

# DOUGLASS & LIDDELL

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August 16, 2012

Energy Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Attention: Tariff Unit

## **Re: Western Power Trading Forum Comments on Draft Resolution E-4522**

Dear Sir or Madam:

On July 20, 2012, Draft Resolution E-4522 of the Energy Division addressing Southern California Edison Company (“SCE”) advice letter (AL) 2339-E, as amended by AL 2339-E-A, AL 2339-E-B, AL 2339-E-C and AL 233-E-D was circulated to interested parties for comment. The accompanying cover letter directed that comments were due on August 14, 2012 and that the matter will be on the agenda at the August 23, 2012 Commission meeting. A subject index listing the recommended changes to the Draft Resolution and an appendix setting forth the proposed findings and ordering paragraphs is attached hereto as Appendix A to these comments.

The Draft Resolution addresses SCE’s supplemental Advice Letter 2339-E-C, which modifies five Power Purchase Agreements (“PPAs”) between BrightSource Energy and SCE. AL 2339-E-C was submitted to the Commission on November 28, 2011, seeking approval of five 200 megawatt (MW) solar thermal facilities for a total of 1,000 MW. On June 8, 2012, the Natural Resources Defense Council, Defenders of Wildlife, and the Sierra Club (collectively, the “Environmental Groups”) submitted a joint protest letter objecting to the approval by the Commission of the Siberia Power Purchase Agreements, as requested by SCE in Advice Letter 2339-E dated April 6, 2009, and as amended most recently by Advice Letter 2339-E-D on February 1, 2012. On June 22, 2012, the Western Power Trading Forum (“WPTF”)<sup>1</sup> added its protest in response to a June 15, 2012 email sent by Jason Simon of the Energy Division that notified interested parties that Energy Division was re-opening the protest period for the subject Advice Letter 2339-E-C.

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<sup>1</sup> WPTF is a California non-profit, mutual benefit corporation. It is a broadly based membership organization dedicated to enhancing competition in Western electric markets in order to reduce the cost of electricity to consumers throughout the region while maintaining the current high level of system reliability. WPTF actions are focused on supporting development of competitive electricity markets throughout the region and developing uniform operating rules to facilitate transactions among market participants.

# DOUGLASS & LIDDELL

AN ASSOCIATION OF  
PROFESSIONAL CORPORATIONS

Energy Division  
August 16, 2012  
Page 2

The Draft Resolution denies cost recovery for PPAs associated with the Solar Partners XVI (Rio Mesa 1) and Solar Partners XVII (Rio Mesa 2) projects that propose to utilize solar power tower technology without molten salt storage. The Draft Resolution concludes the Rio Mesa 1 and 2 projects “compare poorly on price and value relative to other solar thermal projects offered to SCE at the time the amended and restated PPAs were being negotiated and executed”<sup>2</sup> as other offers were said to be “materially higher in value.”<sup>3</sup> Conversely, the Draft Resolution approves PPAs for the three Siberia PPAs that employ solar power tower technology with molten salt storage (“Storage PPAs”).

The Draft Resolution states that the Energy Division evaluated the proposed PPAs on ten different criteria. Among these criteria were consistency with SCE’s 2011 RPS Procurement Plan; price reasonableness and value; the Independent Evaluator’s requirements and recommendations; and Procurement Review Group (“PRG”) participation. The July 22 cover letter that accompanied the Draft Resolution states that “Comments shall focus on factual, legal or technical errors in the proposed Draft Resolution.” Accordingly, WPTF believes that the Draft Resolution incorrectly or fails to apply several of the criteria listed as important to review of the PPAs and therefore is not only internally inconsistent, but also makes factual errors and omissions that must be corrected in the final Resolution to be issued with regard to Advice Letter 2339-E-C.

