-fired generation (totaling 262 MW of capacity). This contract is a resource adequacy (RA) purchase agreement with NRG Energy Center Oxnard, LLC (NRG) for a new simple cycle peaking facility known as the Puente Power Project (NRG Puente Project).⁹

Another contract, which is also for gas-fired generation (totaling 54 MW of capacity), does not count toward SCE's incremental procurement requirements for the Moorpark sub-area under D.13-02-015. This contract is a 10-year agreement with NRG California South, LP (NRG California South) for the existing 54 MW Ellwood Generating Station (Ellwood), which NRG California South will refurbish (without any change in size or capacity) to provide a remaining 30-year design life.¹⁰ Ellwood was included as an existing resource in the CAISO study that served as the foundation of D.13-02-015 and, in that study, it was assumed to continue operating in the need assessment. Therefore, the Ellwood contract is not an incremental resource and does not count toward SCE's procurement requirements for the Moorpark sub-area.¹¹

SCE also seeks approval of an energy storage contract with NRG California South (NRG Energy Storage contracts). This project is located on the

⁸ D.13-02-015 at 68, 131 (OP 2).

⁹ Ex. SCE-1 at 55; Ex. NRG-1 at 2.

¹⁰ Ex. SCE-1 at 57.

¹¹ Ex. SCE-1 at 3, fn. 1; Ex. SCE-1 at 57.

site of Ellwood. The NRG Energy Storage contract is a tolling agreement for a 0.5 MW storage facility.¹²

The remaining contracts include six contracts for energy efficiency (totaling 6 MW of capacity) and two contracts for renewable distributed generation (totaling 5.66 MW of capacity).¹³

A summary of the selected offers is provided in the table below.¹⁴

| Produce Category | Counterparty | Total Contracts | Max Quantity (LCR MW) |
|--|--|------------------------|------------------------------|
| Gas-Fired Gen - Incremental | NRG Energy Center Oxnard LLC (Puente Project) | 1 | 262 |
| Gas-Fired Gen - Not Incremental | NRG California South LP (Ellwood Project) | 1 | 0 (or 54 - not incremental) |
| Energy Efficiency - Incremental | Onsite Energy Corporation | 6 | 6 |
| Renewable Distributed Gen - Incremental | Solar Star California XXXIV, LLC Solar Star California XXXIX, LLC | 2 | 5.66 |
| Energy Storage (In Front Of Meter) - Incremental | NRG California South LP | 1 | .5 |

On January 12, 2015, City of Oxnard, World Business Academy, the Office of Ratepayer Advocates (ORA), and the Sierra Club, Center for Biological Diversity (CBD) filed protests. Other parties filed responses to this Application,

¹² Exhibit SCE-1at 54, lines 12-17; NRG August 5, 2015 reply brief at 7.

¹³ Exhibit SCE-1 at 3, Table I-1.

¹⁴ Exhibit SCE-1 at 3 and 55.

including NRG, NRG California South, California Energy Storage Alliance (CESA), EnerNOC, Inc. (EnerNOC), the Western Power Trading Forum, and Alliance for Retail Energy Markets (AReM) with the Direct Access Customer Coalition (DACC).

Parties submitted prepared testimony in preparation for evidentiary hearings which were held on May 27, 28, and 29, 2015.

A public participating hearing (PPH) was held in Oxnard on July 15, 2015. The general public and public representatives presented opinions at the PPH in Oxnard that – while informal and having no evidentiary weight – were mostly against the Ellwood project and NRG Puente Project.¹⁵ Some speakers supported the projects. Hundreds of letters from the public have been included in the correspondence file of this proceeding.

Parties filed concurrent opening briefs and reply briefs on July 22, 2015 and August 5, 2015, respectively.

1.1. Standard of Review

We review today's Application and request therein under a reasonableness standard. The question is whether SCE conducted its RFO in a reasonable manner, consistent with the law and Commission decisions, and whether the results are reasonable.

1.2. Burden of Proof

The burden of proof is on the Applicant in this proceeding to support its request by a preponderance of evidence. In short, the preponderance of evidence burden of proof standard is met if the proposition is more likely to be true than

¹⁵ The reporter's transcript of this public participation meeting can be found in Central Files at the Commission.

not true. The standard is also described as being met by the evidence presented when the proposition is more probable than not.

