BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Application of Southern California Edison Company (U 338-E) for Approval of Agreements to Sell its Interests in Four Corners Generating Station.	A. 10-11-010 (Filed November 15, 2010)

SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) REPLY COMMENTS ON FEBRUARY 16, 2012 PROPOSED DECISION

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Nothing in the Opening Comments filed by The Utility Reform Network (TURN), the Sierra Club, or the Environmental Defense Fund (EDF) warrants revisions to Administrative Law Judge Yacknin's February 16, 2012 Proposed Decision (the PD). As Southern California Edison (SCE) demonstrated in our Opening Comments, the PD is balanced and well-reasoned and should be timely adopted at the Commission's March 22, 2012 meeting. Approval at that meeting will enable SCE to satisfy one of the crucial closing conditions in the Sale Agreement, which is an important transaction for our customers. From a procedural standpoint, the PD must be adopted as written, as any changes would necessitate a comment period that would prevent a final decision before March 31, 2012.[1] As SCE has previously explained, if the Commission does not approve the Sale by March 31st, SCE will have failed to satisfy one of the closing conditions, and APS will have the option to terminate until and unless the Commission does so.

In its Opening Comments, the Sierra Club simply repeats the same meritless arguments advanced during briefing that ALJ Yacknin correctly rejected in the PD. The opening theme of Sierra Club's comments is far beyond the appropriate scope of this proceeding. Sierra Club claims that the PD "would allow more than $150 million in capital investment" at Four Corners "without any meaningful environmental review."[2] That statement, even if it were true, is misleading and irrelevant to SCE's application in this proceeding. $150 million represents SCE's current (and planned if the Sale does not close) investments from 2007-2014. The only capital investments at issue in this 851 application are SCE's share of the planned 2012 Four Corners capital projects, which represent a small fraction of $150 million. Moreover, as the PD correctly notes, if the Sale closes SCE will be reimbursed for these expenditures by an increase in the sale price.

The PD approves SCE's limited 2012 capital expenditures at Four Corners, noting that "[i]n light of SCE's sale of its interests in Four Corners, these expenditures do not represent SCE's long-term commitment to the power plant or expose California ratepayers to avoidable GHC compliance costs. Therefore, we find it reasonable to exempt these limited capital expenditures from the EPS rules."[3] In response, Sierra Club simply misrepresents what the Commission's Emissions Performance Standard (EPS) prohibits, as they have consistently done

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1 SCE notes that it filed this application in November of 2010, some 16 months before the March 31, 2012 deadline.

2 Sierra Club Opening Comments at p. 1.

3 PD at p.13. The PD also correctly noted that none of the projects will increase the nameplate capacity of the plant in violation of the EPS (PD at p. 15).

both in this docket and in SCE's pending GRC proceeding. Sierra Club claims that the EPS (as defined for Four Corners in D.10-10-016) "prohibits any and all-post 2011 investment."[4] That claim is wrong, regardless of how often Sierra Club makes it. D.10-10-016 denied current ***rate recovery of***, not investment in, post-2011 capital projects.[5] The PD correctly notes that SCE is not requesting rate recovery for the 2012 capital projects at issue in this proceeding.[6]

Even if the PD did not correctly grant SCE a limited EPS exemption for the 2012 projects, Sierra Club is also incorrect when it asserts that SCE has not demonstrated that the investments are not "life-extending." In fact, SCE submitted detailed testimony proving that each investment at issue does not extend the life of Four Corners in violation of the EPS.[7] SCE further demonstrated how the 2012 capital projects are the kind of routine, reliability- and environmental compliance-driven investments that the EPS does not prohibit, but instead encourages.[8] Finally, SCE's briefing in this proceeding also demonstrated why Sierra Club's interpretation of the EPS (as precluding continued reliable operation of the plant and advocating a "run-to-failure" operational practice) is patently unreasonable.

Sierra Club's second line of attack is that the Commission should issue a full EIR on the proposed sale pursuant to CEQA, rather than the Initial Study and Negative Declaration (IS/ND) that the Commission's Energy Division (ED) did issue. This attack is almost entirely just a repackaged recitation of the same arguments that Sierra Club already made about the IS/ND in its post-CEQA briefing, and that the PD has properly rejected: i.e., that the IS/ND's project description is somehow inaccurate or misleading[9]; or it should include the plant capital investments cited by Sierra Club[10]; or that Sierra Club's assertion of huge potential emissions increases resulting from the sale has at least met a CEQA "fair argument" standard.[11] The PD,

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4 Sierra Club Opening Comments at p. 2.

5 D.10-10-016 at pp. 19-20.

6 PD at p. 12. Note that the issue of rate recovery of the 2012 and potential future capital expenditures if the sale does not successfully close is pending in SCE's 2012 GRC proceeding.

7 Sierra Club's repeated citations to the small boiler nose tube replacement project in its Opening Comments is demonstrably false. SCE has never "admitted" that the project is life-extending, and in fact has demonstrated that it is not life-extending. *See*, for example, SCE Rebuttal at pp. 15-16 and SCE's June 24, 2011 Reply Brief at p. 18.

8 *See* SCE Rebuttal at pp. 14-20 and D.07-01-039 at p. 231 (Findings of Fact No. 31).

9 Sierra Club Opening Comments, pp. 6-7.

10 *Id*., pp. 8-9, 13-14.

11 *Id*., pp. 9-13.

like the IS/ND before it, has clearly considered and correctly rejected all these arguments,[12] and Sierra Club identifies no errors or shortcomings in the PD's reasoning.