**a. The Draft Resolution Incorrectly Concludes the Rio Mesa 1 and 2 and Sonoran West Power Purchase Agreements are Consistent with the SCE 2011 RPS Procurement Plan**

WPTF believes that the conclusion that the PPAs are consistent with SCE 2011 RPS Procurement Plan is incorrect. Specifically, the Draft Resolution is internally inconsistent as to the dates of commencement of deliveries. First, at p. 9 it says, “Siberia 1 and Siberia 2 are proposed to interconnect at the Pisgah Substation and reach commercial operation by December 31, 2016.” Next, at p. 10 it says, “Sonoran West is proposed to interconnect at the Colorado River Substation and reach commercial operation by March 31, 2017.” Nevertheless, at p. 12 it concludes, “All of the BSE Contracts are contracted to initially deliver energy and capacity beginning in late 2015, which coincides with SCE’s preference outlined in its 2011 RPS procurement Plan.” Therefore the conclusion that “the BSE Contracts are consistent with SCE’s 2011 RPS Procurement Plan appears to be incorrect as the three approved PPAs do not coincide with SCE’s preference for deliveries beginning in late 2015.

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<sup>2</sup> Draft Resolution, at p. 2.

<sup>3</sup> Ibid.

Energy Division  
August 16, 2012  
Page 3

**b. Price Reasonableness and Value**

There are several items of error in the Draft Resolution regarding its treatment of the price reasonableness and value of the PPAs that demonstrate inconsistency with SCE's 2011 RPS solicitation, the Commission's rules, or, at a minimum, an undue lack of transparency. First, the Draft Resolution states that "all five PPAs are uncompetitive with contracts that SCE shortlisted from its 2011 RPS Solicitation."<sup>4</sup> Regardless of this fact, it then approves three of the PPAs on the grounds that the three approved contracts are competitive "[w]hen benchmarked against other solar thermal projects offered in SCE's 2011 RPS Solicitation."<sup>5</sup> This limited comparison with other solar thermal projects contradicts SCE's least cost-best fit methodology. In SCE's 2011 Written Description of Renewables Portfolio Standard Proposal Evaluation and Selection Process and Criteria, Appendix A to its 2011 RPS solicitation, SCE describes its methodology as follows:

SCE performs a quantitative assessment of each proposal individually and subsequently ranks them based on the proposal's benefit and cost relationship. Specifically, the total benefits and total costs are used to calculate the net levelized cost or "Renewable Premium" per each complete and conforming proposal. Benefits are comprised of separate capacity and energy components, while costs include the contract payments, debt equivalence, congestion cost, and transmission cost. SCE discounts the annual benefit and cost streams to a common base year. The result of the quantitative analysis is a merit-order ranking of all complete and conforming proposals' Renewable Premiums that helps define the preliminary short list.<sup>6</sup>

Effectively, by approving the three Storage PPAs, the Draft Resolution establishes a preference for solar thermal technology using molten salt storage. This constitutes an undisclosed technology "carve-out" inconsistent with SCE's stated methodology that should properly be adopted after a more complete vetting by the Commission. Moreover, had this fact been known to parties that bid in the 2011 RFP, more projects using such a technology might have been offered and a fairer competitive analysis conducted. However, by establishing this preference on a *post hoc* basis, the Draft Resolution forecloses the possibility of a true competitive bid process. Saying that the three approved PPAs are "competitive with other comparable solar thermal contracts offered to SCE"<sup>7</sup> simply does not afford the level of protection to ratepayers that should be provided by the Commission. It is akin to approving a tidal project or a space solar project that beats other tidal or space solar projects even though they are grossly uncompetitive

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<sup>4</sup> Id at p. 13.

<sup>5</sup> Id at 15.

<sup>6</sup> SCE's 2011 Renewable Portfolio Standard Procurement Plan, R.08-08-009 (May 4, 2011) at Appendix A, p. 2 (2011 LCBF Written Report).

<sup>7</sup> Id at p. 16.

Energy Division  
August 16, 2012  
Page 4

with other renewable technologies. The Commission owes ratepayers a more rigorous analysis as to price reasonableness and value than is contained in the Draft Resolution.

