

**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 PROTECT OUR COMMUNITIES FOUNDATION TO THE  
JOINT MOTION TO STRIKE THE OPENING BRIEF OF PROTECT OUR  
COMMUNITIES OF SOUTHERN CALIFORNIA EDISON AND SAN DIEGO GAS AND  
ELECTRIC**

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November 12, 2013

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**I. INTRODUCTION**

Pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure, the Protect Our Communities Foundation ("POC") submits the following response to the Joint Motion to Strike the Opening Brief of the Protect Our Communities Foundation (the "Motion") filed by Southern California Edison ("SCE") and San Diego Gas and Electric ("SDG&E") in the instant proceeding, Track 4 of R.12-03-014.

For the reasons articulated below, the Commission must reject the Joint Motion to Strike in its entirety.



The November 4, 2013 Motion of the Protect Our Communities Foundation for Official Notice of Exhibits, identified as Exhibits POC-3, POC-4 and POC-5, is hereby denied. These items will not be admitted into evidence in this proceeding.

On November 15, 2013, ALJ Gamson issued the following correction to his November 14 ruling (included hereto as Attachment B):

Correction:  
The November 4, 2013 Motion of the Protect Our Communities Foundation for Official Notice of Exhibits, identified as Exhibits POC-4, POC-5 and POC-6, is hereby denied. These items will not be admitted into evidence in this proceeding.

Neither the initial ruling nor the corrected ruling set forth any reason(s) for this denial.

On November 25, 2013, POC submitted its Opening Brief in this proceeding. POC's Opening Brief included two footnotes citing as authority two the documents previously identified as POC-4 and POC-5.

On December 4, 2013, SCE and SDG&E (the "Joint Utilities") filed a Motion to Strike several sections of POC's Opening Brief. This Motion provides a single argument for striking the contested sections – that these sections rely on materials excluded from the Evidentiary record by ALJ Gamson's denial of POC's motion for Official Notice.<sup>5</sup> The Joint Utilities included as "Attachment A" to their Motion a copy of pages 12-16 of POC's opening brief, marked by the Joint Parties with the specific sections they seek to have stricken.

To facilitate reference to the specific language from POC's Opening Brief that the Joint Parties have moved to strike, POC has included as Attachment C to this Response pages 12-16 POC's Opening Brief with each section that the Joint Parties have moved to strike highlighted and numbered.

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<sup>5</sup> Attachment Utilities Motion at p. 22

### **III. THE JOINT UTILITIES' MOTION TO STRIKE IS OVERLY BROAD**

The Joint Utilities Motion to Strike is based solely on the argument that the sections in question must be stricken because they “rely on... materials specifically excluded from the evidentiary record in this proceeding” by the ALJ’s ruling denying POC’s motion for Official Notice. However, only two of the six sections of POC’s Opening Brief that the Joint Utilities have moved to strike actually cite to documents that are not part of the evidentiary record. The remaining sections either cite to sources that are part of the evidentiary record of this proceeding, thus rendering the Joint Parties’ objections moot, or contain argument that does not cite to, or rely on, material outside the evidentiary record.

#### A. The Joint Utilities have moved to strike sections that properly cite documents within the evidentiary record of this proceeding.

The Joint Utilities have moved to strike the POC’s description of the PBRC process (at Page 13), and the chart presented at Page 14 of POC’s opening brief. These sections are identified in Attachment C to this reply as Section 4. However, the sole argument presented by the Joint Utilities to support their motion to strike (that the section relies on “materials specifically excluded from the evidentiary record in this proceeding”) does not apply to this section, as it relies on and properly cites (at Footnote 22) Exhibit POC-1, Attachment 8, which was admitted to the evidentiary record unopposed at the evidentiary hearings in this proceeding. Section 4 does not in any way cite to, discuss, or otherwise

The Joint Utilities request to strike POC’s discussion of the PBRC’s seven-step process, highlighted in Attachment C to this reply as Section 3, is similarly flawed. Section 3 cites to Exhibit POC X CAISO 3, which is part of the evidentiary record. The Joint Utilities confusion regarding the status of Exhibit POC X CAISO 3 is reflected in their Motion to Strike, which cites

ALJ Gamson’s erroneous November 14 email ruling (which refers to Exhibits POC-3, POC-4, and POC-5) but ignores ALJ Gamson’s corrected November 15 ruling, which makes clear that the ruling referred to the documents identified as POC-4, POC-5, and POC-6.

B. The Joint Utilities have moved to strike sections that contain argument and do not rely on documents outside the evidentiary record.

