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Decision 16-05-050 May 26, 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,<sup>1</sup> with certain exceptions. We approve SCE's contract with NRG for the Puente Project today. The Puente Project is a 262 megawatt (MW) natural gas-fired peaker facility. The California Energy Commission must also review the project under its CEQA-equivalent process regarding potential sea level rise and environmental justice matters, as well as all other matters under its jurisdiction.

We also approve several preferred resource load reduction contracts with energy efficiency and solar generation projects totaling approximately 12 MW. Between the Puente Project and the 12 MW of preferred resources, SCE has satisfied its obligation pursuant to D.13-02-015 to procure between 215 and 290 MW in the Moorpark sub-area for local reliability purposes.

Additionally, we will consider the Ellwood contract (and an associated 0.5 MW energy storage project), in a separate decision along with consideration of any additional reliability need in the Goleta area. This application remains open for this purpose.

**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

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

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 long-term local capacity requirements (LCR) by 2021.<sup>2</sup> 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. These facilities currently have approximately 2,000 MW of capacity.

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.<sup>3</sup> Other minimum requirements included that the projects qualify as Full Capacity Deliverability Status and delivery had to include the entire calendar year 2021.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> SCE launched its LCR RFO on September 12, 2013.<sup>7</sup>

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<sup>2</sup> D.13-02-015 at 131 (OP 2).

<sup>3</sup> Ex. SCE-1 at 14.

<sup>4</sup> Ex. SCE-1 at 14.

<sup>5</sup> D.13-02-015 at 133-134 (OPs 5-7).

<sup>6</sup> SCE July 22, 2015 Opening Brief at 3.

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

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 11 contracts.<sup>8</sup> The Application also seeks approval of one project (the Ellwood refurbishment) 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).<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>

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<sup>8</sup> D.13-02-015 at 68, 131 (OP 2).

<sup>9</sup> Ex. SCE-1 at 55; Ex. NRG-1 at 2.

<sup>10</sup> Ex. SCE-1 at 57.

<sup>11</sup> Ex. SCE-1 at 3, fn. 1; Ex. SCE-1 at 57.

SCE also seeks approval of an energy storage contract with NRG California South (NRG Energy Storage contracts). This project would be located on the site of Ellwood. The NRG Energy Storage contract is a tolling agreement for a 0.5 MW storage facility.<sup>12</sup>

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).<sup>13</sup>

A summary of the selected offers is provided in the table below.<sup>14</sup>

<b>Produce Category</b>	<b>Counterparty</b>	<b>Total Contracts</b>	<b>Max Quantity (LCR MW)</b>
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

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

<sup>13</sup> Exhibit SCE-1 at 3, Table I-1.

<sup>14</sup> Exhibit SCE-1 at 3 and 55.

On January 12, 2015, City of Oxnard, World Business Academy (WBA), the Office of Ratepayer Advocates (ORA), and the Sierra Club, Center for Biological Diversity (CBD) filed protests. Other parties filed responses to this Application, 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 were mostly against the Ellwood project and NRG Puente Project.<sup>15</sup> Some speakers supported the projects. These public comments are part of the administrative record of this proceeding, although not the evidentiary record. In addition, 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.

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



## **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 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:<sup>16</sup>

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

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

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 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**

This decision approves the NRG Puente Project contract.

**3.1. Grid Reliability - Flooding**

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 Harbor Boulevard, Oxnard, California.<sup>17</sup>

Our review of the reliability risks facing the NRG Puente Project reflects our obligation to ensure investments in electricity infrastructure are used and

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<sup>17</sup> Ex. SCE-1 at 55.

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.

The reliability of the grid is one aspect of the Commission's broader analysis and responsibility to ensure safety under Pub. Util. Code § 451,<sup>18</sup> consistent with Section 454.5.<sup>19</sup> Section 454.5 concerns utility procurement plans. Pursuant to D.13-02-015, SCE's procurement plan for the Moorpark sub-area was approved by the Energy Division after modifications.<sup>20</sup> The approved procurement plan specified how SCE would consider various factors required by D.13-02-015, including reliability factors such as: least-cost/best-fit analysis, consultation with the CAISO, energy and ancillary services benefits, permitting and interconnection, resource adequacy capacity benefits, and local effectiveness factors.

According to undisputed evidence from NRG, Puente will be a reliable peaker plant with fast-start, fast ramping capabilities which provide important grid support services. Puente has operational characteristics that are similar to (and better than) the retiring OTC units. Puente will utilize a new GE 7HA.01 combustion turbine. This technology has been manufactured and used in the

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<sup>18</sup> 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."

<sup>19</sup> We do not here determine whether there is an obligation for the Commission to evaluate reliability issues in review of procurement contracts that is separate from the Commission's obligations under Section 454.5.