2. Scope of Issues

The issues to be determined are:¹⁶

1. Whether the results of SCE's 2013 LCR RFO for the Moorpark sub-area enhance the safe and reliable operation of SCE's electrical service?
2. Does the Application comply with the procurement authority granted by the Commission in D.13-02-015?
3. Are the results of SCE's 2013 LCR RFO for the Moorpark sub-area a reasonable means to meet the 215 to 290 MW of identified LCR need determined by D.13-02 015? This issue includes consideration of the reasonableness of at least the following:
 - a. Are the price, terms and conditions of the LCR contracts reasonable?
 - b. Did SCE's RFO process limit certain resource bids from being considered? If so, were these limitations reasonable?
 - c. Was the process used to develop the eligibility requirements reasonable?
 - d. Did the process and outcome of any consultations between the California Independent System Operator and SCE impact resources requirements and contract selection? If so, was this impact reasonable?
 - e. Are the LCR RFO contracts consistent with the Commission's Emissions Performance Standards?
4. Should the Commission approve these contracts prior to completion and a final decision by the California Energy

¹⁶ March 13, 2015, *Assigned Commissioner's Ruling and Scoping Memo* at 4-5.

Commission (CEC) of the California Environmental Quality Act (CEQA) review? The CEC is the lead agency for purposes of the CEQA review. As a result, environmental matters will largely be resolved by the CEC.

5. Is SCE's proposed rate treatment, cost recovery, and cost allocation just and reasonable? (A workshop for the purpose of clarifying SCE's proposed Cost Allocation Mechanism, or CAM, treatment will not be necessary.)
6. Is the 54 MW Ellwood Refurbishment project appropriate for the Commission to consider in this proceeding and, if so, is the contract reasonable?
7. Is the contract with NRG California South LP, for a 0.5 MW storage project, reasonable?

3. 262 MW Gas-Fired Generation NRG Puente Project - Offer 447019

Today, the Commission holds, without prejudice, its review of the NRG Puente Project contract until completion of environmental review by the California Energy Commission (CEC).¹⁷ While the Commission is not required to hold this proceeding until CEC review is complete, it has the authority to do so. In this instance, the CEC's review may enhance the Commission's independent determination of critical safety issues and environmental justice matters and also clarify reliability risks posed by locating the new electric infrastructure on the beach in the City of Oxnard. This proceeding remains open for further consideration of this matter.

3.1. Impact of Delay

Before deciding to postpone consideration of the NRG Puente Project, the Commission must evaluate and balance several factors, including any harm that may result from the delay, either to the parties or the public.

¹⁷ CEC Docket 15-AFC-01 (Application for Certification of Puente Project by NRG.)

NRG's argument against delay relied on the principle of efficiency. Simply stated, NRG argued that the act of imposing any delay on a final Commission decision on the NRG Puente Project would be inefficient.¹⁸

Efficiency is always a fundamental concern of the Commission. Efficiency, however, is not always the overriding concern. This is especially so when questions about the safety of the public remain insufficiently addressed.

In this instance, allowing the CEC to review the environmental impact of the NRG Puente Project prior to a final decision by the Commission may be the most efficient path to uphold the paramount goal of safety. As stated above, it is possible that critical safety issues and environmental justice matters will be exposed after further review by the CEC. Reliability risks may be clarified, too.

Moreover, since the CEC is already reviewing the proposal, the length of the delay will be measured in months, and not affect the parties' ability to provide reliable power to the Moorpark sub area in advance of 2021.¹⁹

Therefore, we find that any delay in the review of the NRG Puente Project will not cause unreasonable delays in the procurement required under D.13-02-015 or cause harm to the parties or the public. We now address the risks to reliability posed by the Puente Project.

3.2. Grid Reliability

SCE seeks Commission approval of a 20-year contract with NRG Energy Center Oxnard LLC for 262 MW of gas-fired generation from a new GE 7HA.01 gas-fired CT with a contract start date of June 1, 2020 to be located at 393 North

¹⁸ NRG July 22, 2015 Opening Brief at 43.

¹⁹ D.13-02-015 (OP 2) at 131 stated: Southern California Edison Company shall procure between 215 and 290 Megawatts of electric capacity to meet local capacity requirements in the Moorpark sub-area of the Big Creek/Ventura local reliability area by 2021.

Harbor Boulevard, Oxnard, California.²⁰ Our review of the reliability risks facing the NRG Puente Project reflects our obligation to ensure investments in electricity infrastructure are used and useful and contribute to local reliability. The Commission's review of reliability risks is distinct from the CEC's environmental review but, nevertheless, includes some of the same evidence.

For example, the Commission must evaluate the risk of flooding under Pub. Util. Code § 451.²¹ The reliability of the grid is one aspect of the Commission's broader analysis and responsibility to ensure safety under Section 451. The CEC, on the other hand, evaluates the risk of flooding from an environmental perspective. As such, SCE's suggestion that the reliability risks posed by sea level rise fall outside of the Commission's purview but, instead, within the jurisdiction of CEC's environmental review, does not fully capture the Commission's role.

