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October 1, 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 (Alternate) rev. 1**

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. On August 16, 2012, the Western Power Trading Forum (“WPTF”)¹ filed its comments opposing the Draft Resolution and recommending that the subject advice letters be rejected in their entirety.

On September 12, 2012, revised Draft Resolution E-4522 (ALTERNATE) of the Energy Division was circulated addressing the same topic but reaching a different conclusion on two of the five Power Purchase Agreements (“PPAs”) between BrightSource Energy and SCE. The accompanying cover letter directed that comments were due on October 1, 2012 and that the matter will be on the agenda at the October 11, 2012 Commission meeting. WPTF herein renews its original protest and recommendation. 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 original July 20 Draft Resolution denied 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 concluded 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

¹ 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.

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executed”² as other offers were said to be “materially higher in value.”³ Conversely, the July 20 Draft Resolution approved the PPAs for the three Siberia PPAs that employ solar power tower technology with molten salt storage (“Storage PPAs”).

By contrast the September 12 revised Draft Resolution E-4522, "denies cost recovery for Solar Partners XVI LLC, Solar Partners XVIII LLC and Solar Partners XIX, and approves cost recovery for Solar Partners XVII LLC and Solar Partners XX LLC."⁴ In other words, the July 20 Draft Resolution approved three of the proposed PPAs and denied two. The revised September 12 revised Draft Resolution approves two (Rio Mesa 2 and Sonoran West) and denies three, but one that had been denied is now approved (Solar Partners XVII) and two that were approved are now denied (Solar Partners XVIII and XIX). Put simply, this game of musical chairs as to approval and denial neither provides any greater justification for approval of any of the PPAs nor enhances the perception of the regulatory process as being orderly and consistent. Many of the same flaws that existed in the July 20 Draft Resolution remain.

Both the July 20 and September 12 revised Draft Resolutions state 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; and the Independent Evaluator’s requirements and recommendations. The September 12 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 September 12 revised Draft Resolution also incorrectly applies 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 and its various amendments.

a. A Post Hoc Carve-Out for Solar Thermal Technology does not Assure Price Reasonableness and Value.

There are several items of error in the September 12 revised 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 September 12 revised Draft Resolutions states that “all five PPAs are uncompetitive with contracts that SCE shortlisted from its 2011 RPS Solicitation.”⁵ Regardless of this fact, it then approves two of the PPAs on the grounds that the three approved contracts are

² July 20 Draft Resolution, at p. 2.

³ Ibid.

⁴ September 12 revised Draft Resolution, at p. 1.

⁵ Id at p. 14.

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competitive “[w]hen benchmarked against other solar thermal projects offered in SCE’s 2011 RPS Solicitation.”⁶

Effectively, by approving the three Storage PPAs, the Draft Resolution establishes an inappropriate preference for solar thermal technology using molten salt storage. This constitutes an undisclosed technology “carve-out” that should properly be adopted after a more complete vetting by the Commission. 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 two approved PPAs are competitive with other comparable solar thermal contracts offered to SCE simply does not afford the level of protection to ratepayers that should be provided by the Commission. As noted in WPTF’s original protest, it is akin to approving a tidal project or a space solar project that beats out other tidal or space solar projects even though they are grossly uncompetitive with other renewable technologies. Put simply, this Commission owes ratepayers a more rigorous analysis as to price reasonableness and value than is contained in the September 12 revised Draft Resolution.

Furthermore, the Draft Resolution states that Sonoran West “incorporates molten salt storage capacity which will allow SCE to optimize generation from this facility based on changing system requirements. This unique attribute decreases renewable integration risk and provides more value for ratepayers.”⁷ 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, “It is true that the Commission assumes zero value for avoided integration costs for comparison purposes.”⁸ 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.

b. Picking an Uncompetitive PPA Option in Order to Subsidize the Future Growth of a Private Company Does Not Comport with the Commission’s Obligation to Provide Just and Reasonable Rates.

Certain language in the September 12 revised Draft Resolution can only be characterized as disturbing. In the summary, it states as follows:

Although the Rio Mesa 2 project provides a value that is very similar to Rio Mesa 1, this resolution approves the Rio Mesa 2 PPA, with modifications, because it comprises a necessary step in the evolution of BrightSource’s technology

⁶ Id at 16.

⁷ Id at p. 3.

⁸ Id at p. 16.

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development to build and finance the third generation power towers with molten salt storage that provide much greater value for California ratepayers.⁹

Approval of Rio Mesa 2 is further explained as being necessary because, “Securing the project financing and an EPC agreement for a second-generation power tower will be a requisite step for BrightSource to convince investors to provide project financing for third-generation power towers at acceptable rates of return.”¹⁰

It is not the role of the California Public Utilities Commission to act as a “venture capital angel” for a private company. Not only does the September 12 revised Draft Resolution represent a preference for a specific renewable technology, despite there being no Commission policy for such a technology preference, but it also creates a preference for a specific company’s experimental technology. Whether or not the technology of BrightSource or any other independent generator is to succeed or fail should be based upon its ability to generate and supply power at competitive prices. By first giving after-the-fact preference to a technology that was not singled out in the SCE RFO and by then approving a highly uncompetitive offering simply in order to subsidize BrightSource’s future growth, the Commission would be making a mockery of the concept of least cost-best fit as well as to its historic commitment to competitive markets. A commitment to just and reasonable rates requires a dispassionate and impartial Commission that does not play favorites. If the Commission wants to encourage the development of “third generation power towers with molten salt storage,” then it should do so by allowing all potential developers to make offers in a clearly-defined RFO. Such an approach would be far more likely to result in competitive pricing than the approach contemplated in the egregiously flawed September 12 revised Draft Resolution.

c. The Draft Resolution Ignores the Independent Evaluator’s Recommendation to Reject both the Sonoran West and Rio Mesa 2 PPAs.