<sup>20</sup> The SCE procurement plan also addressed SCE's plans for the West Los Angeles Basin, per D.13-02-015.

power generation industry for many years, and is a proven and reliable technology. The combustion turbine is designed to start quickly, ramp up and down, and turn off when not needed. The combustion turbine can start and be at its full capacity in 10 minutes. Puente will be able to ramp up and down at a rate of approximately 40 MW per minute. Puente will have a flexible operating range between 81 MW (equivalent to 30 percent of maximum load) and 270 MW at standard conditions.

An additional issue raised in this proceeding is the risk of flooding and sea rise. SCE's procurement plan does not specifically address the risk of flooding on reliability. However, the record in this proceeding raises the question of whether sea level rise and potential flooding would be reliability risks for the Puente Project. The CEC evaluates the risk of flooding from an environmental perspective; however, this Commission reviews this risk from a reliability perspective.

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.<sup>21</sup> Dr. David Revell, expert witness of the City of Oxnard, states "portions of the Generating Station's site are exposed to coastal flooding hazards under existing conditions" and the flood risk will only increase as sea level rises.<sup>22</sup> According to the City of Oxnard's expert witness, Dr. Revell, since the site is directly adjacent to the Pacific Ocean, on the

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<sup>21</sup> 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.

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

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.<sup>23</sup>

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.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>

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 the effects of the project on the environment, but the effects of the environment on the reliability of the project.<sup>27</sup>

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<sup>23</sup> Oxnard July 22, 2015 Opening Brief at 7.

<sup>24</sup> Oxnard July 22, 2015 Opening Brief at 7; Sierra Club July 22, 2015 Opening Brief at 3.

<sup>25</sup> Oxnard July 22, 2015 Opening Brief at 10-11.

<sup>26</sup> Sierra Club July 22, 2015 Opening Brief at 4, Oxnard July 22, 2015 Opening Brief at 11-13.

<sup>27</sup> 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.

On the other hand, NRG states that no such risks exist, as determined by its own expert analysis by Mr. Mineart.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup>

NRG further notes that, even if merit exists to Sierra Club's 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.<sup>31</sup>

Based on a review of all of the expert testimony, we find that, during the term of the contract and the expected life of the plant, the risk of coastal flooding has not been shown to compromise the reliability of the proposed project.

Sierra Club argues that the Commission should nevertheless postpone its decision on this matter until the CEC completes its environmental review, a review that Sierra Club suggests could bring forth additional important

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<sup>28</sup> 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."

<sup>29</sup> NRG August 5, 2015 Reply Brief at 10-11.

<sup>30</sup> NRG July 22, 2015 Opening Brief at 25-29.

<sup>31</sup> NRG July 22, 2015 Opening Brief at 22.

considerations as related to reliability. Sierra Club suggests that 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-30-15, which directs all state agencies to "take climate change into account in planning and decision making..."<sup>32</sup> Sierra Club also relies on the Commission's "ongoing 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."

Section 451 states, in 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 public." As stated above, based on the evidence presented in the proceeding, we do not find that the risk based on flooding, sea rise, or tsunami has been shown to compromise reliability and thus do not find that SCE would violate Section 451 through contracting with the NRG Puente Project. In the same way, Executive Order B-30-15 is satisfied. This determination in no way prejudices the CEC's

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<sup>32</sup> 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 B-30-15 states, in part, "WHEREAS taking climate change into account in planning and decision making will help the state make more informed decisions and avoid high costs in the future."

separate review of the project. All further environmental review of flooding-related issues will be conducted under the CEC's CEQA review process.

### **3.2. 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 is correct that the Commission has encouraged the use of brownfield sites for environmental reasons – to site plant on previously disturbed land. D.07-12-052, (and previously D.04-12-048) provided specific direction regarding brownfield siting. Ordering Paragraph 35 states in pertinent part: “IOUs are to consider the use of Brownfield sites first and take full advantage of their location before they consider building new generation on Greenfield sites. If IOUs decide not to use Brownfield, they must make a showing that justifies their decision.”

At the same time, the use of a brownfield site can raise environmental justice issues by, for example, siting new facilities on a brownfield site within a historically economically disadvantaged neighborhood. The City of Oxnard argues that to continue to employ such a site near the disadvantaged neighborhood perpetuates the economic injustice issues connected with living near power plants built decades ago.<sup>33</sup>

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<sup>33</sup> 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

*Footnote continued on next page*



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.<sup>34</sup> CEJA refers to these areas in this proceeding as “environmental justice” or “disadvantaged” communities. In fact, the City of Oxnard is identified as an environmentally disadvantaged community<sup>35</sup> by the California Environmental Protection Agency’s (CalEPA) tool called CalEnviroScreen 2.0.<sup>36</sup> Based on a quantitative analysis of multiple pollution sources and stressors used to rank California’s

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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.