Parties presented competing points of view on the risks posed to reliability and safety based on the location of the plant, as the proposed beach location is near sea level. According to the Sierra Club and City of Oxnard, local reliability could be compromised with a future sea level rise.²² As determined by Dr. David Revell, expert witness of the City of Oxnard, "portions of the Generating Station's site are exposed to coastal flooding hazards under existing

²⁰ Ex. SCE-1 at 55.

²¹ Section 451 provides, in relevant part, "Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, ..., as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

²² Oxnard July 22, 2015 Opening Brief at 6-7 and Exhibit A; Ex. CO-1 at 2; Sierra Club July 22, 2015 Opening Brief at 2-4.

conditions” and the flood risk will only increase as sea level rises.²³ According to the City of Oxnard’s expert witness, Dr. Revell, since the site is directly adjacent to the Pacific Ocean, on the beach, it will be exposed to coastal hazards by 2030 and the entire site will likely be flooded by 2060, according to the most conservative sea level rise projections.²⁴

Further, the City of Oxnard’s expert stated that much of the sandy beach protecting the site is the result of the dredging of Ventura Harbor. Since future funding for this dredging is in doubt, the coastal hazard risk for the NRG Puente Project may increase substantially.²⁵ The City of Oxnard’s second expert, David Cannon, P.E., testified that there would be significant tsunami risk under current conditions, and the risk will increase as sea levels rise.²⁶ The City of Oxnard noted that in the event of an earthquake-tsunami scenario, the Goleta-Santa Clara 230 kV transmission line could be taken out by the earthquake and Puente would be knocked out of service by the earthquake-induced tsunami.²⁷

The City of Oxnard and Sierra Club emphasized that this is a reliability issue, squarely within the jurisdiction of the Commission, since it concerns not

²³ Ex. CO-1 at 2; Oxnard July 22, 2015 Opening Brief at 5-7; Sierra Club July 22, 2015 Opening Brief at 2-3.

²⁴ Oxnard July 22, 2015 Opening Brief at 7.

²⁵ Oxnard July 22, 2015 Opening Brief at 7; Sierra Club July 22, 2015 Opening Brief at 3.

²⁶ Oxnard July 22, 2015 Opening Brief at 10-11.

²⁷ Sierra Club July 22, 2015 Opening Brief at 4, Oxnard July 22, 2015 Opening Brief at 11-13.

the effects of the project on the environment, but the effects of the environment on the reliability of the project.²⁸

On the other hand, NRG states that no such risks exist, as determined by its own expert analysis by Mr. Mineart.²⁹ NRG further argued that, even if risks existed, the CEC has jurisdiction. NRG states that, to date, the existing facility, Mandalay, at the NRG Puente Project site, has not flooded as a result of large storms and that the beach area surrounding the site has only grown wider in the last approximately 30 years.³⁰ Mr. Mineart provided evidence that the NRG Puente Project is not at risk for coastal hazards or tsunamis and highlights flaws in the opponents' experts' testimony.³¹

NRG further notes that, even if merit exists to Sierra Club and City of Oxnard's claims of potential flooding and reliability risks, that the Commission should approve of the contract because the financial risk of destruction is not carried by SCE because, if the NRG Puente Project is destroyed by a tsunami or flood, SCE is only responsible for capacity payments and could terminate the contract if the project does not provide power.³²

Reliability and the related safety concerns fall within the jurisdiction of the Commission. NRG's and SCE's arguments to the contrary lack merit. However,

²⁸ Sierra Club July 22, 2015 Opening Brief at 4; Oxnard August 5, 2015 Reply Brief at 15-21. SCE, however, argues that the climate-related issues (such as tsunami impacts, floods, and sea levels) are, in fact, environmental issues and as such, they will be addressed by the CEC in its review of the proposed project. SCE July 22, 2015 Opening Brief at 7.

²⁹ NRG Reply Brief at 11, stating that "[U]nder 'current conditions,' the Puente site is not more vulnerable to coastal hazards than it was in 1983, but is actually less vulnerable."

³⁰ NRG August 5, 2015 Reply Brief at 10-11.

³¹ NRG July 22, 2015 Opening Brief at 25-29.

³² NRG July 22, 2015 Opening Brief at 22.

based on the expert testimony of NRG, we find that, during the term of the contract, a low risk of coastal flooding exists and coastal flooding that would compromise the reliability of the proposed project is unlikely. We also find that, NRG's financial argument based on the terms of the contract fails to address the risks to reliability. The contract provisions may place the financial burden on NRG in the event of flooding, but these contract terms fail to address the larger concern of reliability. In short, regardless of which party is financially responsible for flooding, the Commission must take reasonable steps to ensure that the infrastructure it approves is not subject to hazards that unreasonably compromise reliability.

