DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ID #12031

ENERGY DIVISION RESOLUTION E-4584

May 9, 2013

RESOLUTION

Resolution E-4584: Southern California Edison Company ("SCE") requests the Commission approve a bilaterally negotiated capacity sale and tolling agreement ("BECA Contract") between SCE and BE CA LLC ("BECA") a subsidiary of JP Morgan Chase & Co. and JP Morgan Energy Ventures Corporation. The BECA Contract will provide SCE with energy, capacity, ancillary services, and all Resource Adequacy ("RA") benefits for a term beginning on October 1, 2013, and ending on May 31, 2018, via a tolling arrangement for twelve existing generating units.

PROPOSED OUTCOME: This Resolution approves the BECA Contract without modification.

SAFETY CONSIDERATIONS: As existing and operational generating facilities, there are no incremental safety implications associated with this contract beyond status quo.

ESTIMATED COST: Contract costs are confidential at this time.

By Advice Letter ("AL") 2853-E Filed on February 15, 2013.

SUMMARY

SCE requests that the Public Utilities Commission of the state of California ("Commission" or "CPUC") 1) approve the proposed bilaterally-negotiated tolling agreement with BECA in its entirety; and 2) include a finding that the BECA Contract, and SCE's entry into the BECA Contract, is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the BECA Contract; subject only to further review for the reasonableness of SCE's administration of the BECA Contract with respect to least cost dispatch and other applicable standards.

The BECA Contract will provide SCE with energy, ancillary services, and RA benefits for a term beginning on October 1, 2013, and ending on May 31, 2018, via a tolling arrangement for twelve existing natural gas-fired generating units

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located in the Los Angeles Basin local area ("LA Basin") for 3,690 megawatts ("MW") of contracted capacity. Each unit is subject to the State Water Resources Control Board ("SWRCB") once-through cooling ("OTC") policy and has a SWRBC OTC compliance deadline of December 31, 2020.

The specific generating units included in the BECA Contract and their corresponding capacities are listed below.

Generating Facility	Unit	RA Capacity (MW)	Contract Capacity (MW)
Alamitos Generating Station	AL1	174.56	175
	AL2	175 .00	175
	AL3	332.18	320
	AL4	335.67	320
	AL5	497.97	480
	AL6	495.00	480
Huntington Beach Generating Station	HB1	225.75	215
	HB2	225.80	215
Redondo Beach Generating Station	RB5	178.87	175
	RB6	175.00	175
	RB7	505.96	480
	RB8	495.90	480
Total		3,817.66	3,690

For the reasons discussed in detail below the Commission approves AL 2853-E without modification.

BACKGROUND

Decision (D.) 12-04-046 directed that an Investor-owned Utility ("IOU") entering into OTC power purchase agreement with contract duration of more than two years but less than five years must submit a Tier-3 AL to the Commission for approval. On February 15, 2013, SCE submitted AL 2853-E seeking Commission approval for the BECA Contract for OTC generating units located in LA Basin, for a duration of less than five years.
The BECA Contract provides SCE with the tolling rights to twelve generating units at the Alamitos, Huntington Beach, and Redondo Beach Generating Stations[1] (collectively, the "AES units"), which are owned and operated by

[1] Specifically, Redondo Units 5, 6, 7, 8, Huntington Beach Units 1, 2, and Alamitos Units 1-6.

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subsidiaries of the AES Corporation (“AES”), AES Alamitos, L.L.C., AES Huntington Beach, L.L.C, and AES Redondo Beach, L.L.C. (collectively, the “AES Subsidiaries”). This BECA Contract is a modified version of the current contract (“Base Agreement”) between the AES subsidiaries and BECA, which ends on May 31, 2018. The BECA Contract is intended to transfer to SCE all the rights and obligations currently accruing to BECA under the Base Agreement.

Under the proposed contract, SCE will receive energy, capacity, ancillary services, and all RA benefits for a term beginning on October 1, 2013, and ending on May 31, 2018, through a tolling arrangement with the AES units for a contract capacity of 3,690 MW. In the past, BECA has resold some of its tolling and RA rights from the AES units to SCE. The BECA Contract will terminate and/or novate the preexisting RA agreements between BECA and SCE as to the relevant units and timeframes.

