

## DOCKETED

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3 **STATE OF CALIFORNIA**  
4 **California Energy Commission**

5 **In the Matter of:**

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7 **REDONDO BEACH ENERGY PROJECT**  
8 **APPLICATION FOR CERTIFICATION**

**Docket No. 12-AFC-03**

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11 **SUPPLEMENTAL BRIEF IN SUPPORT OF INTERVENOR CITY OF REDONDO**  
12 **BEACH'S MOTION FOR ISSUANCE OF SUBPOENA DUCES TECUM TO SOUTHERN**  
13 **CALIFORNIA EDISON AND THE CALIFORNIA PUBLIC UTILITIES COMMISSION**

14  
15 October 12, 2015

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1 (iii) The information requested is directly relevant to the alternatives analysis that  
2 must be performed by CEC Staff and the Committee.

3 In light of the above, the City respectfully requests that the Committee issue a  
4 subpoena duces tecum to SCE and the CPUC to produce the specified unredacted Testimony or, at a  
5 minimum, the names and locations of the 195 proposed gas-fired power plants that were not  
6 awarded power purchase agreements by SCE.

7 **I. PUC SECTION 583 DOES NOT BAR THE COMMITTEE FROM ISSUING A**  
8 **SUBPOENA, NOR DOES IT BAR SCE OR THE CPUC FROM COMPLYING WITH**  
9 **A SUBPOENA**

10 The CEC has the authority to issue subpoenas to secure "such information as is  
11 relevant and necessary in carrying out the purposes of the proceeding." (20 Cal. Code of Regs.  
12 §1204.)

13 Both SCE and the CPUC assert—without any basis—that PUC Section 583 bars the  
14 Committee from issuing a subpoena requesting confidential information, and bars SCE and the  
15 CPUC from complying with such a subpoena. This is a gross misreading of Section 583.

16 Section 583 provides:

17 No information furnished to the commission by a public utility, or any  
18 business which is a subsidiary or affiliate of a public utility, or a  
19 corporation which holds a controlling interest in a public utility,  
20 except those matters specifically required to be open to public  
21 inspection by this part, shall be open to public inspection or made  
22 public except on order of the commission, or by the commission or a  
23 commissioner in the course of a hearing or proceeding. Any present  
24 or former officer or employee of the commission who divulges any  
25 such information is guilty of a misdemeanor.

26 Nowhere in Section 583 is there a reference to subpoenas of any kind, nor any  
27 discussion of the CEC's authority to issue subpoenas, nor the CPUC's obligation to comply with  
28 them. Section 583 merely specifies that the CPUC cannot release such information without an  
order of the Commission or the action of a Commissioner. It does not relieve the CPUC from the  
obligation to comply with a subpoena from the CEC; it merely specifies how that compliance can  
be achieved.

1 CPUC Decision 06-06-066 confirms that Section 583 is merely a procedural  
2 requirement; it does not determine what information the CPUC can or cannot disclose:

3 As we stated in the OIR, § 583 does not limit our ability to disclose  
4 information. As the United States Court of Appeals for the Ninth  
5 District noted in *Southern California Edison Company v.*  
6 *Westinghouse Electric Corporation* (9th Cir. 1989) 892 F. 2d 778,  
7 783: "Section 583 does not forbid the disclosure of any information  
8 furnished to the CPUC by utilities. Rather, the statute provides that  
9 such information will be open to the public if the commission so  
10 orders, and the commission's authority to issue such orders is  
unrestricted." Similarly, *In Re Southern California Edison Company*  
[Mohave Coal Plant Accident], D.91-12-019, 42 CPUC 2d 298, 300  
(1991), states that § 583 "assures that staff will not disclose  
information received from regulated utilities unless that disclosure is  
in the context of a Commission proceeding or is otherwise ordered by  
the Commission" but does not limit our broad discretion to disclose  
information.

11 CPUC Decision 06-06-066 at 27.

12 In addition, we note that Section 583 has no applicability whatsoever to the issuance  
13 of a subpoena to SCE. It merely restricts the manner in which the CPUC can release information.

14 Finally, both SCE and the CPUC argue that the City must take certain steps in the  
15 CPUC proceeding in order for this information be released. This is a red herring. The City is not  
16 the entity issuing a subpoena; the Committee is. The Committee has independent statutory  
17 authority to issue subpoenas for "such information as is relevant and necessary in carrying out the  
18 purposes of the proceeding." Its authority does not require the involvement of the City or any other  
19 party.