While we find that the risks to reliability are low, Sierra Club makes a strong argument that the Commission should postpone its decision on this matter until the CEC completes its environmental review, a review that Sierra Club suggests could bring forth additional important considerations as related to reliability. Sierra Club suggests that, even if the reliability risk is low, benefits exist to waiting until the CEC's review is complete, including giving the Commission a comprehensive picture of additional flooding risks and the related reliability concerns.

Sierra Club's argument relies, in part, on Executive Order B-15-30, which directs all state agencies to "take climate change into account in planning and decision making..."³³ Sierra Club also relies on the Commission's "ongoing

³³ Sierra Club July 22, 2015 Opening Brief at 2-4, citing to Executive Order B-30-15, issued on April 29, 2015 by Governor Brown, to establish a mid-term greenhouse gas emission reduction target for California of 40 percent below 1990 levels by 2030. All state agencies with jurisdiction over sources of emissions were directed to implement measures to achieve reductions of emissions to meet this target. Executive Order-30-15 states, in part, "WHEREAS taking climate

Footnote continued on next page

duty to ensure that utility investments result in infrastructure that is used and useful” and that generating capacity be “deliverable to locations and at times as may be necessary to maintain electric service system reliability and local area reliability.”

As stated above, based on the evidence presented in the proceeding, we find the risk to reliability based on flooding, sea rise, or tsunami to be low. The minimal risks to reliability alone are not enough to cause the Commission to hold our decision until the CEC completes its environmental review. However, we do find that the risk to reliability together with the safety matters and environmental justice issues, addressed in detail below, do present sufficient concern to the public to support a determination to delay a decision on the NRG Puente Project.

3.3. Safety and Environmental Justice

Environmental justice matters are raised in this proceeding in connection with the NRG Puente Project. One argument focuses on NRG’s proposed use of a brownfield site for the NRG Puente Project. NRG suggests that it has adequately considered all environmental justice concerns by siting the proposed gas-fired generator in a brownfield site. NRG’s reasoning is incomplete.

While NRG is correct that the Commission may, in certain instances, encourage the use of brownfield sites for environmental reasons – to site plant on previously disturbed land - the use of a brownfield site can often raise even more significant environmental justice issues by, for example, siting new facilities on a brownfield site within a historically economically disadvantaged neighborhood. To continue to employ such a site, near the disadvantaged neighborhood,

change into account in planning and decision making will help the state make more informed decisions and avoid high costs in the future.”

potentially perpetuates the economic injustice issues connected with living near power plants built decades ago.³⁴ For this reason, NRG's argument that a brownfield site is always in the public interest, is not persuasive.

A second environmental justice argument focuses on the community surrounding the site. In this instance, the proposed site is near a low-income community. As CEJA states, the Moorpark sub-area includes affluent, predominantly white communities with few pollution sources and many socioeconomic advantages, and it also includes a few low-income communities of color bearing disproportionate environmental burdens.³⁵ CEJA refers to these areas in this proceeding as "environmental justice" or "disadvantaged" communities. In fact, the City of Oxnard, as a whole, is identified as an environmentally disadvantaged community³⁶ by the California Environmental Protection Agency's (CalEPA) tool called CalEnviroScreen 2.0.³⁷ Based on a

³⁴ On November 19, 2015, in CEC Docket 15-AFC-01 (Application for Certification of Puente Project by NRG), NRG filed Project Enhancement and Refinement, Demolition of Mandalay Generating Station Units 1 and 2, proposing to include the demolition by late 2022 of the two gas-fired steam-generating units at the existing Mandalay Generating Station site, the site where the NRG Puente Project is proposed. Neither NRG's proposal nor the contract presented in this proceeding included the demolition at the proposed site. A third generating unit, a jet-engine-powered unit that was commissioned in 1970, and has a generating capacity of approximately 130 MW, will continue to operate and will not be affected by the construction of the NRG Puente Project or the demolition of MGS Units 1 and 2. *See*, November 19, 2015 NRG Project Enhancement and Refinement, Demolition of Mandalay Generating Station Units 1 and 2 filed in CEC Docket 15-AFC-01.

³⁵ CEJA July 22, 2015 Opening Brief at 2.

³⁶ Ex. CEJA-1 at 6.

