

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

Order Instituting Rulemaking to Implement the )  
Commission's Procurement Incentive Framework )  
and to Examine the Integration of Greenhouse )  
Gas Emission Standards into Procurement )  
Policies. )  
\_\_\_\_\_ )

Rulemaking 06-04-009  
(Filed April 13, 2006)

<b>DOCKET</b> <b>07-OIIP-1</b>
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**BEFORE THE CALIFORNIA ENERGY COMMISSION**

DATE	DEC 15 2008
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In The Matter Of, )  
 )  
AB 32 Implementation – Greenhouse Gas )  
Emissions. )  
\_\_\_\_\_ )

Docket 07-OIIP-01

**REPLY COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E)**  
**ON ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S RULING**  
**ENTERING ADDITIONAL INFORMATION INTO THE RECORD AND SEEKING**  
**COMMENTS**

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Dated: **December 15, 2008**

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STATE OF CALIFORNIA**

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**REPLY COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E)  
ON ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S RULING  
ENTERING ADDITIONAL INFORMATION INTO THE RECORD AND SEEKING  
COMMENTS**

Southern California Edison Company ("SCE") respectfully submits this reply to the comments of the Division of Ratepayer Advocates ("DRA"), the Natural Resources Defense Council ("NRDC"), and the Western Power Trading Forum ("WPTF") on the Assigned Commissioner and Administrative Law Judge's Ruling Entering Additional Information into the Record and Seeking Comments, dated October 23, 2008 ("Joint Ruling"). No other party submitted comments on the three questions posed by the Joint Ruling. As discussed below, DRA, NRDC, and WPTF assert that the Commission should reject the Commission's original

conclusion in the Proposed Decision (“PD”)<sup>1</sup> that the Four Corners capital expenditures are not “new ownership investments” subject to the Emissions Performance Standard (“EPS”), and should require further analysis of SCE’s contractual obligations to approve Four Corners expenditures. Such an approach is inappropriate because the Commission does not need to examine the extent of SCE’s obligation to approve the Four Corners capital expenditures identified in SCE’s Petition for Modification to properly determine that the expenditures are not subject to the EPS under the test established in Decision (“D.”) 07-01-039. SCE urges the Commission to reject the proposals of DRA, NRDC and WPTF, and issue a new PD finding that the Four Corners capital expenditures at issue are not subject to the EPS.

**A. THE COMMISSION SHOULD ADOPT THE PD’S ORIGINAL CONCLUSION THAT THE FOUR CORNERS CAPITAL EXPENDITURES DO NOT FALL UNDER THE DEFINITION OF “NEW OWNERSHIP INVESTMENT”**

The first question raised for comment in the Joint Ruling is: “How, if at all, should the PD’s original conclusion that the capital expenditures at Four Corners do not fall under the definition of ‘new ownership investment’ change as a result of this new information? Why or why not?” WPTF suggests that the Commission would have reached a different conclusion in the PD had it examined the Four Corners contracts because it believes that SCE in fact had “significant discretion” with respect to investments in Four Corners.<sup>2</sup> DRA seeks to delay a decision on whether the subject capital expenditures fall under the definition of “new ownership investment” by asking the Commission to require SCE to prepare a “detailed summary of approvals and any disapprovals of capital expenditures” with a verification by an officer of

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<sup>1</sup> Proposed Decision Denying Petition of Southern California Edison Company to Modify Decision 07-01-039, issued September 9, 2008.

<sup>2</sup> Comments of the Western Power Trading Forum on the Assigned Commissioner and Administrative Law Judge’s Ruling Entering Additional Information into the Record and Seeking Comments (“WPTF Comments”), filed November 24, 2008, at 5.

SCE.<sup>3</sup> Similarly, NRDC believes that SCE should provide information on SCE's investment history in Four Corners, to show that the investments are required and are not intended to extend the life of the plant five years or more.<sup>4</sup> These arguments are misguided and should be rejected by the Commission.