The existing duration and terms of SCE agreements (unit contingent tolling agreements and RA agreements) are included in the table below.

Generating Facility	**Unit**	**Contract and RA Capacity (MW)**	**Term of RA Agreement**
Alamitos Generating Station	AL1 AL2 AL3 AL4 AL5 AL6	174.56 175 .00 332.18 335.67 497.97 495.00	Jan-Dec 2013, 2014 Jan-Dec 2013, 2014 Jan-Dec 2013 Jan-Dec 2013 Jan-Dec 2015 Jan-Dec 2013, 2014, 2015
Huntington Beach Generating Station	HB1	225.75	Jan-Dec 2013
Redondo Beach Generating Station	RB5 RB6 RB7 RB8	178.87 175.00 505.96 495.90	Jan-Dec 2013, 2014 Jan-Dec 2013, 2014 Jan-Dec 2013, 2015 Jan-Dec 2013, 2014, 2015
Generating Facility	**Unit**	**Contract Capacity (MW)**	**Term of Unit Contingent Tolling Agreement**
Alamitos Generating	AL5	497.97	Jan 2011-Sept 2013

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Station			
Huntington Beach Generating Station	HB2	225.80	Jan 2012-Sept 2013

The ongoing outage at the San Onofre Nuclear Generating Station ("SONGS") has also raised questions regarding the potential need for voltage support in LA Basin and northern San Diego County. The California Independent System Operator ("CAISO") has entered into a Reliability Must-Run ("RMR") agreement with AES Huntington Beach, L.L.C. ("AESHB") to convert Huntington Beach Units 3 and 4 into operation of synchronous condensers, to provide voltage support in the LA Basin and the San Diego/Imperial Valley local capacity areas. This RMR agreement is contingent upon the consent of BECA under the Base Agreement pursuant to which BECA has claimed consent rights with respect to development of new generating capacity in certain portions of the LA Basin by AES subsidiaries.[2] The BECA Contract transfers BECA's alleged consent rights to SCE, effective upon final and non-appealable Commission approval of the BECA Contract.

NOTICE

Notice of AL 2853-E was made by publication in the Commission's Daily Calendar. SCE states that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

COMMENTS/PROTESTS

SCE's AL 2853-E was timely protested by Dynegy Morro Bay, LLC, Dynegy Moss Landing, LLC, and Dynegy Oakland, LLC (collectively, "Dynegy") on March 7, 2013. In addition, the Independent Energy Producers Association ("IEP"), the Alliance for Retail Energy Markets ("AReM") and the CAISO submitted responses to AL 2853-E. SCE responded to the protests/responses of Dynegy, IEP, AReM, and CAISO on March 14, 2013. Dynegy recommends that the Commission reject

[2] The Federal Energy Regulatory Commission ("FERC") has determined that BECA does not have the contractual right to prevent AESHB from constructing the synchronous condenser units. (FERC Order on RMR Agreement, page 3 and 4; issued January 4, 2013, in Docket No. ER13-351-000). JP Morgan Energy Ventures Corporation and BECA sought review of this order on February 4, 2013.

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AL 2853-E. IEP and AReM do not protest the approval of the BECA Contract but raise several questions. The CAISO supports Commission approval of AL-2853.

The following is a more detailed summary of the major issues raised in the protest/comments with SCE's response.

SCE did not conduct a competitive solicitation for this tolling agreement. Dynegy argues that SCE did not conduct a competitive solicitation for tolling agreements and the Commission has no assurance that the price for the BECA Contract is the lowest available price.[3] Dynegy explains that this flaw renders the Advice Letter "unjust, unreasonable, or discriminatory." SCE responds that the Commission should not reject the BECA contract just because it was procured bilaterally. The BECA Contract provides significant and unique benefits at a reasonable price that could not have been obtained through a competitive solicitation.[4]