Second, qualitative factors, such as potential dispatchability from the Storage PPAs, cannot wholly supersede the quantitative analysis and technology neutrality. SCE notes that “the presence of demonstrated qualitative attributes may justify moving a proposal onto SCE’s short list of proposals if (a) the initial proposal rank is within reasonable valuation proximity to those selected for the short list and (b) SCE consults with, and receives general support from, its PRG prior to elevating the proposal based on qualitative factors.”<sup>8</sup> At a minimum, the Draft Resolution should confirm that such criteria were met.

Third, on the one hand, the Draft Resolution states with respect to the Storage PPAs that “these projects incorporate molten salt storage capacity which will allow SCE to optimize generation from these facilities based on changing system requirements. This unique attribute decreases renewable integration risk and provides more value for ratepayers.”<sup>9</sup> The clear implication is that the Commission assigned some level of renewable resource integration value to the Storage PPAs. Yet, D.11-04-030 precludes the use of integration costs and the Draft Resolution specifically states “the Commission assumes zero value for avoided integration costs for comparison purposes.”<sup>10</sup> As such, the Draft Resolution should be clear how the value of the unique attributes of the Storage PPAs were applied in the evaluation process.

**c. The Draft Resolution Ignores the Independent Evaluator’s Recommendation with regard to the Sonoran West Contract and its Entirely Tepid Recommendation for Approval of Rio Mesa 1 and 2.**

The Draft Resolution cites but then ignores the fact that the Independent Evaluator recommended rejection of the Sonoran West PPA.<sup>11</sup> Furthermore, it overlooks the salient fact that the Independent Evaluator’s recommendation for approval of the Rio Mesa 1 and 2 projects was remarkably tepid. As noted by WPTF in its protest, the Independent Evaluator concluded that at best the contracts were “competitive relative to SCE’s other solar thermal options in its most recent solicitation,”<sup>12</sup> which says nothing with respect to their overall reasonable pricing. According to the IE, none of the five contracts warranted placement on the short list, suggesting that they failed the market test and should be rejected by the Commission.

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<sup>8</sup> 2011 LCBF Written Report at p. 6.

<sup>9</sup> Draft Resolution, at p. 3.

<sup>10</sup> Draft Resolution at p. 14.

<sup>11</sup> Id at p. 18.

<sup>12</sup> See, Sedway Consulting, Inc. independent Evaluation Report for Southern California Edison’s BrightSource Amended PPAs (“IE Report”), at p. 6.

# DOUGLASS & LIDDELL

AN ASSOCIATION OF  
PROFESSIONAL CORPORATIONS

Energy Division  
August 16, 2012  
Page 5

## **d. The Draft Resolution Fails to Indicate whether SCE's Procurement Review Group Approved of the PPAs.**

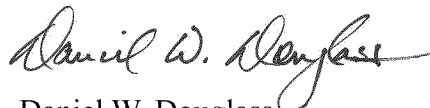
The Draft Resolution states merely that, "Pursuant to D.02-08-071, SCE's Procurement Review Group participated in the review of the BSE Contracts, and SCE has complied with the Commission's rules for involving the PRG."<sup>13</sup> WPTF does not know whether the SCE Procurement Review Group (PRG) approved or disapproved of the proposed PPAs, although it suspects the latter may be true given the fact that two of the named members of the PRG later protested the PPAs (Division of Ratepayer Advocates and The National Resources Defense Council). Whatever the facts may be, the Draft Resolution should not omit the important information as to what the PRG actually recommended. Doing so degrades the importance of the PRG process and suggests that its role has become one of form, but not substance.

### **Conclusion**

In conclusion, WPTF believes that the Draft Resolution is internally inconsistent and draws conclusions that are not justified by the underlying facts. We reiterate the recommendation in our June 22, 2012 protest. If the any of the five contracts are to be considered for Commission approval, such consideration should only occur after they have been demonstrated to be winners in a competitive RFO. The Advice Letter should be rejected so that the sponsors can make a determination as to whether to offer the projects in next renewable RFO conducted by SCE.