The Joint Utilities have further moved to strike two sections of POC’s opening brief that are purely argumentative in nature – the sections identified as Section 1 and Section 6 in Attachment C to this Response. Because these sections are purely argumentative, and neither cite to nor rely on documents outside the evidentiary record, the Joint Utilities’ sole argument in support of their motion to strike – that the sections rely on documents that have been excluded from the evidentiary record – does not apply to these sections. As such, the Joint Parties motion to strike these sections must be denied.

The Joint Utilities have moved to strike the following two sentences from Page 13, identified in Attachment C as Section 1:

“The Western Electricity Coordinating Council (“WECC”) is the regional entity responsible for monitoring and enforcing mandatory NERC reliability standards in California. WECC has developed a robust process for making individual exceptions to NERC contingency categorizations.”

Section 1 presents argument that is based on facts that are common knowledge, undisputed by the parties, and thoroughly evidenced in the record. Neither the claim that WECC is responsible for enforcing NERC standards, nor the claim that WECC has a process for making exceptions to contingency categorizations cites to or relies on documents excluded from the evidentiary record.

The Joint Utilities have moved to strike the following clearly argumentative statement from page 15 of POC's brief (identified in Attachment C as Section 6):

“SDG&E would almost certainly be successful in a PBRC application to re-categorize the Southwest/Sunrise N-1-1.”

This statement is purely argumentative in nature and neither relies on nor cites to documents excluded from the evidentiary record.

#### **IV. POC PROPERLY RELIED ON THE WECC DOCUMENTS AS AUTHORITY**

Only two sections of POC's Opening Brief actually cite to or rely on the documents excluded from the evidentiary record by ALJ Gamson's November 15 Corrected Ruling. These sections are identified in Attachment C to this Response as Section 2 and Section 5. Section 2 provides a quote from WECC's "Reliability Performance Evaluation Work Group Phase 1 Probabilistic Based Reliability Criteria Implementation Procedure," the official WECC document establishing and setting forth WECC's PBRC process. Section 5 cites to another official WECC document, WECC's "Seven Step Process for Performance Category Upgrade Request."

In moving to strike these sections, the Joint Utilities appear to have misunderstood both the nature and purpose of POC's citation to the WECC documents, and the rules regarding citations to authority. Contrary to SCE and SDG&E's assertions, nowhere in its opening brief does POC cite to the WECC documents *as evidence*. Rather, POC properly cites to the official WECC documents as *authority*. Thus, the Joint Utilities' sole argument in support of their Motion to Strike – that the sections rely on documents that have been excluded from the evidentiary record – is irrelevant to Section 2 and Section 5, as authorities such as the cited documents are not required to be part of the evidentiary record.

A. POC cited to the WECC documents as authority, not evidence

Sections 2 and 5 of POC’s opening brief properly cite to official WECC policies as authority, not evidence. Evidence is “testimony, writings, material objects, or other things presented to the senses *that are offered to prove the existence or nonexistence of a fact.*”<sup>6</sup> In contrast, *authority* is as a legal or regulatory rule or principal.

POC’s opening brief does not cite to the documents in question as evidence – the documents are not offered to prove a factual contention. Rather, POC cites to the WECC documents as *authority* to regarding WECC’s official PBRC process.

B. The PBRC process is an official regulatory policy that may be cited as authority

WECC’s official PBRC process, as set forth in the cited WECC documents, is a regulatory policy that may be cited as authority.

WECC’s transmission planning rules and policies are part of a comprehensive transmission planning regulatory scheme implemented by the FERC, NERC, and WECC. FERC is the Federal agency responsible for regulating the national electric grid. Pursuant to the Federal Power Act, FERC has delegated its regulatory authority regarding reliability standards to NERC, which in turn has delegated this regulatory authority to WECC. FERC explains the relationship between FERC, NERC, and WECC as follows:<sup>7</sup>

The Energy Policy Act of 2005 (EP Act 2005) Established section 215 of the Federal Power Act, which authorized the Federal Energy Regulatory commission (Commission or FERC) to certify an Electric Reliability Organization (ERO) for the purpose of proposing reliability standards for the bulk-power system in the continental United States subject to the Commission’s approval. After they are approved by the Commission, the standards are mandatory for the users, owners,