<sup>34</sup> CEJA July 22, 2015 Opening Brief at 2.

<sup>35</sup> Ex. CEJA-1 at 6.

<sup>36</sup> 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 (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.

census tracts,<sup>37</sup> some census tracks within the City of Oxnard rank within the top 20% most environmentally burdened cities in California.<sup>38</sup>

CEJA argues that a connection exists between safety and siting in 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.”<sup>39</sup> 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.<sup>40</sup> However, these once-through-cooling plants are scheduled for closure in 2020.

CEJA and others cite to D.07-12-052 stating that IOUs “need to provide greater weight” to criteria regarding “disproportionate resource siting in low-income and minority communities and environmental impacts.”<sup>41</sup> Ordering Paragraph 4 of D.13-02-015 stated in part: “Any Requests for Offers (RFO) issued by Southern California Edison Company pursuant to this Order shall include the following elements, in addition to any RFO requirements not delineated herein but specified by previous Commission procurement decisions (including Decision 07-12-052) and the authorization and requirements of this decision.”

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<sup>37</sup> Ex. CEJA-1 at 4-6.

<sup>38</sup> Ex. CEJA-1 at 8.

<sup>39</sup> CEJA July 22, 2015 Opening Brief at 2, citing to Senate Bill 43, codified at Pub. Util. Code § 2833 (1)(A).

<sup>40</sup> CEJA July 22, 2015 Opening Brief at 3.

<sup>41</sup> *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.

The dicta cited above from D.07-12-052 remains in effect as guidance, but the Commission to date has not yet provided further specificity regarding how the utilities should implement this guidance. D.07-12-052 provided a wide variety of other direction in Ordering Paragraphs to utilities regarding procurement activities (as have several subsequent decisions in LTPP proceedings, including D.13-02-015 and § 454.5). As noted above, D.07-12-052 provided specific direction regarding brownfield siting in an Ordering Paragraph.

CEJA states in comments on the Alternate Proposed Decision:

“The Commission is not at liberty to ignore environmental justice in this proceeding in light of the state’s anti-discrimination laws, the public utilities code the Commission is particularly bound to implement, and the Commission’s own policies and rules, all of which mandate consideration of environmental justice. Accordingly, the APD’s limitation of the Commission’s review in this proceeding to economic and reliability issues, and exclusion of environmental justice criteria, is untenable.”

A major CEJA contention is that Pub. Util. Code § 399.13 mandates environmental justice review in our review of this contract (presumably balanced against other factors required by procurement decisions between 2007 and 2013, such as reliability criteria, cost and a default preference for siting in brownfield locations). Section 399.13(a)(7) states in pertinent part that in both “soliciting and procuring renewable energy..., each electrical corporation shall give preference to renewable energy projects that provide environmental and economic benefits to disadvantaged communities.” However, as CEJA itself notes, this section is on its face only applicable to Commission review of renewable procurement. In the future, these differences in criteria with procurement will be addressed in the Integrated Resource Planning Proceeding.

CEJA states that “This proceeding is the first and only opportunity CEJA has to challenge the adequacy of SCE’s procurement plan, and due process requires the Commission to properly address it.” CEJA is incorrect. This proceeding appropriately considers whether SCE followed its procurement plan, not whether the plan itself was adequate. As discussed herein, pursuant to D.13-12-015, Energy Division approved SCE’s procurement plan which included procurement for the Moorpark sub-area in September 2014. If CEJA or another party contended that the process authorized in D.13-02-015 for review of SCE’s procurement plan was unlawful, they could have filed an application for rehearing of that decision on this point.

While Energy Division could in theory have required SCE to modify its procurement plan to explicitly include an environmental justice analysis, SCE properly acted upon its approved plan. SCE’s procurement process was then vetted by the Independent Evaluator (Sedway Consulting, Inc.), who found it to be reasonable.

This Commission is concerned about environmental justice issues. It is not our interest or intent to approve contracts for pollution-causing power plants in disadvantaged communities or other similarly-impacted areas beyond that which is necessary to maintain reliability at reasonable rates. If we determine that the Puente Project is consistent with the relevant economic and reliability criteria laid out in D.13-02-015 and SCE’s procurement plan, the CEC is still required to conduct and complete its review. Environmental justice issues are also applicable within the CEC’s CEQA review. 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*). The CEC may disapprove or determine that mitigation measures are required due to environmental justice

concerns. If the CEC determines that the project should not be permitted for environmental justice or other reasons within its jurisdiction, it will not go forward.