³⁷ CalEnviroScreen is the tool on which California relies to identify communities where environmental injustice is the greatest. Ex. CEJA-1 at 5. The Commission has relied on CalEnviroScreen as a tool to identify disadvantaged communities. *See* D.15-01-051 at 53-54. The tool "includes two components representing pollution burden – exposures and environmental effects – and two components representing population characteristics – sensitive populations

Footnote continued on next page

quantitative analysis of multiple pollution sources and stressors used to rank California's census tracts,³⁸ the City of Oxnard ranks within the top 20% most environmentally burdened cities in California.³⁹

CEJA points out that a connection exists between safety and siting in an environmentally disadvantaged communities. These communities, such as the City of Oxnard, are disproportionately affected by "environmental pollution and other hazards that can lead to negative public health effects, exposure, or environmental degradation" and "areas with socioeconomic vulnerability."⁴⁰ In addition, it is worth noting that the City of Oxnard has hosted two large OTC plants on its beaches for decades – the Mandalay and Ormond generating facility sites.⁴¹

In this instance, alternative sites may obviate – or lessen – the environmental justice issues and related safety matters. The CEC will more fully develop the environmental justice and siting issues in CEC Docket 15-AFC-01 (*Application for Certification of Puente Project by NRG*). After this matter is more fully addressed by the CEC, the Commission will gain additional information to

(e.g., in terms of health status and age) and socioeconomic factors." D.15-01-051 at 4 (citing CalEnviroScreen Final Report). CalEnviroScreen 2.0 uses 19 statewide indicators to characterize both pollution burden and population characteristics, as illustrated in the following table. The tool's scientific methodology examines how many indicators are present within each census tract using a scoring system "to weigh[] and sum each set of indicators within pollution burden and population characteristics components." D.15-01-051 at 5 "After the components are scored, the scores are combined to calculate the overall CalEnviroScreen Score." See D.15-01-051.

³⁸ Ex. CEJA-1 at 4-6.

³⁹ Ex. CEJA-1 at 8.

⁴⁰ CEJA July 22, 2015 Opening Brief at 2, citing to Senate Bill 43, codified at Pub. Util. Code § 2833 (1)(A).

⁴¹ CEJA July 22, 2015 Opening Brief at 3.

use when continuing its review of the NRG Puente Project contract at the site proposed.

For this reason, we will hold this matter until the CEC completes its inquiry. Our decision today is particularly appropriate because the Commission requires utilities to take environmental justice into consideration in procurement, and it is unclear that SCE had the opportunity to do so here. When making procurement decisions, utilities must not only seek preferred resources to meet an identified need, but actively prioritize preferred resources in disadvantaged communities.⁴² The Commission also required SCE to apply these principles, stating that IOUs “need to provide greater weight” to criteria regarding “disproportionate resource siting in low-income and minority communities and environmental impacts.”⁴³ Indeed, the Commission’s Procurement Policy Manual explicitly states that IOUs “shall consider” environmental justice issues in evaluating bids from an RFO.⁴⁴

Accordingly, and for all these reasons, we will hold the review of the NRG Puente Project for further consideration after the CEC completes its environmental review. This proceeding remains open.

⁴² CEJA July 22, 2015 Opening Brief at 5.

⁴³ D.07-12-052, *Opinion Adopting Pacific Gas and Electric Company’s, Southern California Edison Company’s, and San Diego Gas & Electric Company’s Long-Term Procurement Plans* (Dec. 21, 2007) at 157.

⁴⁴ California Public Utilities Commission AB 57, AB 380, and SB 1078 Procurement Policy Manual (June 2010) at 4-8; available at <http://docs.cpuc.ca.gov/efile/RULINGS/118826.pdf>. This manual was cited as authority in D.14-02-040 at 4-5.

4. 54 MW Gas-Fired Generation NRG Ellwood Project – Offer 447021

Today's decision refrains from approving the ten-year contract for the Ellwood Project located in Santa Barbara County.

The Ellwood Project includes the refurbishment of the Ellwood plant, an existing gas-fired generation peaker plant in Goleta, Santa Barbara County.⁴⁵ Ellwood is a combustion turbine generating unit built in 1974. Historically, Ellwood has not been a reliable resource.⁴⁶ The Project is located adjacent to a residential area.⁴⁷

While the project may have advantages, the project fails to conform to certain fundamental RFO requirements found in D.13-02-015 and has not been properly vetted. No need determination was made in D.13-02-015. The Commission's consideration of the Ellwood contract in this proceeding also presents procedural concerns. Finally, the contract is of indeterminate value to ratepayers. SCE's may resubmit the project for Commission approval should the circumstances be appropriate.

⁴⁵ Ex. SCE-1 at 57.

⁴⁶ Ex. SCE-1 at 57. *See also*, ORA August 5, 2015 Reply Brief at 3, suggesting that because Ellwood has not historically been a very reliable resource, the need for Ellwood to maintain reliability is unclear and further weakens any assertion that Ellwood is necessary to maintain reliability.

⁴⁷ The project is located at 30 Las Amas Road, Goleta, California 93117 and the commercial operation date is June 1, 2018. Ex. SCE-1 at 55. The project is located approximately 1000 ft. from a public school, the Ellwood School.