The approval of AL 2853-E facilitates BECA's exercise of market power. Dynegy argues that the tolling agreement permits BECA to exercise market power by tying the extension of agreements with AES units to convert Huntington Beach Units 3 and 4 to synchronous condensers, which also render the AL unjust, unreasonable, or discriminatory.[5] IEP comments that based on the description in AL 2853-E, it appears that BECA is leveraging its market power to consent or not consent to the synchronous condenser to obtain contracts for 3,690 MW of capacity.[6] SCE responds that there is no evidence that BECA abused its market power in negotiating the BECA Contract, and that SCE negotiated a reasonable and competitive price for the BECA Contract as demonstrated in the confidential version of AL 2853-E.[7]

The approval of AL 2853-E allows SCE to exercise market power in the LA Basin. IEP comments that under the BECA Contract, SCE will control a significant portion of RA capacity in the western LA Basin sub-area, which might have an effect on competitive markets and price signals for RA. AReM states that the Commission should take steps to mitigate this concentration of capacity and dispatch control and should set up a forum to discuss this matter.[8] SCE responds that that the BECA Contract does not materially change SCE's local RA capacity position relative to what it has historically held to meet its local RA requirements.

[3] Dynegy's protest of AL 2853-E filed on March 7, 2013, page 1 and 2; citing General Order 96-B, Section 7.4.2.
[4] Reply of SCE to the protest of Dynegy and responses of AReM, IEP, and CAISO, page 2.
[5] Dynegy's protest of AL 2853-E filed on March 7, 2013, page 3.
[6] IEP's response to AL 2853-E, page 2.
[7] Reply of SCE to the protest of Dynegy and responses of AReM, IEP, and CAISO, page 3.
[8] AReM's response to AL 2853-E, pages 3 and 4.

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SCE further explains that its ability to withhold a resource through its dispatch control is mitigated by the CAISO tariff requirements that RA resources are subject to a must-offer obligation.[9]

SCE will control redevelopment of new generation at the sites of the AES units. IEP and AReM comment that the BECA Contract transfers the alleged right of consent to the redevelopment of the twelve existing generation units owned by AES to SCE. The transfer of this alleged right to SCE raises competitive concerns. AReM urges that the Commission staff, SCE, and interested stakeholders should have a forum for discussing the manner in which SCE would exercise the new generation consent rights.[10] SCE responds that BECA already controls the contract capacity and consent rights through May 2018, and the transfer of such interests from an unregulated party to a utility regulated by the Commission mitigates, rather than increases, competitive concerns.[11]
The Commission should address cost allocation associated with the BECA Contract on direct access ("DA") or community choice aggregation ("CCA") retail choice customers.[12] AReM proposes that the Commission, in the event it approves AL 2853-E, conduct stakeholder discussions to resolve whether or to what extent any of the costs associated with the BECA Contract will be imposed on DA or CCA retail choice customers, either through the Cost Allocation Mechanism ("CAM") or through the imposition of non-bypassable charges ("NBCs"). SCE responds that it is not requesting that any of the costs of the BECA Contract be allocated through the CAM.[13]

AReM further states that the BECA Contract, if approved, will pave the way for installation of the synchronous condensers at Huntington Beach. AReM believes that it is appropriate that such costs accrue solely to the bundled customer portfolio. SCE responds by stating that the synchronous condensers do not address supply issues that result from the outage at SONGS. Rather, SCE argues that the synchronous condensers provide dynamic voltage support for reliability purposes, not for generation supply. Moreover, AL 2853-E addresses cost recovery related to the costs of the BECA Contract, and does not address the costs of the synchronous condensers.

CAISO supports AL-2853 E for reliability reasons. The CAISO supports SCE's statement that the Commission's approval of the BECA Contract will eliminate the alleged contractual barriers to the operation of synchronous condensers at Huntington Beach Generating Station Units 3 and 4. The CAISO claims that the

[9] Reply of SCE to the protest of Dynegy and responses of AReM, IEP, and CAISO, page 4.
[10] AReM's response to AL 2853-E, page 4.
[11] Reply of SCE to the protest of Dynegy and responses of AReM, IEP, and CAISO, page 4.
[12] AReM's response to AL 2853-E, page 3.
[13] Reply of SCE to the protest of Dynegy and responses of AReM, IEP, and CAISO, page 3.