In future procurement applications, we intend to explicitly consider environmental justice issues as part of our review of procurement contracts. In order to ensure that utility procurement applications include sufficient information to ensure such review, the long-term procurement plan (LTPP) proceeding (which is a Rulemaking proceeding applicable to the industry as a whole) will need to specify what information the utility must provide. The Commission recently opened proceeding R.16-02-007 to Develop an Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements. R.16-02-007 includes potential procurement rule changes within its preliminary scope. Any procurement guidance regarding environmental justice must delineate between the role of the CPUC in evaluating the reasonableness of a proposed procurement contract and the role of the CEC in performing its CEQA-equivalent evaluation. In addition, any procurement guidance must consider how to balance the Commission's long-standing preference for brownfield site development with environmental justice considerations, as well as all other economic and reliability considerations.

### **3.3. No Deferral to the CEC**

As noted above, the Scoping Memo in this proceeding included the question of whether the Commission should approve these contracts prior to completion and a final decision by the CEC of its CEQA review. Several parties argue that the Commission should defer review of the Puente Project contract until the CEC completes its CEQA review process. We have discussed above

why this is unnecessary in the context of potential flooding risks. Here we discuss the issue more broadly.

NRG and SCE argued that deferral of consideration of the Puente Project contract would be a substantial departure from Commission precedent. They claim it would create a new standard of review for contracts submitted to the Commission for approval. SCE also contends that, if environmental review is a prerequisite for Commission approval, every project that was the subject of an offer in the LCR RFO would have had to be fully permitted in order to submit a bid. This would have limited the number of eligible bidders and associated competition. Other parties argue that there is sufficient evidence in this proceeding about reliability concerns associated with environmental factors and environmental justice issues to defer our decision until the CEC completes its CEQA review.

In D.15-11-041 at 28-29, regarding SCE's Los Angeles Basin LCR contracts stemming from D.13-02-015, we addressed the issue of our contract review process vis-à-vis the CEC CEQA review process:

We find that no law specifically requires the Commission wait until CEQA review is complete. We further find that if the project is not approved by the CEC under CEQA, termination of a contract with SCE may result.

We further find that no law specifically requires us to approve contracts before CEQA review is complete. Rather, we use our best judgement in each case to determine the optimal timing of our contract review and disposition. In some cases, we will find that making a contract decision independent of the CEC's CEQA review is reasonable.

In this case, we find that contract approval now, prior to approval of the CEC's CEQA review is reasonable. Misuse of the Commission's contract approval, however, is not permitted. For example, parties are directed to not interfere with the CEC's review

by, for example, impressing upon the CEC that contract damages may result if the project is not approved under CEQA. The CEC's CEQA review can and should be conducted independent of the parties' opinions regarding potential damages and risks based on the Commission's approval of the underlying contract.

The situation here is similar to that in D.15-11-041. While it is not unusual for non-CPUC environmental review processes to start or be completed before CPUC contract review, it is not a requirement that the project proponent do so. We have reviewed all Commission Decisions and Resolutions on procurement contracts since 2002. In none of those cases has the Commission deferred its decision to the completion of the CEC (or local) environmental review process.

If we were to change our long-standing process here, this would create substantial uncertainty for project developers seeking approval for contracts for new energy projects. Thus the question becomes whether there is a compelling rationale to modify our process.

The CEC has clear jurisdiction to review the environmental impact of the NRG Puente Project. The CEC website (Energy Facilities Licensing Process) at [http://www.energy.ca.gov/siting/guide\\_license\\_process.html](http://www.energy.ca.gov/siting/guide_license_process.html) states: "The [CEC's] thorough site certification process provides a timely review and analysis of all aspects of a proposed project, including need, public health and environmental impacts, safety, efficiency, and reliability." Through the certification process an environmental review is performed under CEQA. Typically, CEQA reviews are performed by the "lead" local agency. Under Pub. Res. Code § 25500 et seq., the CEC "has the exclusive authority to certify the construction and operation of thermal electric power plants 50 [MW] or larger...."

The CEC specifically includes environmental justice issues in its review of projects of this type. For example, in the CEC's September 27, 2012 decision reviewing the Pio Pico Energy Center (Docket 11-AFC-1) - which was included in a contract approved by the CPUC - the CEC states: "The record establishes that an environmental justice screening analysis was conducted and that the project, as mitigated, will not have a disproportionate impact on low-income or minority populations." For the Puente Project, the CEC's January 14, 2016 "Puente Power Project Status Report 3" states that "The Applicant has submitted the following in support of their Application for Certification (AFC)...: A revised Environmental Justice analysis."

Thus, it is clear that environmental justice issues are not only within the purview of CEC environmental review, but will be specifically considered in the CEC's review of the Puente Project. Consideration of the NRG Puente Project contract by this Commission does not prejudice the CEC review.