4.1. Parameters of RFO

The Ellwood contract falls outside of the parameters of the RFO and the need determination, as defined D.13-02-015. No parties contest this matter. In D.13-02-015, the Commission ordered SCE to procure a maximum of 290 MW in the Big Creek/Ventura local reliability area. The capacity of the Ellwood contract results in SCE contracting for amounts that exceed this limitation.⁴⁸ Importantly, D.13-02-015 set this maximum to reflect the maximum amount of potential costs that the Commission found reasonable to impose on ratepayers. The maximum amount was the limit of the LCR need the Commission determined, and the Commission has not yet found the need for any further LCR procurement together with the related costs reasonable for ratepayers. Because neither the capacity amount, or costs, have been determined reasonable, the contract should be denied.

4.2. Incremental Capacity

Moreover, under the terms of the RFO, all contract capacity needs to be incremental. In D.14-02-040, the Commission found that only incremental capacity of existing plants, such as Ellwood, or repowered plants could participate in long-term RFOs.⁴⁹ The rationale behind this requirement in D.14-02-040 was to create a level playing field among bidders, an essential component to a well-functioning market. All parties agree that Ellwood is not new or incremental capacity. Ellwood is currently operating, and under a contract with NRG. Therefore, the project does not fall within the definition of incremental resource and, under the terms of the Commission's prior decisions,

⁴⁸ ORA July 22, 2015 Opening Brief at 5.

⁴⁹ D.14-02-040 at 28.

the 54 MW contract to refurbish the Ellwood facility does not count toward the LCR procurement authorization required in D.13-012-015.⁵⁰ For this reason, the contract should be denied.

4.3. Due Process

In addition, because Ellwood falls outside of the matters within the expected scope of this proceeding,⁵¹ our considering it could compromise the due process rights of parties. The expected scope of this proceeding was relatively narrow and included the Commission's considerations of the results of SCE's RFO authorized by D.13-02-015. No party disputes that Ellwood falls outside of the RFO authorized by D.13-02-015. SCE never notified the parties and the public that the Commission would consider projects outside of the parameters of the RFO and above the maximum LCR need determination. As a result, as a matter of due process, the Commission must refrain from considering this contract. For this reason, the contract should be denied.

4.4. No Overriding Benefits

Nevertheless, the Ellwood contract has favorable characteristics. Notably, NRG and SCE seek to justify this contract based on the concerns about the challenges of maintaining system reliability in the Goleta area.⁵² In addition,

⁵⁰ Sierra Club July 22, 2015 Opening Brief at 5-6, *citing to* D.14-02-040, *Modifying Long-Term Procurement Planning Rules* (also known as the LTPP Track 3 decision).

⁵¹ Arguing that this proceeding is the appropriate forum for the Commission's consideration of the Ellwood contract, NRG presents the argument that NRG an application proceeding is the appropriate means to seek approval for a ten-year contract, such as the Ellwood contract, and no reason exists to submit a second, separate application. NRG July 22, 2015 Opening Brief at 46. This argument is flawed as it overlooks the fact that the Ellwood contract was not scoped in this proceeding and consideration of the Ellwood contract violates due process rights.

⁵² SCE July 22, 2015 Opening Brief at 11; Ex. SCE-1 at 57.

while SCE and NRG acknowledge that the contract falls outside of the parameters of the RFO, SCE and NRG urge the Commission to evaluate and approve of a power purchase agreement for Ellwood in this proceeding because, by acting now, the Commission might, according to SCE and NRG, be able to obtain a more favorable outcome in terms of lower costs to ratepayers and increased reliability. SCE and NRG also point to the companion contract that NRG presented as a package with Ellwood - the contract for 0.5 MW of IFOM storage, as a reason to approve of the 54 MW Ellwood project. Also, as suggested by SCE and the Independent Evaluator, the costs of Ellwood could be modest compared to the reliability benefits. Finally, if SCE waits for NRG to retire Ellwood, the Commission might have to reassess the need in that area and for Ellwood and then order SCE to fulfill that need, very likely at a cost much greater than the proposed Ellwood refurbishment.⁵³

Initially, these arguments in favor of approval of Ellwood appear persuasive. None of the assertions regarding reliability or costs, however, have been vetted.⁵⁴ Ellwood was not, for example, part of the bidding process for the RFO. No independent need determination has occurred. Moreover, approval of the project implicates a number of larger concerns, such as reliance on fossil fuel. And, while it is possible that the Goleta area would benefit from additional capacity or even a plant with the exact characteristics of Ellwood, we cannot determine whether Ellwood or another similar project is the best choice to meet

⁵³ SCE July 22, 2015 Opening Brief at 11-12.