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synchronous condensers are essential to provide the dynamic voltage support service necessary to prevent the CAISO's need to rely on load shed to maintain grid reliability. Furthermore, the CAISO argues that the twelve generating units subject to the BECA Contract provide flexible capacity and are critical to system reliability because of their strategic location in the transmission constrained LA Basin.[14]

DISCUSSION

On February 15, 2013, SCE submitted a Tier 3 AL specifically seeking Commission for approval of the BECA Contract. We evaluated SCE's AL 2853-E based on criteria established in previous Commission Decisions and in Public Utilities Code, Section 454.5, which provide guidance to the IOUs and the Commission for the procurement of electricity and electricity-related products. Specifically SCE must demonstrate:

1. that this transaction is in compliance with the Energy Action Plan ("EAP") Loading Order;
2. that this transaction is in compliance with once-through cooling Procurement Rules;
3. that this transaction was discussed with the Procurement Review Group ("PRG");
4. that this transaction is in compliance with SCE 's Public Utilities Code Section 454.5 Bundled Procurement Plan ;
5. that this transaction meets residual energy and capacity needs; and
6. that this transaction is at a reasonable price.

The BECA Contract is not inconsistent with the EAP Loading Order.

The EAP Loading Order, published May 8, 2003 and endorsed in D.04-12-048, contains explicit direction regarding California's preferences for meeting identified resource needs, and the Investor Owned Utilities ("IOUs") are to prioritize their resource selections accordingly. The EAP prioritizes resources in a "loading order" of policy preference and directs IOUs to procure resources in the following order of priority: Energy Efficiency ("EE") and Demand Response ("DR"), renewable fuel resources, clean fossil-fired Distributed Generation ("DG"), and clean central-station generation.[15] The AES fleet consists of existing natural gas-fired steam boiler electric generating facilities.

[14] CAISO's response to AL 2853-E, page 1.

[15] D.04-12-048, page 98.

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The BECA Contract does not meet all of SCE's bundled customer needs, and therefore has not displaced the opportunity for procurement of additional preferred resources. SCE expressed that it is still pursuing all of its statutory and CPUC decisional requirements regarding preferred resources, including EE, DR, Renewable Portfolio Standards, DG, and Combined Heat and Power. Additionally, the BECA Contract enables SCE to meet its local and system RA capacity needs, which currently cannot be met by preferred resources. Therefore, the BECA Contract is not inconsistent with the EAP Loading Order.

The BECA Contract complies with OTC Procurement Rules.

Each AES unit is subject to the State Water Resources Control Board ("SWRCB") OTC policy and has a SWRBC OTC compliance deadline of December 31, 2020. D.12-04-046 directed that IOUs submit any OTC power purchase agreement with contract duration of more than two years but less than five years to the Commission for approval via a Tier 3 AL. This Decision provided guidance on how the utilities must prepare, and how the Energy Division must evaluate, such power purchase agreements. We address how the BECA contract is in compliance with each of the criteria specified in D.12-04-046 below.

1) How the contract helps facilitate compliance with the SWRCB OTC policy, or at a minimum does not delay compliance.

Each AES unit is subject to the SWRCB's OTC policy. The SWRCB OTC compliance deadline for all of the AES units in the BECA contract is December 31, 2020. The BECA contract term ends on May 31, 2018. Mitigation of OTC reliance is not affected by this contract, and AES can pursue compliance activities regardless of this contract. Therefore this contract does not violate any current OTC guidelines.

2) Include the expected operation of the OTC facility under normal load (1 in 2) and high load (1 in 10) conditions, including number of starts and run time after each start.

SCE estimated an expected capacity factor of 7.8% for the AES units. SCE estimated this value using its price based economic dispatch model. The economic dispatch model factors in the number of starts and run time after each start. We find the use of an economic dispatch model as a tool to determine operation of the AES units acceptable for this guideline. We find SCE compliant with the requirement.

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3) Include the Local Capacity requirement ("LCR") net position with and without the OTC facility over the contract duration and two years beyond the contract duration.

SCE provided the LCR, with and without the AES units, in Appendix B of AL 2853-E. These requirements were based on CAISO LCR studies for 2013, and on SCE planning forecasts of LA Basin LCR need for 2014 through 2020.

