

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

Order Instituting Rulemaking to Integrate
and Refine Procurement Policies and
Consider Long-Term Procurement Plans.

Rulemaking 12-03-014
(Filed March 22, 2012)

**RESPONSE OF THE VOTE SOLAR INITIATIVE
TO THE MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY
TO STRIKE PORTIONS OF THE OCTOBER 9, 2012 COMMENTS FILED BY
THE VOTE SOLAR INITIATIVE**

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Pursuant to Rule 11.1(e) of the California Public Utility Commission's (Commission's) Rules of Practice and Procedure, The Vote Solar Initiative (Vote Solar) hereby responds (Response) to the October 22, 2012 *Motion of Southern California Edison Company (U 338-E) to Strike Portions Comments Submitted by Community Environmental Council and Vote Solar Initiative* (Motion). Vote Solar limits this Response to the content of the Motion applicable to Vote Solar, and for the reasons stated herein, respectfully requests the Commission deny the Motion in its entirety.

I. INTRODUCTION AND SUMMARY

SCE incorrectly states that portions of Vote Solar's October 29, 2012 comments (Comments) are improper because: 1) they have already been struck, 2) they are prejudicial, and 3) they are irrelevant because they are out of scope and non-responsive.¹ To the contrary, SCE's claim of *issue preclusion* based on previously stricken Vote Solar evidence is misapplied because the content of the Comments and the content of the previously stricken material are not the same. Further, SCE's speculation that Vote

¹ Motion at p.1.

Solar's Comments are prejudicial is unsupported by law and the record, particularly in light of the fact that no party other than SCE replied in any negative way to those Comments.

Finally, SCE's bold allegation that the Comments are irrelevant because they are out scope and non-responsive is directly contrary to the record. Section IV of the common briefing outline for this proceeding is entirely dedicated to the "*Procurement of LCR Resources and Incorporation of the Preferred Loading Order in LCR Procurement.*"² Question 4.E of the September 14, 2012 *Administrative Law Judge's Ruling Seeking Comment on Workshop Topics*, as subsequently amended by Judge Gamson's October 4, 2012, email ruling (Ruling) seeks responses regarding

"the pros and cons... with regard to... local procurement considered in Track 1 of LTPP [of a]djusting existing procurement mechanisms, such as the Renewable Auction Mechanism, to focus on the physical locations with needs that can be met by that programmatic resource."³

In general, Vote Solar's Comments are exclusively centered on the Preferred Loading Order. More specifically, the Comments discuss adjusting two existing procurement mechanisms, namely the Renewable Auction Mechanism and the California Solar Initiative, to focus on the physical locations with needs that can be met by these programmatic resources.⁴ Rather than reading the Comments for their plain face value, SCE digs deeply and with great futility to accuse Vote Solar of resurrecting the PRLM while simultaneously reducing the Ruling to a request for parties to merely "generally opine" on the issues.⁵

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² See the August 27, 2012 email from SCE attorney Carol A. Schmid-Frazer officially serving the revised common briefing outline.

³ Ruling at pp. 2-3.

⁴ Comments at pp. 5 – 8.

⁵ Motion at p. 6.

II. SCE’S CLAIM OF ISSUE PRECLUSION DOES NOT APPLY TO THE VOTE SOLAR COMMENTS

SCE’s first of three arguments is that Vote Solar’s Comments were “already struck”⁶ In making this claim of *issue preclusion*⁷, SCE must demonstrate that the content of Comments is the same as the content of the stricken Vote Solar testimony.⁸ On their face, the content of the Comments and the content of the stricken testimony (i.e. the PRLM proposal) are simply not the same, or even substantially similar. In fact, Vote Solar attached the stricken testimony to the Comments in an effort to illustrate that what is described in the Comments is “a somewhat similar but vastly simpler approach” to the PRLM proposal.⁹ In light of Commissioner Florio’s and Judge Gamson’s comments at hearing regarding the complexity¹⁰ and breadth¹¹ of the PRLM proposal, Vote Solar sought to make clear that the content of the Comments was focused on simplicity and containment, as opposed to the complex and broad scope of the stricken PRLM proposal.

In hindsight, Vote Solar acknowledges that this point should have been more forcefully stated. The highlighted language addressing the PRLM proposal¹² should have been better and more directly tied together with the subsequently stated point regarding the “somewhat similar but vastly simpler” concepts described in the Comments. Vote Solar regrets and apologizes for this omission, but this does not change the factual reality that the content of the Comments and the content of PRLM proposal are substantially and notably different. Ultimately, Vote Solar did not reintroduce, resurrect or in anyway suggest that the Commission should adopt the stricken PRLM proposal. Accordingly, SCE’s claim of *issue preclusion* fails.

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⁶ Motion at p. 3.

⁷ *Issue preclusion* refers to the fact that a particular question of fact or law that has already been fully litigated by the parties in an action for which there has been a judgment on the merits, cannot be re-litigated in any future action involving the same parties or their successors.