⁵⁴ CEJA August 5, 2015 Reply Brief at 13-14, stating that no substantial evidence in the record to support a decision for the Ellwood plant, no evidence that Ellwood is faulty or unreliable, or needs to be refurbished, no legal authority to close or refurbish a gas-fired plant based on age alone.

the need without, at a minimum, a need determination or even a competitive bid process. Such a process would likely involve the consideration of many factors, in addition to a cost analysis, so that the State could move toward decreased reliance on gas-fired generation consistent with the State's loading order. In addition, such an analysis may conclude that renewable options outweigh gas-fired generation options, such as Ellwood – but no such analysis has been done.⁵⁵

Our decision today takes into consideration the fact that Ellwood was modeled in both the CAISO's analysis, relied on in D.13-02-015, and the CAISO's 2014-2015 transmission plan presented as evidence in this proceeding. Our decision today also considers that the CAISO's statement that if the Ellwood is not refurbished, and instead is retired, the LCR needs in the Moorpark sub-area will increase.⁵⁶ Even taking the CAISO's statements into consideration, it is a reasonable course of action to first fully vet the Ellwood Generating Station, a gas-fired option, along with other resources, perhaps even renewable options, consistent with the loading order, rather than approving Ellwood now before a full analysis of all options is completed.

The energy storage contract for 0.5 MW at the Ellwood site that NRG presented together with (and as a package deal with) Ellwood would potentially be a good fit for this RFO. However, this energy storage contract does not

⁵⁵ For example, evidence was presented in this proceeding that preferred resources are available in the Moorpark sub-area to fill the LCR need. This evidence relied upon a study by the Southern California Regional Energy Network that identified 200 MW of preferred resources available for the Moorpark sub-area that could eliminate the need for the procurement of gas fired generation. CBD July 22, 2015 Opening Brief at 7, *citing to* Powers Engineering (PE) Ex. 23 at 24. The Southern California Regional Energy Network is administered by the County of Los Angeles and funded by utility ratepayers under the auspices of the California Public Utilities Commission. CBD July 22, 2015 Opening Brief at 7.

⁵⁶ CAISO August 5, 2015 Reply Brief at 3-4.

present significant enough benefits in terms of capacity to cause the Commission to approve, at least in this proceeding, the much larger and problematic Ellwood project.⁵⁷

Accordingly, and for all these reasons, the Ellwood contract is rejected. Today's decision does not prejudice SCE's ability to seek Commission approval of a contract involving Ellwood's refurbishment at another time, if appropriate.

5. 0.5 MW NRG Energy Storage Project – Offer 447030

The ten-year, 0.5 MW energy storage contract⁵⁸ between SCE and NRG California South LP at the Ellwood site would, most likely, have been found consistent with D.13-02-015 and approved today.

However, as NRG points out, approval of the Ellwood contract is required to facilitate the addition of the new 0.5 MW energy storage facility at the Ellwood site, as the two contracts were linked together by NRG as a mutually exclusive offer.⁵⁹

Because the Ellwood contract is not approved today, we necessarily reject the 0.5 MW energy storage project located at the Ellwood site.

⁵⁷ NRG seeks to justify SCE's inclusion of the 54 MW Ellwood project in this proceeding by relying on the 0.5 MW energy storage project, which does fall within the requirements of D.13-02-015. However, the 0.5 MW energy storage project cannot be relied upon to justify noncompliance with the prohibition on long-term contracting of non-incremental resources in new-resource RFOs because allowing the pairing of new and non-incremental resources as a means to override this rule would create an unwanted loophole. If the Commission permitted this type of contract justification and as Sierra Club and ORA note, developers could use very small generation projects to secure extended contracts for existing and much larger fossil fuel generation projects. Sierra Club July 22, 2015 Opening Brief 6-7; ORA July 22, 2015 Opening Brief at 8.

⁵⁸ Ex. SCE-1 at 54.

⁵⁹ NRG July 22, 2015 Opening Brief at 45.

6. Remaining Offers

SCE presented several additional contracts for Commission consideration. Six contracts are for energy efficiency (totaling 6 MW of capacity), and two contracts are for renewable distributed generation (totaling 5.66 MW of capacity).⁶⁰ We find these contracts reasonable and consistent with D.13-02-015. These contracts are approved.

7. Cost Allocation Mechanism Treatment

The cost treatment and allocation proposals were uncontested. On April 17, 2015, a joint motion was filed seeking to enter into the record a Joint Memorandum of Understanding with respect to cost allocation issues in this proceeding.⁶¹

Based upon our review, we find that any payments to be made by SCE pursuant to the contracts are recoverable in full by SCE through the ERRA proceeding.