4) How any other available generation resources compare under these criteria.

The AES units are in the generation constrained LA Basin. According to SCE, if all LSEs were to procure the RA capacity from all other units in the LA Basin to satisfy their requirements, they would still have to contract for about 1,000 MW of capacity from the AES units.[16] These units represent 49.11%, and without SONGS these units total 69.06%, of the generation in Western LA Basin sub-area, which is of particular concern in terms of local reliability.[17] Therefore, the AES units are uniquely required for reliability in the LA Basin when compared to other generation resources. SCE has no alternative for meeting its LA Basin RA procurement requirements that does not rely on a portion of the BECA Contract capacity.

Consistent with D.02-08-071, SCE's Procurement Review Group ("PRG") was notified of the BECA Contract.

The Commission established PRGs to oversee the procurement activities of IOUs and mandated that each IOU maintain and routinely consult with its PRG. The PRG is to review and assess the details of the IOUs' overall procurement strategy and specific proposed procurement contracts and processes prior to submitting filings to the Commission.[18] SCE briefed the PRG on January 9, 2013, at which time it presented various details about ongoing negotiations of the BECA contract including the pricing, contract terms, and a cost/benefit analysis.

The BECA Contract meets residual energy and capacity needs for SCE's bundled customers.

SCE demonstrates its residual need via a set of energy and capacity tables in Appendix B of Advice Letter 2853-E. We evaluated the tables and determined that the BECA Contract meets residual local and system capacity needs for SCE's bundled customers.

[16] AL-2853-E, page 10.
[17] Advice Letter 2853-E, page 8.
[18] D.02-08-071, pages 7 and 8.

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Furthermore, the ongoing outage at SONGS has raised allegations of at least short term potential need for a significant amount of local capacity and energy in the LA Basin. Public Utilities Code, Section 380 ("Section 380") requires that the Commission consult with the CAISO regarding minimum resource adequacy needs. On August 20, 2012, the CAISO issued an Addendum to the 2013 Local Capacity Technical ("LCT") Study, dated April 30, 2012, which includes the results and recommendations of the 2013 LCT Study in the absence of SONGS. This Addendum was not intended to change the 2013 LCR allocations already provided to Load Serving Entities ("LSEs") based on the 2013 LCT Study report dated April 30, 2012. Instead, the CAISO issued results and recommendations to provide LSEs with advance notice of LCR needs in the absence of SONGS in order to facilitate a more informed 2013 RA procurement. The study identified a net deficiency in LCR needs. The report concludes that, essentially, all existing available resources are needed for LCR in the LA Basin, and additional deficiencies exceed existing capacity. Specifically, the CAISO states, "These results, in the absence of SONGS, would also provide a basis to allocate the costs of any ISO procurement needed to mitigate reliability conditions notwithstanding the resource adequacy procurement of LSEs."[19]

Public Utilities Code, Section 380 discusses resource adequacy as including the "retention of existing generating capacity *that is economic* and needed [emphasis added]." Thus, the RA program is not only designed to maintain the physical availability of adequate generation resources, but predictable access to such resources at a reasonable cost. SONGS counts towards 2,246 MW of local RA requirements in the LA Basin. The BECA Contract may help mitigate the price risk likely to arise from a shortage of energy. Specifically, the CAISO states, "Further, the 12 generating units subject to the BECA Contract are flexible capacity resources located in the constrained LA Basin sub-area and are critical to system reliability."[20] The AES units are expected to provide flexible RA capacity to SCE's portfolio.[21] Further, the BECA Contract procured through CPUC processes may reduce the potential for the CAISO to rely on resources procured through its more costly Capacity Procurement Mechanism ("CPM").

The BECA contract exceeds the ratable rate limits approved in SCE's AB 57 Bundled Procurement Plan.

[19] CAISO Local Capacity Technical Analysis 2013, Addendum to the final report and study results based on absence of SONGS, page 1.
[20] CAISO response to SCE's AL 2853-E.
[21] The Commission is currently determining a Flexible Capacity Procurement Obligation on LSEs through the RA proceeding (Rulemaking 11-10-023).