There is no clear or compelling reason based on the record of this proceeding to modify the process of allocating responsibilities between this Commission and the CEC that has been used successfully for many years, including in D.15-11-041. We are satisfied that the siting issues regarding low-income and disadvantaged communities per D.07-12-052 will be adequately and substantially considered in the CEC review process. We will proceed to review the merits of the NRG Puente Project contract.

### **3.4. Economic and Reliability Review of the Puente Project Contract**

The Puente Project contract was submitted by SCE in response to D.13-02-015, which required SCE to procure between 215 and 290 MW of capacity in the Moorpark sub-area. Per D.13-02-015, SCE submitted its



procurement plan to Energy Division, which approved it with modifications on August 30, 2013. In accordance with D.06-05-039, SCE retained Sedway Consulting Inc. as an Independent Evaluator to oversee the preparation and administration of the LCR RFO. The Independent Evaluator confirmed that the Puente Contract's economics and general terms and conditions represent the best resource available from the RFO. SCE contends that it showed that it was not possible to procure the required minimum level of incremental capacity using only preferred resources.<sup>42</sup> SCE contends it demonstrated that a gas-fired project must be part of the Moorpark reliability solution, and proved that the Puente Contract was the superior gas-fired offer.

The CAISO analyzed the results of the RFO in the context of the draft 2014-2015 transmission plan local capacity requirement analysis for the Moorpark sub-area and found that the resources selected by SCE in the RFO meet the minimum procurement requirements set forth in D.13-02-015. However, the CAISO indicated that the selected resources "are only a portion of those necessary to meet reliability needs in the Moorpark sub-area. To ensure reliability, the Commission must continue to monitor the development and implementation of other local resources including additional achievable energy efficiency."<sup>43</sup> The CAISO noted that the 2014-2015 transmission plan assumed another 87 MW of energy efficiency would materialize in the Moorpark sub-area by 2024. Accordingly, based on the CAISO's local capacity requirement analyses, we find that the selected RFO resources will enhance the reliable operation of SCE's electrical service and support the reliability of service starting in 2021.

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<sup>42</sup> Exhibit SCE-2, Appendix D at D-42.

<sup>43</sup> Exhibit CAISO-1/Sparks at 4-5.

SCE held a single RFO for both preferred and conventional resources covering both the LA Basin and Moorpark sub-areas. SCE seeks approval of contracts totaling approximately 274 MW of capacity (excluding the Ellwood refurbishment, which we discuss separately below). This is below the maximum procurement target of 290 MW in D.13-02-015.

SCE's RFO was designed and conducted with oversight from the Independent Evaluator and reviewed by the Energy Division and SCE's Cost Allocation Mechanism Group. The Independent Evaluator stated that it "believe(d) that SCE pursued reasonable and adequate procedures for notifying potential interested parties...On the LCR RFO launch date...SCE issued a press release and emailed over 3,400 industry contacts (compiled from previous power supply solicitations, regulatory service lists, etc.) that the LCR RFO had been released and invited them to participate. SCE also notified all CAM members of the LCR RFO's launch."<sup>44</sup> The Independent Evaluator "concluded that SCE did a good job of publicizing the 2013 LCR RFO solicitation, and that the solicitation was quite robust, as evidenced by the substantial response that it received from the bidding community."<sup>45</sup>

D.13-02-015 made several Findings of Fact which are relevant to our independent analysis of the Puente Project contract. Finding of Fact 26 stated: "Gas-fired resources at the current OTC sites are certain to meet the ISO's criteria for meeting LCR needs. Other resources can also meet or reduce LCR needs, but may not be effective in doing so." Finding of Fact 38 states: "The ISO has shown that there is a need for in-area generation with operational characteristics similar

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<sup>44</sup> Exhibit SCE-2, Appendix D at D-34 to D-35.

<sup>45</sup> Exhibit SCE-2, Appendix D at D-35.

to retiring OTC plants in the Moorpark sub-area of the Big Creek/Ventura local area.” Finding of Fact 39 states: “The most likely locations for [sic] to meet LCR needs in the Moorpark sub-area are the sites of the current OTC plants.”

The CAISO states in its brief that its local capacity requirement analyses show that the procured RFO resources will help maintain the reliable operation of SCE’s electrical service. In addition, the CAISO states that SCE’s required consultations with the CAISO during the RFO process were consistent with the Commission’s directives and necessary to ensure that the selected resources met identified capacity needs. Through its consultations with SCE, the CAISO was able to ensure that the selected RFO resources do in fact meet system needs. If the Puente Project is delayed or rejected, the CAISO is concerned that it will increase the possibility that there will be insufficient resources to meet local capacity requirements when generation facilities in the Moorpark sub-area retire at the end of 2020. We agree with the CAISO that the Puente Project is necessary to meet the identified local reliability need in the Moorpark sub-area. The need determination of the Moorpark sub-area in D.13-02-015 depended upon the retirement of Mandalay Units 1 and 2 and Ormond Beach once-through-cooling generation units.