As noted in SCE's Response, filed November 6, 2008, SCE's discretion with respect to funding capital expenditures intended to maintain the plant through its contract life is limited by express and implied contractual duties.<sup>5</sup> This is supported by the Munger, Tolles & Olson LLP report ("MTO Report") attached to the SCE Response, which finds that "SCE does not have unfettered discretion with respect to capital investments at Four Corners" because SCE is obligated to work in good faith with its co-owners to approve appropriate capital budget items.<sup>6</sup>

Regardless, the accuracy of the PD's conclusion that the Four Corners capital expenditures are not "new ownership investments" does not depend upon whether the expenditures are contractually mandated. Given the factual test established by the Commission in D.07-01-039, the only relevant inquiry at this point is whether the Four Corners expenditures at issue were "designed and intended to extend the life of one or more units by five years or more [or] result in a net increase in the rated capacity of the powerplant."<sup>7</sup> Here, as explained in SCE's Comments, filed November 24, 2008, and its attached matrix, the Four Corners capital expenditures identified in SCE's General Rate Case ("GRC") testimony do not trigger the EPS

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<sup>3</sup> Response of the Division of Ratepayer Advocates to Assigned Commissioner and Administrative Law Judge's Ruling Entering Additional Information into the Record and Seeking Comments ("DRA Comments"), filed November 24, 2008, at 4.

<sup>4</sup> Comments of the Natural Resources Defense Council on the Additional Information on Southern California Edison Company's Ownership Interest in the Four Corners Generating Plant and Applicability to the Greenhouse Gas Emissions Performance Standard ("NRDC Comments"), filed November 24, 2008, at 2-3.

<sup>5</sup> Response of Southern California Edison Company to Assigned Commissioner and Administrative Law Judge's Ruling Entering Additional Information into the Record and Seeking Comments ("SCE Response"), filed November 6, 2008, at 3.

<sup>6</sup> Report of Munger, Tolles & Olson LLP Regarding Review of Southern California Edison Company's January 28, 2008 Petition for Modification and Related Submissions in R. 06-04-009 ("MTO Report"), attached as Appendix A to the SCE Response, at 4-5.

<sup>7</sup> Comments of Southern California Edison Company on Assigned Commissioner and Administrative Law Judge's Ruling Entering Additional Information into the Record and Seeking Comments ("SCE Comments"), filed November 24, 2008, at 4.

because they were not designed and intended to extend the life of Four Corners beyond the end of its contract life (but instead to enable it to operate reliably, safely, and in compliance with environmental laws to the end of its contract life), and do not increase the rated capacity of the Four Corners units.<sup>8</sup>

Because the Four Corners capital investments do not meet the Commission’s established test for “new ownership investments” as a threshold matter, WPTF is wrong to assert that the additional information cited in the Joint Ruling – regarding SCE’s contractual obligations – “squarely contradicts” the PD’s conclusion that the expenditures are not “new ownership investments.”<sup>9</sup> To the contrary, the Commission does not need to reach the issue of SCE’s contractual obligations respecting the funding of capital expenditures to determine that the EPS does not apply to the expenditures identified by SCE.

Likewise, a study of past capital expenditures or investments at Four Corners, as requested by DRA and NRDC, is unnecessary. DRA correctly notes that the MTO Report suggests that SCE’s course of dealing in past approvals of Four Corners capital expenditures may inform an analysis of SCE’s obligations under the implied covenant of good faith and fair dealing.<sup>10</sup> DRA relies on this reference to request that SCE provide a detailed historical summary of past approvals of capital budgets and expenditures. However, DRA believes that such a detailed historical summary “is relevant to SCE’s ability to control ongoing expenditures in Four Corners.”<sup>11</sup> Similarly, NRDC argues that a historical analysis is needed to determine whether the capital expenditures are “truly required.”<sup>12</sup> Contrary to the assertions of DRA and NRDC, a detailed historical study would not change the character of the Four Corners capital expenditures currently before the Commission and addressed in the PD. As discussed above, the Commission can and should properly conclude that the Four Corners capital expenditures

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<sup>8</sup> SCE Comments, at 4-6, and Appendix A thereto.