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The Commission-approved Utility AB 57 Bundled Procurement Plan establishes the limits and criteria that guide utility procurement activities. All transactions and actions that fall within the boundaries of a Commission-approved AB 57 procurement plan are compliant and are assured cost recovery.

In D.12-01-033, the Commission adopted SCE's 2010 Bundled Procurement Plan compliance filing covering the years 2012 through 2022 with modifications. This Decision required SCE to file a conformed version of the 2010 Bundled Procurement Plan in the form of a Tier 3 AL, approved by Resolution E-4542 on October 11, 2012.

Among other things, SCE's Bundled Procurement Plan specifies position limits (for energy and capacity) and transaction rate limits (referred to as "ratable rates") that apply to electrical capacity transactions for delivery months that occur two or more calendar years beyond the transaction year. Ratable rates are calculated by dividing the maximum transaction volume requirements by the number of months or years available to conduct transactions. The construct of ratable rates prevent SCE from procuring all its forward requirements by constraining future procurement. The BECA contract exceeds SCE's approved ratable rates in years 2015 through 2018. Exceeding the ratable rates implies that SCE has procured its future requirements, and puts ratepayers more at risk to downside load and price forecast errors, while reducing the risk of upside price and load forecast errors.

The approval of AL 2853-E allows SCE to exceed its AB 57 Bundled Procurement Plan ratable rate limits. To the extent that ratable rates are exceeded, SCE would be precluded from incremental forward contracting in the "capped" periods until such time that SCE's ratable rates exceeded SCE's approved limits.

The BECA Contract is reasonably priced.

SCE employed a Net Present Value ("NPV") analysis to value the BECA Contract. The NPV is the net value of the contract benefits and costs. The contract benefits include energy and ancillary services and RA capacity. The contract costs include contract payments, debt equivalence, and other costs. SCE also netted the value of the existing RA agreements between SCE and BECA to the NPV. We evaluated the assumptions used in the analysis and found them reasonable. The quantitative valuation results show that the BECA contract is reasonably priced, and provides cost certainty to SCE's customers for future years. The capacity provided by these contracts also provides SCE significant savings in potential Standard Capacity Product ("SCP") charges with the uncertainty around the operation of SONGS.

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SCE has agreed to provide consent to AESHB to operate Huntington Beach Units 3 and 4 as synchronous condensers.

The ongoing outage at SONGS has also arguably created the critical need for voltage support in LA Basin and northern San Diego County. The CAISO has therefore entered into a RMR agreement with AESHB to convert Huntington Beach Units 3 and 4 into operation of synchronous condensers to provide voltage support in the LA Basin and the San Diego/Imperial Valley local capacity areas. On November 9, 2012, the CAISO and AESHB filed the RMR agreement with the Federal Energy Regulatory Commission ("FERC") in Docket Number ER13-351-000. The RMR agreement sets forth certain conditions precedent[22] to the effectiveness of the RMR agreement, including the consent of BECA under its existing agreements with AESHB. The CAISO has characterized synchronous condensers as essential to provide the dynamic voltage support necessary to prevent the CAISO from having to rely on load shedding during certain potential contingencies.
BECA and the AES Subsidiaries are also parties to a May 1, 1998 agreement (the "Capacity Addition Agreement"), under which BECA has consent rights with respect to new generating capacity in certain portions of the LA Basin constructed by the AES Subsidiaries. The BECA Contract transfers BECA's alleged consent rights to SCE, effective upon final and non-appealable Commission approval of the BECA Contract. The Commission's approval of the BECA Contract, and SCE's consent to the operation of synchronous condensers, will eliminate the alleged contractual barriers and litigation risk related to the development of synchronous condensers at Huntington Beach Units 3 and 4.

In AL 2853-E, SCE has indicated that it will consent to the operation of the synchronous condensers. Specifically, "The BECA Contract resolves this problem by transferring BECA's consent rights to SCE, effective upon final and non-appealable Commission approval of the BECA Contract. SCE will consent to the operation of the synchronous condensers."[23]

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[22] "In order for the RMR Agreement to become effective, AESHB must, among other things, receive approval from the Commission on or before June 1, 2013, in a final, non-appealable order; approval from the California Energy Commission (CEC) of the amendments to its licenses for Huntington Beach Units 3 and 4; and consent, confirmation, or other acknowledgement as may be required by BE CA, LLC under the existing agreements between AESHB and BE CA, LLC." (FERC Order on RMR Agreement, page 4, issued January 4, 2013, Docket No. ER13-351-000)

[23] AL 2853-E, page 7.