CEJA casts doubt on the reasonableness of the Puente Project contract. CEJA claims in its brief that there is no evidence to support a finding that SCE acted reasonably in assigning NRG’s offers key qualitative value based on its fear that NRG may retire the Mandalay and Ellwood peakers. CEJA also contends that “NRG Oxnard’s economic ranking as the least cost/best fit GFG offer[], and its ultimate selection, turned on those unfounded reliability concerns.”

As SCE explains in its reply brief at 11, the qualitative factors reinforced SCE’s quantitative assessment that the NRG Energy Center was the best option

to meet the LCR need. SCE's assessment combining qualitative and quantitative factors is consistent with its procurement plan. The outcome of SCE's RFO was found by the Independent Evaluator to be the best resource available from the RFO and was found by the CAISO to meet the LCR needs of the Moorpark sub-area.

We find that the results of SCE's 2013 RFO 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. The record shows that the LCR RFO followed a thorough process and elicited a robust response. We find the contract process to have been reasonable and in compliance with D.13-02-015. The Puente plant is expected to provide necessary grid reliability benefits at a reasonable cost to ratepayers. We find the results of the contract process regarding the selection of the Puente Project contract to be reasonable and consistent with D.13-02-015.

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

Today's decision defers consideration of the ten-year contract for the Ellwood Project located in Santa Barbara County to a separate decision in this docket.

The Ellwood Project includes the refurbishment of the Ellwood plant, an existing gas-fired generation peaker plant in Goleta.<sup>46</sup> Ellwood is a combustion

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<sup>46</sup> Ex. SCE-1 at 57.

turbine generating unit built in 1974. Historically, Ellwood has not been a reliable resource.<sup>47</sup> The Project is located adjacent to a residential area.<sup>48</sup>

#### **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. 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.<sup>49</sup> 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.

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.<sup>50</sup> The rationale behind this requirement in D.14-02-040 was to create a level playing field among bidders, an essential

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<sup>47</sup> 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.

<sup>48</sup> 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.

<sup>49</sup> ORA July 22, 2015 Opening Brief at 5.

<sup>50</sup> D.14-02-040 at 28.

component to a well-functioning market. All parties agree that Ellwood is not new or incremental capacity. Ellwood is currently operating, and under a contact with NRG. Therefore, the project does not fall within the definition of incremental resource and, under the terms of the Commission's prior decisions, the 54 MW contract to refurbish the Ellwood facility does not count toward the LCR procurement authorization required in D.13-02-015.<sup>51</sup>

SCE essentially combined the Ellwood contract (and an associated 0.5 MW storage contract) with the Moorpark LCR procurement contracts into one application. Arguing that this proceeding is the appropriate forum for the Commission's consideration of the Ellwood contract, NRG contends an application proceeding such as this one 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.)

The Scoping Memo in this proceeding includes the following issue for consideration: Is the 54 MW Ellwood Refurbishment project appropriate for the Commission to consider in this proceeding and, if so, is the contract reasonable?

In SCE's August 30, 2013 approved procurement plan pursuant to D.13-02-015 (at p. 15-16), SCE provides the following additional statements regarding the Moorpark sub-area:

The CAISO's analysis of LCR needs in the Moorpark sub-area focused on the loss of the Moorpark-Pardee number one, two, and three transmission lines. This would result in voltage collapse for the Moorpark sub-area. However, in addition to

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<sup>51</sup> 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).

the loss of the Moorpark-Pardee lines, there is another transmission outage that, without sufficient local generation capacity support, could create a reliability concern in this area. As can be seen from Figure II-3, the Goleta substation area is served radially from Santa Clara substation by two 230 kV lines, Santa Clara-Goleta No. 1 and No. 2. The two Santa Clara-Goleta 230 kV lines are co-located on a single tower corridor through rugged mountainous terrain in a wooded area that is subject to natural hazards including soil erosion and wildfires. If an outage occurred on the two Santa Clara-Goleta 230 kV lines, SCE can serve approximately two-thirds of the peak loads served by Goleta substation by being transferred to an adjacent 66 kV system once a proposed upgrade to that system that presently awaiting CPUC approval is completed. However, the time period to restore full service to load served by Goleta substation could be significant. Due to the rugged terrain, loss of the Santa Clara-Goleta lines due to environmental hazards could result in rolling blackouts in this area for an extended period. There is significant value to the local communities in seeking generation sited in this area. (footnote deleted)

NRG and SCE seek to justify this contract based on the concerns about the challenges of maintaining system reliability in the Goleta area.<sup>52</sup> In addition, 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

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

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.<sup>53</sup> On the other hand, CEJA argues<sup>54</sup> that there is 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, and no legal authority to close or refurbish a gas-fired plant based on age alone.