⁸ Comments, Attachment B.

⁹ *Id.* at p. 6.

¹⁰ Transcript at p. 51, line 9.

¹¹ *Id.* at p. 52, lines 19.

¹² Comments at p. 6.

III. NO PARTY, INCLUDING SCE, IS PREJUDICED BY VOTE SOLAR'S COMMENTS

In the second argument, SCE dramatically proclaims that not only SCE, but all parties to this proceeding as well as parties to other proceedings will be “deprived of notice and an opportunity to be heard on” the Vote Solar Comments.¹³ Despite SCE’s histrionics regarding due process, both Commission precedent and the related reply comments of the parties clearly demonstrate that the relevant three and a half pages¹⁴ of Vote Solar’s Comments are neither controversial nor affronts to due process. In fact, a fair argument exists that SCE’s Motion is, in itself, an attempt to deny Vote Solar due process by limiting Vote Solar to merely “opining” on procurement issues.

To this point, past Commission rulings have denied motions to strike because the Commission can avoid abridging the right of a party to be heard while also assuring as robust a record as possible because the Commission is endowed with the ultimate ability to appropriately weight all of the information before it.¹⁵ In other words, the Commission should err on the side of allowing parties to be heard and of building a robust record, because if anything untoward slips through, the Commission can later place little or no merit on that content.

Equally notable, in the replies to the opening comments on the Ruling, of the at least eighteen replying parties, no party other than SCE filed negative reply comments on Vote Solar’s Comments, and one party filed supportive comments.¹⁶ As for SCE, in the handful of non-introductory pages in which SCE replies to Vote Solar’s Comments¹⁷, SCE does not demonstrate any confusion or lack of understanding of Vote Solar’s Comments, thus negating SCE’s claim that the “prejudice is compounded at this late state of the proceedings because discovery is closed, and SCE lacks an opportunity to cross examine witnesses.”¹⁸ SCE is simply not in any position to claim that Vote Solar’s

¹³ Motion at p.7.

¹⁴ At p. 6 of the Motion, SCE requests that pages 5-8 of the Comments be stricken. Vote Solar assumes that SCE seeks to strike on the material beginning at Question 4.E of page 5, rather than the entirety of page 5.

¹⁵ See, e.g., the August 26, 2011 ruling in A.10-03-014 and the June 16, 2009 ruling in A.08-03-015.

¹⁶ Distributed Energy Consumer Advocates Reply Comments at p. 5 and p.10.

¹⁷ SCE Reply Comments at pp. 8-10.

¹⁸ Motion at p. 7.

Comments cause prejudice to SCE or anyone else. Further, past Commission decisions actually weigh in favor of protecting Vote Solar's due process rights against this unfounded attack by SCE.

IV. THE VOTE SOLAR COMMENTS ARE WITHIN THE GENERAL SCOPE OF THIS PROCEEDING AND ARE SPECIFICALLY RESPONSIVE TO THE RULING

As stated earlier in these comments in Section I, the common briefing outline is an obvious and quick rebuttal to SCE's claim that Vote Solar's Comments are outside of the general scope of this proceeding. Nevertheless, in the third and final argument, SCE attempts to obfuscate the scope issue by comingling it with the striking of the PRLM proposal. Ironically, and quite contrary to SCE's allegations, nothing in the record unequivocally indicates that the PRLM proposal was struck because it was outside of the general scope of the proceeding, but rather it was struck because it should have been proposed in opening testimony.¹⁹ Because SCE can not reasonably deny that issues related to the Preferred Loading Order are squarely within this proceeding, SCE must wrongly allege, as also discussed earlier, that the content of the Comments is the same as the stricken PRLM proposal. Even more ironically, if the contents of the Comments and the PRLM proposal were the same (which they are clearly not), it does not change the general scope of this proceeding, and the fact that the content of both the Comments and the PRLM proposal address, or addressed, issues within the scope of this proceeding.

SCE's related argument that the Comments are not responsive to the Ruling is also unfounded, and highly dependent on SCE's theory that parties were to merely "opine" on procurement issues in commenting on the Ruling. Vote Solar, on the other hand, presumes that the Ruling specifically, and the Commission generally, seek opinions backed by facts and reasoning. Vote Solar's Comments strive to accomplish this by expressing support for "existing procurement mechanisms, such as the Renewable Auction Mechanism, to focus on the physical locations with needs that can be met by that programmatic resource," but while also describing what "adjustments" Vote Solar

¹⁹ Transcript at p. 52, lines 13 -14.

believes are necessary to achieve this approach. Vote Solar's Comments are a sincere effort to respond as fully and thoughtfully as possible to the Ruling. SCE's flimsy attempt to abridge the record through procedural gaming should not be used to silence the legitimate advocacy of Vote Solar or any other party.

WHEREFORE, for the reasons stated above, Vote Solar respectfully requests the Commission deny the SCE Motion in its entirety.

Respectfully Submitted,

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