WPTF thanks the Energy Division for its attention to the issues discussed herein.

Very truly yours,



Daniel W. Douglass

Counsel for the

**WESTERN POWER TRADING FORUM**

cc: Commissioner Michael R. Peevey  
Commissioner Timothy Alan Simon  
Commissioner Michel Peter Florio  
Commissioner Cather J. K Sandoval  
Commissioner Mark J. Ferron  
Edward Randolph - Director of the Energy Division  
Karen V. Clopton - Chief Administrative Law Judge  
Frank R. Lindh - General Counsel  
Jason Simon - Energy Division  
Service List – R.11-05-005

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<sup>13</sup> Draft Resolution, at p. 19.

# DOUGLASS & LIDDELL

AN ASSOCIATION OF  
PROFESSIONAL CORPORATIONS

Energy Division  
August 16, 2012  
Page 6

## Appendix A

### Subject index listing the recommended changes to the Draft Resolution

WPTF recommends that the Commission reject all five PPAs discussed in the Draft Resolution.

### Proposed findings and ordering paragraphs

WPTF suggests the following modifications to the proposed findings and ordering paragraphs:

1. The BSE Contracts are inconsistent with SCE's 2011 RPS Procurement Plan, approved by D.11-04-030.
2. The PPAs include the Commission-adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.
3. SCE did not adequately utilize its LCBF methodology at the time the BSE Contracts were negotiated and executed.
4. The Commission finds that the price and value of the Rio Mesa 21 and Rio Mesa 2 contracts are not competitive with other comparable solar thermal contracts offered to SCE or other renewable contract proposals that were shortlisted in SCE's 2011 RFO.
5. The Commission finds that the price and value of the Siberia 1, Siberia 2 and Sonoran West contracts are not competitive with other comparable solar thermal contracts offered to SCE other renewable contract proposals that were shortlisted in SCE's 2011 RFO.
- ~~6. Payments made by SCE under the Siberia 1, Siberia 2 and Sonoran West contracts are fully recoverable in rates over the life of the PPAs, subject to Commission review of SCE's administration of the PPAs.~~
- ~~6. SCE must seek approval from the Commission to amend any BSE PPA through a Tier 2 Compliance filing if the point of interconnection changes. SCE must verify with an Independent Evaluator that the renewable premium for the PPA(s) is not negatively impacted. If the renewable premium is negatively impacted for the PPA(s), SCE must file a supplemental Tier 3 Advice Letter requesting approval of the amended and restated PPA(s).~~
- ~~6. SCE must file a Tier 2 Compliance filing within 10 days of Commission approval of the Siberia 1 and Siberia 2 and Sonoran West PPAs to amend the PPAs to include the required contract modifications.~~
- ~~6. Projected generation from the BSE Contracts meets the need requirements of SCE's RPS portfolio.~~

