

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

<b>DOCKET</b>	
07-OIIP-1	
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Order Instituting Rulemaking to Implement the  
Commission's Procurement Incentive Framework  
and to Examine the Integration of Greenhouse  
Gas Emissions Standards Into Procurement  
Policies.

R.06-04-009  
(Filed April 13, 2006)

**BEFORE THE CALIFORNIA ENERGY COMMISSION**

In The Matter Of,

AB 32 Implementation – Greenhouse Gas  
Emissions.

Docket 07-OIIP-01

**COMMENTS OF THE WESTERN POWER TRADING FORUM ON THE  
SOUTHERN CALIFORNIA EDISON COMPANY PETITION FOR  
MODIFICATION OF DECISION NO. 07-01-039**

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**WESTERN POWER TRADING FORUM**

February 27, 2008

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Pursuant to Rule 16.4(f) of the Commission's Rules of Practice and Procedure, the Western Power Trading Forum<sup>1</sup> ("WPTF") submits these comments with respect to the *Petition for Modification of Decision No. 07-01-039 of Southern California Edison Company* ("SCE"), submitted to the California Public Utilities Commission ("Commission") on January 28, 2008, as amended by SCE on February 12, 2008.

**I. Summary and Recommendations**

On January 25, 2007, the Commission approved Decision ("D.") 07-01-039 that established an Emission Performance Standards ("EPS Decision"). On January 28, 2008, SCE

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<sup>1</sup> WPTF is a California non-profit, mutual benefit corporation. The membership of WPTF includes energy service providers, scheduling coordinators, generators, energy consultants and public utilities, all of which are active participants in the restructured California electricity market and elsewhere in the West.

submitted a *Petition for Modification of Decision No. 07-01-039 of Southern California Edison* (“SCE Petition” or “Petition”). In the Petition, SCE describes its request as seeking the following modification to the EPS Decision:

SCE urges the CPUC to recognize that SCE’s continued legal obligations regarding Four Corners Generating Station do not fall under the category of “covered procurements” set out by the EPS Decision for CPUC-jurisdictional entities.<sup>2</sup>

However, the suggested wording change to the EPS Decision reveals a broader blanket exemption sought by the utility not just for the Four Corners Generating Station (“Four Corners”), but also for all existing utility-owned generation. If granted, the Petition would allow SCE to spend \$179 million on various capital expenditures intended to extend the life and install various environmental improvement modifications to Four Corners. The expenditures, however, will not bring Four Corners into compliance with the EPS and therefore SCE seeks an exemption from the EPS both for Four Corners and other utility-owned generation.

As described in more detail below, WPTF opposes the Petition and urges its rejection by the Commission for the following reasons:

1. Senate Bill 1368 (“SB 1368”) does not give the Commission the authority to grant the SCE Petition.
2. It is not clear that SCE must default on its partnership obligations in order to comply with the EPS.
3. SCE’s request for blanket exemption for future expenditures on any of its utility-owner generation should be rejected.
4. The Petition does not comply with the provisions of Rule 16.4, in that it was not filed by SCE within one year of the effective date of the EPS Decision.

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<sup>2</sup> SCE Petition, at p. 1.

In short, while WPTF's objections are not intended to prevent SCE from making investments in Four Corners that are necessary for the safe and reliable operation of the facility, the SCE Petition simply does not make a compelling case as to why it should receive a blanket exemption from the requirements of SB 1368 with respect to both its planned long term financial commitment to Four Corners as well as to future investments in other existing utility-owned generation.

At a minimum, if the Commission is at all inclined to consider the SCE Petition, WPTF recommends that the Commission should issue the following directives to the utility:

1. SCE should explain why its planned expenditures for the facility, as reflected in its rate case application, A.07-11-011, contain some environmental improvement investments, but apparently not the investments that would allow Four Corners to get closer to EPS compliance.
2. SCE should be directed to explain which of the investments are necessary for safe and reliable operation of the facilities versus those that are intended to extend the life of the facility.
3. Finally, the Commission should direct SCE to provide further details about its partnership agreement to ascertain how changes in law or governmental actions, such as SB 1368 and the issuance of the EPS Decision, are or are not accommodated in its Four Corners agreements.

With this information, the Commission will be better able to determine whether or not a narrow exemption to the EPS is warranted for certain of the utility's planned investments, as opposed to the blanket exemption sought by the SCE Petition.

## **II. WPTF Comments**

WPTF urges the Commission to reject the Petition for the reasons discussed below:

### **1. Senate Bill 1368 does not give the Commission the authority to grant the SCE Petition.**

An examination of the relevant statutory language makes it clear that the Commission does not have the legal authority to grant the relief sought by the SCE Petition. Senate Bill 1368 (“SB 1368”) contains the following provisions:

8341. (a) No load-serving entity or local publicly owned electric utility may enter into a long-term financial commitment unless any baseload generation supplied under the long-term financial commitment complies with the greenhouse gases emission performance standard established by the commission, pursuant to subdivision (d), for a load-serving entity, or by the Energy Commission, pursuant to subdivision (e), for a local publicly owned electric utility.