<sup>9</sup> WPTF Comments, at 5.

<sup>10</sup> DRA Comments, at 3-4.

<sup>11</sup> DRA Comments, at 4.

<sup>12</sup> NRDC Comments, at 2.

requested in the GRC are not subject to the EPS under the “new ownership investment” test without having to assess SCE’s contractual obligations respecting capital project approval. In addition, the question of whether SCE should further “control” or reduce expenditures is properly addressed in SCE’s GRC. SCE submitted comprehensive testimony and supporting evidence in the 2009 GRC that address the reasonableness of Four Corners expenditures. DRA actively participated in SCE’s GRC and received all of this information. Thus, a comparison of current investments with past investments, as requested by NRDC and DRA, is unnecessary.

The Commission’s decision in the PD was correct and the EPS should not apply to SCE’s capital investments at Four Corners.

**B. SCE SHOULD BE ALLOWED TO RECOVER ITS FOUR CORNERS CAPITAL EXPENDITURES**

The Joint Ruling’s second question asks: “Should SCE be allowed to recover any of the requested capital expenditures for Four Corners? Which expenses and why?” DRA asserts that SCE should not be permitted to recover any Four Corners expenditures approved by the plant owners before the Commission adopts a decision expressly exempting Four Corners capital expenditures from the EPS.<sup>13</sup> This argument should be rejected. A Commission finding that the EPS does not apply to these expenditures would be grounded in the Decision implementing SB 1368 (D.07-01-039); both SB 1368 and D.07-01-039 remained unchanged during the time SCE approved such expenditures. WPTF believes that it is premature to determine whether SCE is entitled to collect the requested capital expenditures, in part because it believes the Commission should further examine the underlying facts and evidence and “carefully consider[] the long term viability of Four Corners and the appropriateness of SCE’s continued ownership.”<sup>14</sup> Similarly, NRDC believes that capital investments at Four Corners should be approved on a case-by-case basis, and asserts that the study proposed in the PD analyzing SCE’s ownership interests in Four

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<sup>13</sup> DRA Comments, at 4-5.

<sup>14</sup> WPTF Comments, at 5.

Corners should be completed before the Commission approves SCE's investments.<sup>15</sup> These proposed additional reviews should not be mandated as prerequisites to a decision on SCE's Petition, as they are not necessary to the Commission's determination on the applicability of the EPS to the identified capital expenditures.

DRA states that the Commission should deny recovery for "as yet unauthorized expenditures" because SCE has approved Four Corners capital projects since the filing of its Petition and the issuance of D.07-01-039.<sup>16</sup> In its Comments, SCE has provided the Commission with a matrix demonstrating that the PD was in fact correct in determining that these approved expenditures were not "new ownership investments" within the meaning of the Commission's decision implementing SB 1368.<sup>17</sup> Thus, SCE's actions to approve these proposed capital expenditures since the issuance of D.07-01-039 did not violate that decision.

As discussed above, the Commission has sufficient information before it to determine that the Four Corners capital expenditures are not "new ownership investments" and that SCE can seek rate recovery. NRDC requests that SCE provide three additional items of information that NRDC believes are necessary to determine whether the investments fall under the EPS: "... 3) the nature of the requested expenses; 4) a comparison of current investments with past investments in the non-EPS compliant plan to show that current investments are not intended to extend the life of the plant more than five years; and 5) an analysis of the full costs of continued ownership given the current end-date for the ownership contract and the soon-to-be-instituted GHG emissions limit in California under AB 32."<sup>18</sup> SCE has provided the first of these items, the nature of the requested expenses, in the detailed matrix attached to the SCE Comments. This information and the other information provided by SCE to the Commission provide the necessary detail for the Commission to address the critical question: were the investments

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<sup>15</sup> NRDC Comments, at 4.