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The BECA Contract fulfills the Commission specified conditions for a bilaterally-negotiated contract.

Dynegy recommends that the Commission reject AL 2853-E because it is unjust, unreasonable, or discriminatory within the meaning of General Order 96-B, Section 7.4.2. Dynegy argues that SCE did not conduct a competitive solicitation for tolling agreements and the Commission has no assurance that the price called for in the tolling agreement is the lowest available price.

While the Commission has demonstrated a preference for competitive solicitations, it has also authorized utilities to engage in bilateral negotiations for local reliability reasons.

> "In addition to the limited circumstances enumerated in D.03-12-062 at Conclusion of Law 15, we authorize the utilities to engage in bilateral negotiated contracts for capacity and energy from power plants where the purpose is to enhance local area reliability. Utilities may include such transactions in their quarterly compliance filings, for approval if there is no objection."[24]

The AES units are in the generation constrained LA Basin. SCE states that if all LSEs were to procure the RA capacity from all other units in the LA Basin to satisfy their requirements, they would still have to contract for about 1,000 MW of capacity from the AES units.[25] We rely on the comments provided by CAISO that the twelve generating units subject to the BECA Contract provide flexible capacity and may be critical to system reliability because of their strategic location in the transmission constrained LA Basin. Thus, the BECA Contract provides system and local reliability benefits. Therefore, it fulfills the criteria under which an IOU can enter into a bilateral agreement, and is not unjust or unreasonable or unduly discriminatory.

AL 2853-E addresses cost recovery related to the costs of the BECA Contract, not the costs of the synchronous condensers.

AReM states that the BECA Contract, if approved, will pave the way for installation of the synchronous condensers at Huntington Beach. AReM notes that the installation of the synchronous condensers is intended to address supply issues that result from the outage of SONGS. Since SONGS resides in the SCE bundled customer portfolio, AReM believes that it is appropriate that such costs accrue solely to the bundled customer portfolio.

[24] D.04-07-028, page 17.
[25] AL 2853-E, page 10.

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We disagree with AReM. First, the installation of the synchronous condensers is a part of the RMR agreement between CAISO and AES Huntington Beach, L.L.C. On November 9, 2012, the CAISO and AESHB filed the RMR agreement with the FERC and in the filing discussed the rate schedules and treatment of all costs related to the synchronous condensers.[26] Second, AReM's assertion that the installation of the synchronous condensers intends to address supply issues that result from the outage of SONG is erroneous. The synchronous condensers are not supply resources but are devices that will provide voltage support. AL 2853-E only addresses cost recovery related to the costs of the BECA Contract that include the costs associated with energy, ancillary services, and RA benefits from the AES units.

AReM's suggestion that the Commission should address cost allocation associated with the BECA Contract on direct DA or CCA retail choice customers through CAM or the imposition of a non-bypassable charge is unnecessary and inappropriate with respect to the AL at hand. SCE did not request in this AL that any of the costs of the BECA Contract be allocated through CAM.

The Commission adopted a waiver trigger in the Local RA requirement program to mitigate market power.

IEP comments that under the BECA Contract, SCE will control a significant portion of RA capacity in the Western LA Basin sub-area, which might have an effect on competitive markets and price signals for RA. AReM states that the Commission should take steps to mitigate this concentration of capacity and dispatch control and should set up a forum to discuss this matter.

While it is accurate that approval of the BECA Contract adds significant percentage of local RA in the Western LA Basin sub-area to SCE's portfolio; these units represent 49.11%, and without SONGS these units total 69.06%, of the generation in Western LA Basin sub-area.[27] We have no reason to believe at this point that SCE will not facilitate the sale of excess local RA at a reasonable price.