(b) (1) The commission shall not approve a long-term financial commitment by an electrical corporation unless any baseload generation supplied under the long-term financial commitment complies with the greenhouse gases emission performance standard established by the commission pursuant to subdivision (d).<sup>3</sup>

This language is mandatory and does not provide for exceptions of the type sought by SCE. A load-serving entity (“LSE”) may not enter into a long-term financial commitment that does not comply with the EPS standard. The Commission may not approve such a commitment unless it complies with the EPS standard.

The language is clear and does not provide an exemption for a LSE or electrical corporation that is making a long term financial commitment to a power plant that is not compliant with the EPS simply because that electrical corporation has financial contributions required by existing contractual agreements with other partners with an ownership interest in the plant. Indeed, SB 1368 is intended to specifically ensure that new investment in existing

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<sup>3</sup> See chaptered version of SB 1368, page 6.

baseload facilities that are not compliant with the EPS includes the investment necessary to achieve EPS compliance before the new investment is authorized. The EPS Decision acknowledged this when it established the following standard against which a utility's long term commitment would be evaluated to determine if it triggered the EPS compliance requirements:

Specifically, in addition to new baseload plant construction or the acquisition of new ownership interest in an existing plant owned by others, we will define "new ownership investments" to include any investment that is intended to extend the life of one or more units of an existing baseload powerplant for five years or more, or results in a net increase in the existing rated capacity of that powerplant.<sup>4</sup>

By SCE's own admission, a number of the planned investments with the \$179 million request are to extend the life of the plant. Thus, the plain language of the statute and the Commission's implementing regulations; coupled with the descriptions that SCE has provided of the work that will be performed, make it clear that the Commission does not have the statutory authority to grant the relief sought in the SCE Petition, and in fact would frustrate the legislative intent.

**2. It is not clear that SCE must default on its partnership obligations in order to comply with the EPS.**

In the Petition, SCE claims that if it is not granted the exemption, it will be unable to comply with its partnership obligations and thus ineligible to continue receiving its share of the Four Corners energy output. SCE has known at least since D.07-01-039 was issued that new investment in the facility would carry with it EPS compliance obligations. And while it appears that SCE and its partners are intending to make some investments in environmental improvements with its partners that will maintain environmental compliance, SCE does not indicate in the Petition whether it has discussed with its partners the investment necessary to bring Four Corners into compliance with the EPS. Of particular note is that the partners have

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<sup>4</sup> See D.07-01-039, at p. 53.

evidently agreed that making investments to extend the life of the facility are warranted, but mysteriously fail to acknowledge the carbon constraints or emission performance standards that will apply during that extended plant life. Finally, SCE attempts to justify its request for exemption from the EPS standard by claiming that the investments are intended to ensure that the plant has some residual value when and if SCE decide to sell its ownership interest, as though investment in compliance with the EPS would not enhance the value of the plant.

Each of these omissions is troubling, and should cause the Commission to adopt the recommendations contained in Section I of these comments before making any decision on the SCE Petition. The Commission should direct SCE to explain why its planned expenditures for the facility, as reflected in its rate case application A.07-11-011 contain some environmental improvement investments, but apparently not the investments that would allow for Four Corners to achieve EPS compliance. SCE should also be directed to explain which of the investment are necessary for safe and reliable operation of the facilities versus those that are intended to extend the life of the facility. Finally, the Commission should direct SCE to provide further details about its partnership agreement to ascertain how changes in law, such as SB 1368, or other governmental action, such as the EPS Decision, are or are not accommodated in the Four Corners Operating Agreement or Co-Tenancy Agreement. The excerpts from the agreements attached to the SCE Petition do not indicate what rights accrue to parties with regard to changes in law or governmental action and it may be that SCE has legal rights it may exercise of which the Commission and interested parties are unaware.

**3. SCE's request for blanket exemption for future expenditures should be rejected.**

WPTF reads the SCE Petition as seeking an exemption not only for the spending contained in the SCE general rate case pertaining to Four Corners. In addition, SCE seeks a

blanket exemption as for future spending as well. This is clear from the suggested wording contained in the SCE Petition:

The EPS Decision can be modified to exclude its applicability to arrangements such as Four Corners by inserting the following language into the definition of “Covered Procurements” set forth in Attachment 7:

**Except for financial contributions required by existing contractual agreements (effective prior to January 29, 2007),** new investments in the LSE’s own existing, non-CCGT baseload powerplants that are: 1) intended to extend the life of one or more units by five years or more, 2) result in a net increase in the rated capacity of the powerplant, or 3) intended to convert a non-baseload plant to a baseload plant, . . . .<sup>5</sup>

This request for a blanket exemption for all future spending required by existing contractual agreements should be rejected. It is, in fact, inconsistent with the direction provided in the EPS Decision with regard to Four Corners and SCE’s concerns as to the definition of “covered procurements,” as indicated by the following excerpt from the EPS Decision:

In its opening comments to the Proposed Decision, SCE argues that the definition of “covered procurements” might result in unconstitutionally impairing a contract that it has with its co-tenants concerning maintenance of the Four Corners Project. SCE does not state that the EPS rule as currently written will prevent it from complying with its contractual obligations, only that it may. Nor does it provide us with a copy of the contract. In short, this record does not establish whether the EPS rule as written will make it impossible for SCE to comply with its contractual obligations, and if so whether that would constitute an unconstitutional impairment of contract. Furthermore, SCE’s proposed solution is to grant generic relief, rather than relief for the specific plant where SCE says it has problems. Accordingly, we see no reason to grant SCE’s requested relief at this time. If SCE anticipates that the EPS will prevent it from complying with its contractual obligations at Four Corners, it should file an application or petition for modification, together with adequate supporting information, documentation, and analysis, and request appropriate relief.<sup>6</sup>

The foregoing excerpt makes it clear that the Commission was concerned about SCE’s proposed “generic relief,” as opposed to making a narrow request for relief applicable solely to

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<sup>5</sup> SCE Petition, at pp. 8-9.

<sup>6</sup> EPS Decision, at pp. 45-46 [Emphasis added].



Four Corners. For this reason, WPTF recommends that if the Commission is inclined at this time to grant any exemption here, then the Commission should follow the direction laid out in the EPS Decision and create narrow, limited exceptions for the specific expenditures related to the Four Corners plant. Any further expenditure planned by SCE for other utility-owned generation for which an exemption would be required should be brought before the Commission at that time.

**4. The Petition does not comply with the provisions of Rule 16.4 in that it was not filed within one year of the EPS Decision.**

SCE has failed to comply with the requirement in the Commission's Rules of Practice and Procedure that a petition for modification must be filed within one year of the effective date of the decision sought to be modified and/or the petitioner must explain why its late-filed petition could not have been filed within that one-year period. Rule 16.4(d) of the Commission's Rules of Practice and Procedure provides as follows:

(d) Except as provided in this subsection, a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified.

The final two lines of the EPS Decision provide that: "This order is effective today. Dated January 25, 2007, at San Francisco, California." Therefore, in accordance with Rule 16.4, a petition for modification of the EPS decision needed to have been filed by January 25, 2008. However, the SCE Petition was filed three days later, on January 28, 2008.

Further, Rule 16.4 (d) also provides that:

If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition.

However, the SCE Petition does not acknowledge the fact that it is filed late and provides no explanation as to why SCE could not have filed in compliance with the Rules of Practice and Procedure.

This omission is surprising, since SCE raised the precise issue in the workshops and other proceedings leading up to the issuance of the EPS Decision and the Petition in fact notes that the utility's concerns were considered (and rejected) in the EPS Decision. It is therefore unclear why SCE chose to wait past the time required by the Rules of Practice and Procedure for filing a petition for modification, or why it omitted an explanation as to why the petition could not have been filed within the required one-year period. However, the fact that SCE sat on its hands and made a late filing is, in itself, grounds for the Commission to issue a summary denial of the Petition and WPTF urges that the Commission do so.

### **III. Conclusion**

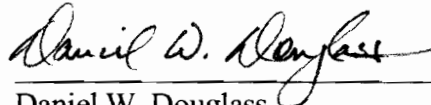
Therefore, for the reasons stated above, WPTF asks that the Commission reject the SCE Petition in its entirety. The clear wording of Senate Bill 1368 does not give the Commission the authority to grant the SCE Petition. Furthermore, SCE has failed to comply with the Rules of Practice and Procedure with regard to the timing of petitions for modification. If the Commission is inclined to disregard the Rules violation or creatively interpret its statutory authority in this regard, then it is unclear whether SCE must default on its partnership obligations in order to comply with the EPS and more information is required to draw this conclusion. Further, SCE's request for blanket exemption for future expenditures should be rejected.

Finally, and at a minimum, if the Commission is at all inclined to consider the SCE Petition, WPTF recommends that the Commission should issue the following directives to the utility:

- SCE should explain why its planned expenditures for the facility, as reflected in its rate case application, A.07-11-011, contain some environmental improvement investments, but apparently not the investments that would allow Four Corners to achieve EPS compliance.
- SCE should be directed to explain which of the investments are necessary for safe and reliable operation of the facilities versus those that are intended to extend the life of the facility.
- SCE should provide further details about its partnership agreement to ascertain how changes in law, such as SB 1368, are or are not accommodated in that agreement.

WPTF thanks the Commission for its attention to these comments.

Respectfully submitted,

  
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**WESTERN POWER TRADING FORUM**

February 27, 2008

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *Comments of the Western Power Trading Forum on the Southern California Edison Company Petition for Modification of Decision No. 07-01-039* on all parties of record in proceeding *R.06-04-009* by serving an electronic copy on their email addresses of record and by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is not available.

Executed on February 27, 2008, at Woodland Hills, California.

  
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Michelle Dangott