20 **II. SCE HAS FAILED TO MEET ITS BURDEN OF PROOF TO ESTABLISH THAT**  
21 **THE REQUESTED INFORMATION IS CONFIDENTIAL**

22 In its Response, the CPUC asserts that since no challenge to the confidentiality of the  
23 information was made in the CPUC proceeding, the information is presumed to be confidential:

24 None of the parties in proceeding A.14-11-012 have challenged the  
25 confidential treatment of the information, and as a result, the  
Commission hearing no challenges, has received SCE's Exhibit under  
seal.

26 (CPUC Response, TN# 206200 at 1-2.)  
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1 This approach is the *opposite* of the established rule. CPUC Decision 06-06-066  
2 expressly provides that information must be presumed *not* to be confidential, and the burden of  
3 proof is on the party seeking confidentiality:

4 We start with a presumption that information should be publicly  
5 disclosed and that any party seeking confidentiality bears a strong  
6 burden of proof. *Indeed, as discussed below, a party seeking  
protection of its documents always bears the burden of proof.*

7 (CPUC Decision 06-06-066 at 2.)

8 Moreover, the party seeking confidentiality must bring a motion to establish that the  
9 material does, in fact, meet the substantive requirements for confidential treatment:

10 As both courts and this Commission have stated in the past (and as  
11 reiterated in the OIR), § 583 does not require the Commission to  
12 afford confidential treatment to data that does not satisfy substantive  
13 requirements for such treatment created by other statutes and rules.  
14 This is important because several of the parties claim that there is a  
legal presumption of confidentiality for all data. If this were true, the  
Commission would be legally obligated to protect whole swaths of  
information without first considering whether the information meets  
relevant legal tests for trade secrets, privilege, or other established  
provisions protecting data from disclosure.

15 Section 583 sets forth a process for dealing with claims of  
16 confidentiality, and does not contain any substantive rules on what is  
and is not appropriate for protection...

17 Thus, § 583 sets out the first procedural step for a party claiming  
18 confidentiality. That party has the right to submit relevant material  
19 under seal when it first submits it to the Commission. *However, the  
material is not entitled to remain confidential forever based on the  
20 invocation of § 583. Rather, the affected party must accompany its  
records with a motion establishing the legal and factual basis for  
confidential treatment.*

21 (CPUC Decision 06-06-066 at 26-27.)

22 The City is not aware of any motion filed by SCE to establish the legal and factual  
23 basis for confidential treatment of the requested information.

24 The CPUC and SCE are asserting that information submitted under seal is  
25 automatically deemed to be confidential, absent challenges seeking a determination to the contrary.  
26 This is clearly not the case. The procedure set forth in CPUC Decision 06-06-066 provides that the  
27 party seeking confidential treatment must file a motion in the CPUC proceeding "establishing the  
28 legal and factual basis for confidential treatment."

1 **III. THE INFORMATION REQUESTED IS DIRECTLY RELEVANT TO THE**  
2 **ALTERNATIVES ANALYSIS THAT MUST BE PERFORMED BY CEC STAFF AND**  
3 **THE COMMITTEE.**

4 SCE and the CPUC both assert—without basis—that the information requested is not  
5 relevant to the CEC proceeding. This is clearly not the case.

6 A critical portion of the Commission's Alternatives Analysis is the investigation of  
7 alternative potential sites. (CEC Preliminary Staff Assessment at 4.2-2.) Based on the numerous  
8 offers for power plant sites in the Western Los Angeles Basin received by SCE in response to its  
9 RFO, it is apparent that many viable sites do, in fact, exist. Thus, to fulfill its obligation to consider  
10 "a reasonable range of project alternatives for examination" under CEQA, the Commission must  
11 consider alternative sites that can be reasonably ascertained by soliciting the redacted information  
12 from the CPUC or SCE.

13 Furthermore, by its own admission, SCE confirms that "[r]evealing the location of  
14 potential new/incremental generation facilities will reveal the size and competition of the market  
15 within a specific local area....", namely the Western Los Angeles Basin. (SCE Response,  
16 TN#206209 at 4.) This is precisely the type of the information needed by CEC Staff and the  
17 Committee to perform a meaningful Alternatives Analysis.

18 **CONCLUSION**

19 The City respectfully requests that the Committee issue a formal request or subpoena  
20 to the SCE and CPUC, requiring them to produce the unredacted version of pages 35-39 of the  
21 "Testimony Of Southern California Edison Company on the Results of its 2014 Local Capacity  
22 Requirements Request For Offers For The Western Los Angeles Basin" or, at a minimum, the name  
23 and location for each proposed site in the 198 "indicative offers" for gas-fired power plants received  
24 by SCE.

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DATED: October 12, 2015

JEFFER MANGELS BUTLER & MITCHELL LLP

By:   
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BEACH