Moreover, SCE is authorized to allocate the benefits and costs of the contracts entered into as a result of the LCR RFO to all benefitting customers in accordance with D.13-02-015 and D.14-03-004. We also find that such cost allocation should be made consistent with the April 17, 2015 motion and memorandum of understanding.

Lastly, we approved SCE's plan for the allocation of costs and benefits to all benefitting customers set forth in Chapter 9 of Exhibit SCE-1. SCE may establish the LCR Products Balancing Account, as needed.

⁶⁰ Ex. SCE-1 at 3, Table I-1.

⁶¹ This motion was filed by SCE, AReM and DACC.

8. Motions

All motions to correct transcript errors, to file documents confidentially, and for party status are granted. SCE's motion for leave to amend rebuttal testimony is granted. The motions dated August 17, 2015 and July 21, 2015 by ORA to admit exhibits, file under seal, and amend exhibits are granted.

9. Comments on Proposed Decision

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

10. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Regina DeAngelis is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The results of the RFO, with the exception of the NRG Puente Project and the Ellwood contract, substantially comply with the procurement directives in D.13-02-015.

2. Additional information regarding fundamental issues, such as safety, reliability, and environmental justice, may be available on the NRG Puente Project after the review by the California Energy Commission.

3. In the absence of additional information, SCE has not established, by the preponderance of the evidence that the NRG Puente Project is safe, reliable and in the public interest.

4. The Ellwood contract was not entered into under the directives of D.13-02-015 and, therefore, the Commission is unable to establish that the contract is reasonable at this time.

5. Under the terms of the contracts, the energy storage contract with NRG California South, located at the site of Ellwood, is not available if the Commission refrains from approving Ellwood.

6. The terms and conditions of the six contracts for energy efficiency (totaling 6 MW of capacity) and the two contracts are for renewable distributed generation (totaling 5.66 MW of capacity) are reasonable and consistent with D.13-02-015.

7. The cost allocation and recovery proposals by SCE together with the April 17, 2015 Joint Memorandum of Understanding are reasonable.

Conclusions of Law

1. Southern California Edison Company substantially complied with the procurement directives in Decision 13-02-015.

2. Further consideration is warranted of the 20-year contract for gas-fired generation (totaling 262 MW of capacity) with NRG for a new simple cycle peaking facility, the NRG Puente Project following the review by the California Energy Commission.

3. The ten-year agreement with NRG California South for the existing 54 MW Ellwood Generating Station (Ellwood) is not approved.

4. The energy storage contract with NRG California South (0.5 MW) is not approved.

5. Six contracts for energy efficiency (totaling 6 MW of capacity) are found reasonable and approved.

6. Two contracts for renewable distributed generation (totaling 5.66 MW of capacity) are found reasonable and approved.

7. SCE has substantially satisfied the procurement requirements of D.13-02-015 and is relieved from the requirement to procure additional resources as part of the RFO required by D.13-02-015. SCE remains obligated to procure additional resources via any approved procurement mechanisms to meet the minimum amounts required under D.13-02-015.

8. Any payments to be made by SCE pursuant to the approved contracts are recoverable in full by SCE through the ERRA proceeding.

9. SCE is authorized to allocate the benefits and costs of the contracts entered into as a result of the LCR RFO to all benefitting customers in accordance with D.13-02-015 and D.14-03-004.

10. SCE's plan for the allocation of costs and benefits to all benefitting customers set forth in Chapter 9 of Exhibit SCE-1 is reasonable.

11. The April 17, 2015 motion regarding cost allocation is reasonable and granted.

12. SCE may establish the LCR Products Balancing Account, as needed.

ORDER

IT IS ORDERED that:

1. All contracts presented are accepted and approved, with the exception of Offers 447019 (Puente Project), 447021 (Ellwood), and 447030 (Energy Storage). Offer 447019 (Puente Project) will be considered further in this proceeding after review by the California Energy Commission in Docket 15-AFC-01 (Application for Certification of Puente Project by NRG). Offer 447021 (Ellwood) and Offer 447030 (Energy Storage) are rejected without prejudice.

2. Southern California Edison Company (SCE) shall allocate costs associated with the contracts approved in this proceeding according to Chapter 9 of Exhibit SCE-1 and the April 17, 2015 Joint Memorandum of Understanding.

3. Southern California Edison Company shall establish the Local Capacity Requirement Products Balancing Account.

4. All rulings on motions issued by the Administrative Law Judge during the proceeding are adopted. All motions to correct transcript errors, to file documents confidentially, and for party status are granted. Southern California Edison Company's motion for leave to amend rebuttal testimony is granted. The motions dated August 17, 2015 and July 21, 2015 by Office of Ratepayer Advocates to admit exhibits, file under seal, and amend exhibits are granted.

5. Application 14-11-016 remains open.

This order is effective today.

Dated _____, at San Francisco, California.