# DOUGLASS & LIDDELL

AN ASSOCIATION OF  
PROFESSIONAL CORPORATIONS

Energy Division

August 16, 2012

Page 7

- ~~10.6.~~ The Independent Evaluator recommends rejecting Rio Mesa 1 and Rio Mesa 2 and Sonoran West, and recommends approving Siberia 1 and Siberia 2.
- ~~11.7.~~ Consistent with D.06-05-039, an Independent Evaluator (IE) oversaw SCE's RPS procurement process. Additionally, the IE reviewed the proposed contracts and compared the proposals to the results of the most recent bids received consistent with D.09-06-050.
8. Pursuant to D.02-08-071, SCE's Procurement Review Group participated in the review of the BSE Contracts, and SCE has complied with the Commission's rules for involving the PRG.
- ~~12.9.~~ SCE's Procurement Review Group recommended that \_\_\_\_\_.
- ~~10.~~The proposed PPAs meet the conditions for EPS compliance established in D.07-01-039 because the facilities will produce electricity at a capacity factor of less than 60 percent and are therefore not a base load power plant as defined in Public Utilities Code Section 8340(a).
- ~~10.~~Because the Siberia 1, Siberia 2 and Sonoran West contracts are greater than 10 years in length, the contracts will contribute to SCE's long term contracting requirement established in D.12-06-038.
- ~~10.~~Procurement pursuant to the PPAs is procurement from an eligible renewable energy resource for purposes of determining SCE's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.11-12-020 and D.11-12-052, or other applicable law.
- ~~10.~~The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource under the PPAs to count towards an RPS compliance obligation. Nor shall that finding absolve SCE of its obligation to enforce compliance with the PPAs.
- ~~17.10.~~ The protests of Advice Letter (AL) 2339-E-C by the Division of Ratepayer Advocates (DRA) and the Western Power Trading Forum (~~WFTR~~WPTF) are accepted because the Commission concurs that the amended and restated BSE Contracts should be compared to ~~comparable~~ projects resulting from SCE's 2011 RPS Solicitation.
- ~~18.11.~~ The protest of Advice Letter (AL) 2339-E-C by the National Resources Defense Council (NRDC), Defenders of Wildlife and The Sierra Club is accepted because the Commission concurs that environmental concerns exist that may increase the risk of permitting delays potentially resulting in project failure.
- ~~19.12.~~ Protest letters from The Wilderness Society, the Center for Biological Diversity, and the Desert Protective Council will not be considered because they failed to serve their protest to the service list as required.

# DOUGLASS & LIDDELL

AN ASSOCIATION OF  
PROFESSIONAL CORPORATIONS

Energy Division

August 16, 2012

Page 8

- ~~20.13.~~ The comment letter submitted by the California Wind Energy Association (CalWEA) is not accepted because it is out of scope.
- ~~21.14.~~ The response letter submitted by the United States Department of Defense (DOD) is accepted because the Commission views any potential conflict with military training operations as a potential siting risk that can potentially decrease the viability of the Siberia projects.
- ~~22.15.~~ The Rio Mesa 1, ~~and Rio Mesa 2, Siberia 1, Siberia 2 and Sonoran West~~ power purchase agreements should be rejected in their entirety.
- ~~16.~~ The Siberia 1, Siberia 2 and Sonoran West power purchase agreements should be approved with modifications.
- ~~24.16.~~ AL 2339-E, as amended by AL 2339-E-A, AL 2339-E-B, AL 2339-E-C and AL 2339-E-D are approved in part with modifications and not approved in part.

## Therefore it is ordered that:

1. The power purchase agreements between Southern California Edison Company and Solar Partners XVI LLC and Solar Partners XVII LLC, as proposed in Advice Letter 2339-E, and amended by Advice Letters 2339-E-A, 2339-E-B, 2339-E-C and 2339-E-D, are not approved.
2. The power purchase agreements between Southern California Edison Company and Solar Partners XVIII LLC, Solar Partners XIX LLC, and Solar Partners XX LLC as proposed in Advice Letter 2339-E, and amended by Advice Letters 2339-E-A, 2339-E-B, 2339-E-C and 2339-E-D, are not approved with modifications.
- ~~3. SCE must seek approval from the Commission to amend any BSE PPA through a Tier 2 Compliance filing if the point of interconnection changes. SCE must verify with an Independent Evaluator that the renewable premium for the PPA(s) is not negatively impacted due to a change in the point of interconnection. If the renewable premium is negatively impacted for the PPA(s), SCE must file a supplemental Tier 3 Advice Letter requesting approval of the amended and restated PPA(s).~~
- ~~4. SCE must file a Tier 2 Compliance filing within 10 days of Commission approval of the Siberia 1 and Siberia 2 and Sonoran West PPAs to amend the PPAs to include the required contract modifications.~~