

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

Order Instituting Rulemaking to Continue	)	
Implementation and Administration of California	)	
Renewables Portfolio Standard Program	)	Rulemaking 11-05-005
	)	(Filed May 5, 2011)

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**REPLY COMMENTS OF THE CITY OF CERRITOS  
ON THE PROPOSED DECISION**

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In accordance with Rule 14.3(d) of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the City of Cerritos (Cerritos) hereby replies to the opening comments of Southern California Edison Company (SCE) on the proposed decision of Administrative Law Judge Anne E. Simon (Proposed Decision). The Proposed Decision grants the *Amended Motion of the City of Cerritos for Certain Determinations*, dated December 3, 2010 (Cerritos Motion), and concludes that Cerritos should continue to participate in the statewide renewables portfolio standard (RPS) program under rules and procedures applicable to publicly owned utilities (POUs).<sup>1</sup>

SCE was the only party to file comments on the Proposed Decision.<sup>2</sup> This continues a noticeable pattern. Notwithstanding the fact that this proceeding and its antecedent (R.08-08-009) are inundated with interested parties, including consumer advocates and renewable resource proponents, no party other than SCE has expressed a concern with Cerritos' request. The Commission should take note of this fact. The Commission should also take note of the repeated efforts of SCE to make Cerritos' operation as a community aggregator as difficult, constrained

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<sup>1</sup> See, e.g., Proposed Decision at 8.

<sup>2</sup> Since the Proposed Decision grants Cerritos' request, and since Cerritos supports the conclusions and holdings in the Proposed Decision, Cerritos did not file opening comments on the Proposed Decision.

and burdensome as possible.<sup>3</sup> While SCE's vast resources can undoubtedly sustain these tactics, SCE's efforts are simply wasteful to the Commission and unnecessarily harmful to Cerritos, particularly given Cerritos's size and its status as a local governmental entity.<sup>4</sup>

In regard to commonsense regulations, the dichotomy between SCE's opening comments and the Proposed Decision could not be more profound. The Proposed Decision rightly focuses on that which is "fair and efficient."<sup>5</sup> On the other hand, SCE presses for duplicative and onerous regulation, acknowledging that Cerritos "regularly reports to the CEC" but nevertheless demanding that Cerritos also be subject to the Commission's regulatory oversight.<sup>6</sup> The Commission should adopt the Proposed Decision's fair and efficient disposition of Cerritos's request.

In its opening comments, SCE requests that "the Commission should add language to the PD to make clear that its determination to treat Cerritos as a local publicly owned electric utility for RPS purposes does not apply for any other purposes."<sup>7</sup> This is hardly a "clarification." SCE is raising an entirely new issue at the eleventh hour, and requesting a preemptive holding from the Commission that would have broad ramifications, and would conflict with existing practice and precedent. SCE's requested modification is both procedurally inappropriate and legally

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<sup>3</sup> See SCE's various filings in this proceeding, R.08-08-009 and R.09-06-008.

<sup>4</sup> As referenced in the Cerritos Motion, Cerritos serves approximately 50,000 MWh per year of load, which makes Cerritos about 1/100th the size of the largest Electric Service Providers and about 6/10,000th the size of SCE. (*See* Cerritos Motion at 5, note 13.).

<sup>5</sup> See Proposed Decision at 7 ("The fair and efficient administration of the RPS program will be advanced by maintaining the existing reporting relationship between Cerritos and the [California Energy Commission ("CEC")], and allowing Cerritos to continue to be subject to CEC oversight as the RPS program evolves under SB 2 (1X).").

<sup>6</sup> See SCE Comments at 2.

<sup>7</sup> SCE Comments at 4-5.

unsustainable, as further described below. Accordingly, the Commission should disregard SCE's request.

SCE's request is procedurally inappropriate. SCE's request is not a clarification, but a major modification. This is seen most clearly in the fact that Cerritos has been operating since 2005 as a POU/community aggregator, not an Electric Service Provider ("ESP"), and thus has not been subject to the full array of Commission requirements, like ESP registration, financial security and resource adequacy ("RA").<sup>8</sup> Not only is SCE's request a major modification, it is also clearly outside the scope of issues raised by the Cerritos Motion. The scoping memo in A.09-06-008, D.10-01-012 and the Proposed Decision acknowledge that the only issue to be addressed by the Cerritos Motion is Cerritos's participation in the Commission's RPS program,<sup>9</sup> not the City of Cerritos's obligations under any other programs or requirements.<sup>10</sup> SCE's comments on the Proposed Decision may only focus on factual, legal or technical errors, not new issues and proposals.<sup>11</sup> Accordingly, it would be unfair for the Commission to grant SCE's requested modification. If SCE wants to propose such a broad change, it is free to do so through a procedurally appropriate vehicle, like a petition for modification or an application, not comments on a proposed decision.