The September 12 revised Draft Resolution cites but then ignores the fact that Sedway Consulting, Inc., the Independent Evaluator, recommended rejection of both the Sonoran West and Rio Mesa 2 PPAs.¹¹ The Commission established the Independent Evaluator process so that an unbiased and informed party could review all of the information related to proposed PPAs and then render an independent judgment as to their suitability and compliance with Commission rules and standards. However, when the Commission ignores these recommendations it gives short shrift to the independent evaluator process and undercuts its authority and prestige. Why do we have an independent evaluator process if the recommendations are to be so completely ignored, without explanation?

⁹ Id at p. 3.

¹⁰ Id at p. 16.

¹¹ Id at p. 20.

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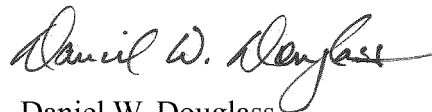
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Conclusion

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 and August 16, 2012 protests. If the Rio Mesa 2 and Sonoran West PPAs or 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 and all its amendments 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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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 1, ~~and~~ Rio Mesa 2, Siberia 1, Siberia 2 and Sonoran West contracts are not competitive with other comparable solar thermal contracts offered to SCE and other PPAs recently approved by the Commission.
- ~~5. The Commission finds that the price and value of the Siberia 1, Siberia 2 and Sonoran West contracts are competitive with other comparable solar thermal contracts offered to SCE and other contracts recently approved by the Commission.~~
- ~~6. Commercial financing and EPC agreements for BSE's third generation power towers depend on first commercially financing and securing an EPC agreement for second generation power towers.~~
7. There are serious concerns regarding the project viability of Siberia 1 and Siberia 2 due to incompatibility with military training operations at the nearby Twenty-nine Palms Marine base and transmission availability in the Pisgah area.
- ~~8. Payments made by SCE under the Rio Mesa 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.~~
- ~~9. SCE must inform the Commission of any amendment to a BSE PPA through an information only filing with the Energy Division if the point of interconnection changes and the renewable premium does not increase. SCE must submit an Independent Evaluator report with the information only filing verifying that the renewable premium~~

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~~for the PPA(s) does not increase. If the renewable premium of a PPA(s) does increase as a result of a change in location, SCE must file a supplemental Tier 3 Advice Letter requesting approval of the amended and restated PPA(s).~~

- ~~10. SCE must file a Tier 2 Compliance filing within 21 days of the issuance of this resolution to amend the PPAs to include the required contract modifications.~~
- ~~11. Projected generation from the BSE Contracts meets the need requirements of SCE's RPS portfolio.~~
12. The Independent Evaluator recommends rejecting Rio Mesa 1, Rio Mesa 2 and Sonoran West and recommends approving Siberia 1 and Siberia 2.
13. 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.
14. 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.
- ~~15. 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 base load power plants as defined in Public Utilities Code Section 8340(a).~~
- ~~16. Because the Rio Mesa 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.~~
- ~~17. 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.~~
- ~~18. 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.~~
19. 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.
20. 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

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concur that environmental concerns exist that may increase the risk of permitting delays potentially resulting in project failure.

21. 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.
22. The comment letter submitted by the California Wind Energy Association (CalWEA) is ~~not accepted because it is out of scope.~~
23. 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.
24. The Rio Mesa 1, Rio Mesa 2, Sonoran West, Siberia 1 and Siberia 2 power purchase agreements should be rejected in their entirety.
- ~~25. The Rio Mesa 2 and Sonoran West power purchase agreements should be approved with modifications.~~
26. 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 agreement between Southern California Edison Company and Solar Partners XVI LLC, Solar Partners XVII, Solar Partners XVIII LLC, ~~and 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.
- ~~2. The power purchase agreements between Southern California Edison Company and Solar Partners XVII 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 approved with modifications.~~
- ~~3. Southern California Edison Company must inform the Commission of any amendment to the power purchase agreements between Southern California Edison Company and Solar Partners XVII LLC and Solar Partners XX LLC through an information only filing with the Energy Division if the point of interconnection changes and the renewable premium does not increase. Southern California Edison Company must submit an Independent Evaluator report with the information only filing verifying that the renewable premium for the power purchase agreement(s) does not increase. If the renewable premium of a power purchase agreement does increase as a result of a change in the point of interconnection, Southern California Edison Company must file a supplemental Tier 3~~

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~~Advice Letter requesting approval of the amended and restated power purchase agreement(s).~~

- ~~4. Southern California Edison Company must file a Tier 2 advice letter within 21 days of the issuance of this resolution to amend the approved power purchase agreements to include the required contract modifications.~~