We find that it is appropriate to consider the Ellwood contract in this proceeding. SCE clearly stated in its approved procurement plan that it would evaluate reliability issues in Goleta. Further, parties have litigated SCE's proposal for the Ellwood refurbishment contract; there is no value in starting anew and duplicating the efforts already undertaken by the parties. However, the record in this proceeding does not appear to be fully developed enough to decide whether to approve the Ellwood contract at this time.

To determine if the Ellwood contract is reasonable, it is necessary to determine if there is a reliability need that it would meet. D.13-02-015 required that SCE procure new resources to fill the Moorpark sub-area reliability need. Goleta is within the Moorpark sub-area, but the current Ellwood facility was considered by the CAISO to be an existing operational resource in the 2012 LTPP

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<sup>53</sup> SCE July 22, 2015 Opening Brief at 11-12.

<sup>54</sup> Reply Brief at 13-14



proceeding in which D.13-02-015 was decided. Thus, the Ellwood peaker would not be eligible to fill the identified reliability need in the Moorpark sub-area.

The CAISO states in its brief that if the Ellwood Peaker is not refurbished, and instead retires, the LCR needs in the Moorpark sub-area will increase. The CAISO also includes the Ellwood peaker in its 2014-2015 TPP. SCE states in its brief that the Ellwood refurbishment, which will provide a new 30-year design life for an existing gas-fired generation facility that is close to the end of its useful life, is necessary to maintain system reliability in the Moorpark LCR area, and in particular, in the Goleta sub-area absent other resources being developed.

With the approval of the contract for the Puente Project and 12 MW of preferred resources in this decision, SCE has filled more than the minimum procurement of 215 MW in the Moorpark sub-area required by D.13-02-015. Typically, we would consider if there are any further local reliability needs through our LTPP proceeding (currently R.16-02-007). The preliminary scope of that proceeding, as set forth in the Rulemaking at 12, includes: "To the extent necessary, identify CPUC-jurisdictional needs for new resources to meet local, flexible, or system resource adequacy requirements and consider authorization of procurement to meet that need." However, the Rulemaking at 16-17 also states: "we do not anticipate that the modeling refinements addressed in this new proceeding will lead to procurement decisions in this two-year cycle, absent any unforeseen circumstances that could potentially affect grid reliability."

Although it may be incomplete, there is already a record in this proceeding regarding the reliability circumstances in the Moorpark and Goleta areas. Therefore, this proceeding is the most efficient procedural venue to establish if there is a separate local reliability need in the Goleta area, given that the identified Moorpark sub-area need identified in D.13-02-015 has been filled. If

we determine there is an additional unmet local reliability need in the Goleta area that needs to be filled, we will consider if the Ellwood refurbishment contract is the best resource to do so.

Rather than delay consideration of the Moorpark LCR contracts until the record regarding reliability needs and the Ellwood contract is complete, we will defer consideration of Goleta reliability matters to a separate decision in this docket. For the purposes of the forthcoming decision, we seek to ensure the record includes the following information:

1. Is the Ellwood facility currently under contract between SCE and NRG, and, if so, for how long?
2. Is there a specific unmet local reliability need in the Goleta area absent the Ellwood facility, given the approvals in this decision? If so, what is the amount of this need, and in what timeframe does it occur?
3. What is the best way to fill any local reliability need in the Goleta area?
4. Should there be a new RFO or other process to identify resources to meet any unmet local reliability need in the Goleta area?
5. Should the Ellwood refurbishment contract and associated storage contract be approved at this time to meet any unmet local capacity need, or should the Ellwood refurbishment/storage contract be required to participate in any new RFO (or other process) to meet any unmet local capacity needs?

**5. 0.5 MW NRG Energy Storage Project – Offer 447030**

The ten-year, 0.5 MW energy storage contract<sup>55</sup> between SCE and NRG California South LP at the Ellwood site will also be considered in a subsequent

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<sup>55</sup> Ex. SCE-1 at 54.

decision in this docket. The Ellwood refurbishment 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.<sup>56</sup>

## **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).<sup>57</sup> 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.<sup>58</sup>

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.

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<sup>56</sup> NRG July 22, 2015 Opening Brief at 45.

<sup>57</sup> Ex. SCE-1 at 3, Table I-1.

<sup>58</sup> This motion was filed by SCE, AReM and DACC.

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.

## **8. Motions**

All outstanding 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 July 21, 2015 and August 17, 2015 by ORA to admit exhibits, file under seal, and amend exhibits are granted.

## **9. Comments on Alternate Proposed Decision**

The alternate proposed decision of Commissioner Carla J. Peterman 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 March 3, 2016 by SCE, ORA, CAISO, City of Oxnard, CEJA, EnerNOC, Sierra Club, WBA and NRG, and reply comments were filed on March 8, 2016 by ORA, SCE, CAISO, City of Oxnard, Sierra Club, CBD, and NRG.