SCE's requested modification is legally unsustainable. As a matter of practice, Cerritos has been operating since 2005 without being subject to the entirety of the Commission's various programs and requirements, as now requested by SCE. As a matter of precedent, the

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<sup>8</sup> Regarding RA requirements, Cerritos follows the requirements applicable to POU's, and the Cerritos City Council has adopted various resolutions adopting RA policies for Cerritos's community aggregation program. (See Cerritos Motion at 2, note 5, referencing Cerritos Resolution Nos. 2006-1 and 2010-21.).

<sup>9</sup> See Proposed Decision at 5.

<sup>10</sup> See SCE Comments at 5 (emphasis added).

<sup>11</sup> See Rule 14.3(c).

Commission has previously acknowledged Cerritos' status as a POU,<sup>12</sup> and has repeatedly acknowledged that Cerritos' designation as a "community aggregator" under Assembly Bill ("AB") 80 distinguishes Cerritos in various respects.<sup>13</sup> Moreover, as Cerritos previously demonstrated, Cerritos is statutorily not an ESP,<sup>14</sup> and therefore it is wrong for SCE to assert, categorically and summarily, that all obligations and responsibilities of ESPs should apply to Cerritos. This is not to say, however, that the Commission is somehow devoid of jurisdiction over Cerritos' operations as a community aggregator. As stated in the Cerritos Motion, the Commission has continuing jurisdiction over Cerritos' operating agreements with SCE, and Cerritos has various obligations under those agreements vis-à-vis the Commission.<sup>15</sup> For all these reasons, the Commission should disregard SCE's requested modification.

Finally, SCE's view of the *status quo* is skewed, at best, and should not be adopted by the Commission. The Proposed Decision holds that "[f]rom this Commission's perspective, there is no benefit to the RPS program in disturbing the *status quo*, in which Cerritos reports to the CEC pursuant to §387, in order to require Cerritos to be treated like either a CCA or an ESP under our jurisdiction."<sup>16</sup> Remarkably, SCE states that the *status quo* is not treating Cerritos as a POU for RPS purposes.<sup>17</sup> This statement is based in fiction not facts, since it is undeniable that Cerritos has been operating since 2005 as a POU for RPS purposes. This fact is seen most clearly in the CEC's repeated acknowledgement of Cerritos as a POU, and the CEC's inclusion

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<sup>12</sup> See D.07-04-007 at 1 ("Cerritos has provided retail electric services to the local community since mid-2005 as a publicly-owned utility.").

<sup>13</sup> See, e.g., D.05-01-009 at 1 (allowing service to be provided following the suspension of direct access) and D.10-01-012 at 2 (describing unique features of AB 80).

<sup>14</sup> See Cerritos Motion at 8.

<sup>15</sup> See Cerritos Motion at 12, note 49.

<sup>16</sup> Proposed Decision at 6.

<sup>17</sup> See SCE Comments at 2.

of Cerritos within the scope of the CEC's RPS oversight.<sup>18</sup> Even SCE acknowledges that Cerritos has fulfilled its statutory duty as a POU by regularly reporting to the CEC on Cerritos's RPS implementation.<sup>19</sup> While SCE may wish for a different status, it does not change the actual *status quo*.

The Proposed Decision adopts a fair and efficient outcome, namely, a continuation of Cerritos's relationship to the CEC for RPS purposes. The Commission should disregard SCE's requested changes to the Proposed Decision.

Dated: August 29, 2011

Respectfully submitted,



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<sup>18</sup> See, e.g., Cerritos Motion at 10.

<sup>19</sup> See SCE Comments at 2.

## VERIFICATION

I, Scott Blaising, am counsel for the city of Cerritos and am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of the *Reply Comments of the City of Cerritos on the Proposed Decision*, filed in R.11-05-005, are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true. In addition, as allowed under Rule 1.11(d), this Verification is being submitted by me, as counsel, on behalf of Cerritos because Cerritos is located in a county other than the county in which my office is located.

Executed on August 29, 2011 at Sacramento, California.

A handwritten signature in black ink, appearing to read "Scott Blaising". The signature is stylized with a large, sweeping initial "S" and a long horizontal stroke at the end.

Scott Blaising  
**BRAUN BLAISING McLAUGHLIN, P.C.**

Counsel for the City of Cerritos