The Commission has checks in place to monitor IOU procurement activities to avoid IOU exercise of market power. The Commission established PRGs to oversee the procurement activities of IOUs and mandated that each IOU is to maintain and routinely consult with a PRG. Furthermore in D.06-06-064, the Commission determined that a waiver process is necessary as a market power

[26] FERC *Order on RMR Agreement*, page 3 and 4; issued January 4, 2013, in Docket No. ER13-351-000.

[27] AL 2853-E, page 8.

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mitigation measure and adopted it as a component of the RA program for Local RA obligations. The Decision specifies that an LSE can request a waiver if it cannot meet its local RA obligations based on specified standards. If LSEs are unable to fulfill their Local RA requirements through procurement from SCE, the Commission can grant a waiver. In order to qualify for a waiver, an LSE must demonstrate that despite having actively pursued all commercially reasonable efforts to acquire the resources needed to meet the LSE's local procurement obligation, it either received no bids, or received bids that were unreasonably priced or had unreasonable terms.
Due to the preceding discussion, we are convinced that SCE's entrance into this tolling agreement complies with all procurement authorities. No party has presented evidence that SCE has or will exert market power due to the approval of the BECA Contract. We continue to welcome requests for local RA procurement waivers should any relevant entity believe that SCE exercises capacity market power in the future. We expect that SCE will adhere to all requirements regarding least cost dispatch of energy, and shall refrain from exercising market power in the resale of excess local and/or system capacity.

The disclosure of the BECA Contract is subject to the Public/Confidential treatment specified in D.06-06-066 and other relevant precedent. The BECA Contract begins on October 1, 2013 and the confidential terms of this contract will become public after three years[28], unless D.06-06-066 is modified to amend the current confidentiality treatment.

COMMENTS

Public Utilities Code section 311(g) (1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding. The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

FINDINGS

[28] D.06-06-066, Appendix 1, page 15.

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1. D. 12-04-046 directed that OTC power purchase agreements with contract duration of more than two years but less than five years must be submitted to the Commission for approval via a Tier-3 Advice Letter.

2. On February 15, 2014, SCE submitted AL 2853-E seeking Commission approval for a bilaterally negotiated capacity sale and tolling agreement ("BECA Contract") between SCE and BE CA LLC for twelve OTC generating units.

3. The BECA Contract will provide SCE with energy, ancillary services, and RA benefits for a term beginning on October 1, 2013, and ending on May 31, 2018, via a tolling arrangement for twelve existing natural gas-fired generating units located in the LA Basin for 3,690 MW of contracted capacity.

4. The BECA Contract meets residual energy and capacity need for SCE's bundled customers.

5. Commission approval of this Advice Letter is required to allow SCE to exceed its AB 57 Bundled Procurement Plan ratable rate limits.

6. The ongoing outage at SONGS has created the potential for need for voltage support and electric generation in LA Basin and northern San Diego County.

7. The CAISO has entered into an RMR agreement with AESHB to convert Huntington Beach Units 3 and 4 into operation of synchronous condensers, to provide voltage support in the LA Basin and the San Diego/Imperial Valley local capacity areas. The RMR agreement sets forth certain conditions precedent to the effectiveness of the RMR agreement, including the consent of BECA under its existing agreements with AESHB.

8. The BECA Contract transfers BECA's alleged consent rights to SCE, effective upon final and non-appealable Commission approval of the BECA Contract.

9. SCE has agreed to provide consent to AES Huntington Beach, L.L.C. to operate Huntington Beach Units 3 and 4 as synchronous condensers.

<u>THEREFORE IT IS ORDERED THAT:</u>

1. The request of Southern California Edison ("SCE") that the Commission approve the bilaterally-negotiated tolling agreement ("BECA Contract")

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between SCE and BE CA LLC in its entirety as requested in Advice Letter 2853-E is granted.

2. SCE's entry into the BECA Contract is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the BECA Contract, subject only to further review with respect to the reasonableness of SCE's administration of the BECA Contract with respect to least cost dispatch and any other applicable standards.

3. We expect that SCE shall adhere to all applicable principles of least cost dispatch and shall refrain from exercising market power in the resale of excess system and/or local capacity.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on May 9, 2013. The following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

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