As a part of its argument on the project description, Sierra Club now makes an additional, strange assertion that the PD somehow "erroneously fails to account for" the emissions of SCE's post-sale replacement energy.[13] This assertion is just plain false: the IS/ND clearly does take into account the emissions of the SCE replacement energy,[14] and the PD's approval and certification of the IS/ND of course encompasses all of the IS/ND, including that aspect of its emissions analysis.[15]

The Commission should also reject EDF's proposed alterations to the PD. As EDF admits, all of the scenarios examined by Commission Staff in the Negative Declaration (ND) result in lower greenhouse gas (GHG) emissions as a result of the sale. Nevertheless, EDF proposes "conditional requirements" that would burden SCE with reporting and potential compliance obligations if the scenarios do not play out as predicted (*i.e.*, if APS does not shut down Units 1-3). Those "conditional requirements" are contrary to the Sale Agreement, P.U.C. §851, the EPS, and AB 32.

First, Section 9.4 of the Sale Agreement requires that SCE obtain "a final order no longer subject to appeal from the CPUC approving the application … all in form and substance reasonably satisfactory to [SCE], and without significant conditions, modifications of the transaction or qualifications in the order that are not reasonably acceptable to [SCE]… ."[16] Without such approval, SCE is not obligated to close. Simply put, EDF's proposed "conditional

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12 PD, pp. 26-27

13 Sierra Club Opening Comments, p. 7.

14 IS/ND, pp. 3-5 to 3-6; *see especially,* Table 3.1-1, at p. 3-5; *see also*, IS/ND Appendix C.

15 Sierra Club also now argues that the PD should be revised to take into consideration all the testimony and transcripts from Docket A.10-11-015 that Sierra Club had included in its comments to the ED on the Draft IS/ND, apparently claiming that some of those documents were excluded from the record, and citing to the PD's footnote 14 (at page 26) on this issue. SCE's understanding of the administrative record in this proceeding is that the ALJ already did, by her Ruling of February 14, 2012, admit into the formal record of this docket all of the documents that Sierra Club had included in its IS/ND comments, to the extent they were cited by Sierra Club in its brief and are of any arguable relevance here. In any case, even if there was inadvertent omission of any such documents by the ALJ's February 14 Ruling, Sierra Club registered no objection at that time, and any such error was completely immaterial and harmless. All documents that Sierra Club included with its IS/ND comments are part of the CEQA administrative record, the ED clearly took into consideration all submitted comments and their attachments in finalizing the IS/ND, and the PD has now considered the IS/ND and has correctly concluded that it should be certified. Sierra Club does not even try to present an argument as to how it may have been harmed by any such error.

16 SCE Application, Appendix C, p. C-56.

requirements," which would impose potential obligations three years from now after SCE no longer owns Four Corners are not likely to be "reasonably acceptable" to SCE.

Second, EDF overstates the Commission's required review under P.U.C. § 851 and the EPS. EDF claims that whether or not a proposed sale is in the "public interest" necessarily includes an assessment of the environmental consequences of the sale. SCE respectfully submits that the "public interest" the Commission must consider is the public interest of California ratepayers. Moreover, whether or not APS ultimately shuts down Units 1-3, SCE must still divest its interest in Four Corners pursuant to the EPS; therefore, APS's failure to do so would not render the sale "unreasonable." The EPS is meant to protect ***California*** ratepayers from the economic consequences of long-term commitments to non-EPS compliant plants.[17]

Finally, contrary to EDF's arguments, EDF's proposed "conditional requirements" are inconsistent with AB 32, not complementary to it. EDF's recommendations are outside of the Commission's legal authority and would disrupt the proper functioning of the cap-and-trade program. Although EDF admits that a scenario where the sale of Four Corners would result in increased emissions is "unlikely,"[18] EDF nonetheless proposes that SCE be required to offset GHG emissions for Four Corners that are outside of California and outside of the scope of the California Air Resource Board's (ARB) cap-and-trade program. This proposal is overly vague, ill-conceived, and should be rejected.

The ARB has established a cap-and-trade program in California that issues allowances under a set cap on emissions for electricity produced in or imported into California. Compliance entities, such as SCE, must report their emissions and then remit allowances for each reported ton of carbon dioxide equivalent (CO_2e). Requiring SCE to report and retire allowances or offsets for forecasted Four Corners emissions, when SCE had not procured this electricity and would have no compliance obligations under California's cap-and-trade program, is legally questionable under the U.S. Constitution's commerce clause restrictions and is outside the scope of the Commission's authority. The Commission is not authorized to create additional

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17 In any event, the PD ***does*** consider the environmental consequences of the proposed sale.

18 EDF Opening Comments at 4.

obligations under the ARB's cap-and-trade program, nor is it authorized to regulate emissions from a plant outside of California and unrelated to any California entity.[19]

As the Commission has noted, by establishing a baseline allocation based on emissions and maintaining that allocation as emissions change, will create an important incentive for regulated entities to pursue emissions reductions.[20] Under EDF's proposal, regulated entities would have little incentive to reduce their reliance on high-emitting resources, which would, contrary to EDF's assertions, challenge the environmental integrity of the cap-and-trade program.

Respectfully submitted,

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[19] Moreover, EDF's scheme could lead to double-counting for Four Corners emissions, as any electricity from Four Corners that is imported into California by a different entity will already be subject to a cap-and-trade compliance obligation.

[20] D.08-10-037, Final Opinion on Greenhouse Gas Regulatory Strategies, FOF 35-37, available at http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/92591.pdf ("It is reasonable to transition allocation of allowances to retail providers from an historical emissions basis to a sales basis by 2020 because a sales-based allocation would provide a long-term incentive to reduce reliance on high-emitting resources").