The alternate decision was revised in response to comments as follows:

- Clarify the flooding risks pertain to both the contract and the expected life of the plant;
- Address the applicability of Sections 451, 454.5 and 399.13;
- Address the significance of dicta in D.07-12-052 regarding environmental justice;
- Reference previous decisions which included procurement requirements regarding siting in brownfield locations, and other procurement mandates;
- Clarify the relationship between the CPUC and CEC roles in evaluating environmental justice issues with regard to

the NRG Puente Project, including citing language from D.15-11-041;

- Address the conduct of the RFO and SCE's compliance with procurement directives in D.13-02-015;
- Determines that the Puente Project is necessary to meet the identified local reliability need in the Moorpark sub-area;
- Address the relationship between this proceeding and the LTPP Rulemaking regarding reliability in the Goleta area;
- Provide guidance regarding record development for a subsequent decision in this docket about procurement in the Goleta area; and
- Provide guidelines for record development in R.16-02-007 regarding environmental justice.

#### **10. Assignment of Proceeding**

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

#### **Findings of Fact**

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

2. During the term of the Puente Project contract and the expected life of the plant, the risk of coastal flooding has not been shown to compromise the reliability of the proposed project.

3. D.07-12-052 included dicta regarding environmental justice considerations in procurement solicitations.

4. D.07-12-052 and subsequent LTPP decisions up to D.13-12-015 included Ordering Paragraphs regarding a preference for brownfield sites and other requirements for procurement solicitations.

5. The Energy Division reviewed and approved SCE's procurement plan pursuant to D.13-02-015.

6. The SCE procurement plan involved an all-source RFO.

7. The NRG Puente Project would be located in a brownfield site.

8. Additional review of safety, reliability, and environmental justice issues regarding the NRG Puente Project will be performed by the California Energy Commission.

9. The NRG Puente Project contract's economics and general terms and conditions represent the best resource available from the RFO.

10. SCE's assessment combining qualitative and quantitative factors in evaluating the NRG Puente Project contract is consistent with its procurement plan.

11. The results of SCE's 2013 RFO are consistent with the CAISO's planning assumptions in the 2014-2015 transmission plan.

12. The selected RFO resources will enhance the reliable operation of SCE's electrical service and support the reliability of service starting in 2021.

13. The Puente Project is necessary to meet the identified local reliability need in the Moorpark sub-area. The need determination of the Moorpark sub-area in D.13-02-015 depended upon the retirement of Mandalay Units 1 and 2 and Ormond Beach once-through-cooling generation units.

14. SCE's LCR RFO followed a thorough process and elicited a robust response.

15. The record is incomplete regarding evaluation of the reliability need for the Ellwood contract and whether the Ellwood contract is the best way to meet any such need.

16. 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 at this time.

17. 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.

18. 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. The California Energy Commission has jurisdiction to review environmental issues, including issues about flooding and environmental justice in its review of the NRG Puente Project.

3. Dicta from D.07-12-052 regarding environmental justice considerations in procurement solicitations should be viewed as guidance.

4. Pub. Util. Code § 399.13 does not apply to all-source procurement contracts.

5. There is no clear or compelling reason based on the record of this proceeding to modify the process of allocating responsibilities between this Commission and the CEC that has been used successfully for many years, by deferring Commission contract review until the CEC environmental review is complete.

6. The results of the contract process regarding the selection of the Puente Project contract are reasonable and consistent with D.13-02-015.

7. 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, should be approved.

8. The ten-year agreement with NRG California South for the existing 54 MW Ellwood Generating Station (Ellwood) should be considered in a subsequent decision in this docket.

9. The energy storage contract with NRG California South (0.5 MW) should not be approved at this time.

10. Six contracts for energy efficiency (totaling 6 MW of capacity) are reasonable and should be approved.

11. Two contracts for renewable distributed generation (totaling 5.66 MW of capacity) are reasonable and should be approved.

12. 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.

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

14. 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.

15. 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.

16. The April 17, 2015 motion regarding cost allocation is reasonable and should be granted.



17. SCE should be allowed to establish the LCR Products Balancing Account, as needed.

**ORDER**

**IT IS ORDERED** that:

1. All contracts presented by Southern California Edison Company are accepted and approved, with the exception of 447021 (Ellwood) and 447030 (Energy Storage). These contracts will be considered in a subsequent decision in this docket.

2. Southern California Edison Company 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 outstanding 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 July 21, 2015 and August 17, 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 May 26, 2016, at San Francisco, California.

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

CARLA J. PETERMAN

LIANE M. RANDOLPH

Commissioners