<sup>16</sup> DRA Comments, at 5 ("SCE apparently recognized that the EPS should be modified in order to allow ongoing capital expenditures, yet failed to indicate in its Petition for Modification that it continued to approve capital expenditures").

<sup>17</sup> See SCE Comments, Appendix A.

<sup>18</sup> NRDC Comments, at 4.

intended to extend the life of the Four Corners units by five years or more or result in a net increase in that unit's rated capacity? NRDC's second item, a comparison of current investments with past investments, is unnecessary as discussed above. As for the final item identified by WPTF, while SCE is willing to conduct a study analyzing the future costs of continued ownership and investments in Four Corners as originally proposed in the Commission's PD, this study is not essential for the Commission to make its determination regarding the applicability of the EPS to the capital expenditures requested by SCE in the 2009 GRC. Again, the reasonableness of future costs is an issue for a future GRC, while the practicality of investments in Four Corners past its current contract life is well beyond the scope of the applicability of the EPS to the capital expenditures currently before the Commission. Completion of the study should not be a prerequisite for a finding here.

Like NRDC, WPTF requests an extended and accelerated study reviewing the long-term viability of Four Corners before SCE is allowed to recover its capital expenditures. For the same reasons stated above with respect to NRDC, WPTF's request should be denied.

**C. EVIDENTIARY HEARINGS ARE NOT NECESSARY**

The Joint Ruling's final question asks: "Are evidentiary hearings necessary and what issues need to be addressed through hearings?" The direct answer to this question is that hearings are not needed. None of the other commenting parties takes a firm position on the need for hearings. WPTF believes that the study proposed in the PD on the feasibility of maintaining SCE's investments in Four Corners should be conducted before the Commission can reach the issue of whether evidentiary hearings are necessary.<sup>19</sup> DRA also believes that additional information should be provided, but that it is "unclear" whether evidentiary hearings are necessary at this time.<sup>20</sup> NRDC believes that evidentiary hearings will not be needed if SCE can

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<sup>19</sup> WPTF Comments, at 8.

<sup>20</sup> DRA Comments, at 5.



provide information showing that the required investments would not extend the life of the plant for more than five years.

Because SCE has provided sufficient information in its filings before the Commission to show that the requested investments are not “new ownership investments” that trigger the EPS, SCE agrees with NRDC that evidentiary hearings are unnecessary. As discussed above, the study proposed in the PD on future investments does not inform the decision currently at issue in this proceeding, which is whether the repairs and other capital improvements at Four Corners designed and intended to maintain the plant through its contract life are subject to the EPS. The documents already submitted to the Commission in SCE’s Petition, in response to the Commission’s data requests, and the documents submitted as appendices to the SCE Response provide a sufficient record for the Commission to make its decision without the need for evidentiary hearings.

#### **D. CONCLUSION**

For the reasons discussed above and in SCE’s Response and SCE’s Comments, SCE respectfully requests that the Commission issue a new PD that: 1) concludes that the capital expenditures at Four Corners included in SCE’s GRC rate recovery request do not fall under the definition of “new ownership investment;” 2) concludes that the crucial inquiry is whether the expenditures were necessary to keep the plant operating through its existing contract term, regardless of whether the expenditures potentially extend the life of some plant components beyond five years; 3) permits SCE to seek rate recovery in the GRC for the capital expenditures at Four Corners; and 4) finds that evidentiary hearings are not necessary.

Respectfully submitted,

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December 15, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to the Commissioner's Rules of Practice and Procedure, I have this day served a true copy of REPLY COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) ON ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S RULING ENTERING ADDITIONAL INFORMATION INTO THE RECORD AND SEEKING COMMENTS on all parties identified in the attached service list(s).

Transmitting the copies via e-mail to all parties who have provided an e-mail address.  
First class mail will be used if electronic service cannot be effectuated.

Executed this **15th day of December, 2008**, at Rosemead, California.

/S/ RAQUEL IPPOLITI

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