<sup>6</sup> Cal. Evid. Code Section 431/432/433/434/435/436/437/438/439/440/441/442/443/444/445/446/447/448/449/450/451/452/453/454/455/456/457/458/459/460/461/462/463/464/465/466/467/468/469/470/471/472/473/474/475/476/477/478/479/480/481/482/483/484/485/486/487/488/489/490/491/492/493/494/495/496/497/498/499/500/501/502/503/504/505/506/507/508/509/510/511/512/513/514/515/516/517/518/519/520/521/522/523/524/525/526/527/528/529/530/531/532/533/534/535/536/537/538/539/540/541/542/543/544/545/546/547/548/549/550/551/552/553/554/555/556/557/558/559/560/561/562/563/564/565/566/567/568/569/570/571/572/573/574/575/576/577/578/579/580/581/582/583/584/585/586/587/588/589/590/591/592/593/594/595/596/597/598/599/600/601/602/603/604/605/606/607/608/609/610/611/612/613/614/615/616/617/618/619/620/621/622/623/624/625/626/627/628/629/630/631/632/633/634/635/636/637/638/639/640/641/642/643/644/645/646/647/648/649/650/651/652/653/654/655/656/657/658/659/660/661/662/663/664/665/666/667/668/669/670/671/672/673/674/675/676/677/678/679/680/681/682/683/684/685/686/687/688/689/690/691/692/693/694/695/696/697/698/699/700/701/702/703/704/705/706/707/708/709/710/711/712/713/714/715/716/717/718/719/720/721/722/723/724/725/726/727/728/729/730/731/732/733/734/735/736/737/738/739/740/741/742/743/744/745/746/747/748/749/750/751/752/753/754/755/756/757/758/759/760/761/762/763/764/765/766/767/768/769/770/771/772/773/774/775/776/777/778/779/780/781/782/783/784/785/786/787/788/789/790/791/792/793/794/795/796/797/798/799/800/801/802/803/804/805/806/807/808/809/810/811/812/813/814/815/816/817/818/819/820/821/822/823/824/825/826/827/828/829/830/831/832/833/834/835/836/837/838/839/840/841/842/843/844/845/846/847/848/849/850/851/852/853/854/855/856/857/858/859/860/861/862/863/864/865/866/867/868/869/870/871/872/873/874/875/876/877/878/879/880/881/882/883/884/885/886/887/888/889/890/891/892/893/894/895/896/897/898/899/900/901/902/903/904/905/906/907/908/909/910/911/912/913/914/915/916/917/918/919/920/921/922/923/924/925/926/927/928/929/930/931/932/933/934/935/936/937/938/939/940/941/942/943/944/945/946/947/948/949/950/951/952/953/954/955/956/957/958/959/960/961/962/963/964/965/966/967/968/969/970/971/972/973/974/975/976/977/978/979/980/981/982/983/984/985/986/987/988/989/990/991/992/993/994/995/996/997/998/999/1000

<sup>7</sup> Powers Opening Testimony, Exhibit 1, pp. 1



and operators of the bulk power system and are enforced by the ERO under the Commission's oversight. The statute also authorized the ERO to delegate enforcement authority to a Regional Entity, subject to Commission approval. In July 2006, the Commission certified the North American Electric Reliability Corporation (NERC) as the ERO. And on June 5, 2007, the Commission accepted executed agreements between NERC and eight Regional Entities, including the Western Electricity Coordinating Council (WECC), in regard to the delegation of NERC's ERO standards development and enforcement authorities to such entities.

Thus, for utilities within WECC's jurisdiction, WECC exercises federal regulatory authority regarding the establishment, implementation, and enforcement of reliability standards and related policies.

The fact that the PBRC process exists and is an official WECC policy that allows for individual exceptions to mandatory NERC/WECC reliability standards is not contested by any party to this proceeding. In cross examination, both CAISO witness Sparks<sup>8</sup> and SDG&E witness Jontry<sup>9</sup> admitted that the PBRC process exists and is an official WECC policy that allows for such individual exceptions. The evidentiary record in this proceeding includes a PBRC application that SDG&E filed with WECC, seeking an exception to the categorization of the N-2 outage of Southwest Powerlink and the proposed Sunrise Powerlink transmission lines as a NERC/WECC Category C event.<sup>10</sup>

As an official WECC policy that allows utilities to apply for individual exceptions to mandatory NERC/WECC reliability standards, the PBRC process is an essential part of the FERC/NERC/WECC regulatory scheme regarding system reliability. As such, the official WECC documents setting forth the PBRC process are properly viewed as regulatory authority, which may be directly cited to.

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<sup>8</sup> Transcript, p. 1559, line 14 to p. 1560, line 22.

<sup>9</sup> Transcript, p. 1773, line 25 to p. 1774, line 2.

<sup>10</sup> ~~POC XXXX CAISO~~

## V. CONSIDERATION OF THE PBRC IS ESSENTIAL

This proceeding will be severely flawed if the Commission allows the Joint Utilities to suppress POC's citation to the official WECC documents setting forth the PBRC process.

In this proceeding, SDG&E and CAISO have claimed that, in light of the decommissioning of the San Onofre Nuclear Generating Facility, a significant Local Capacity Requirement ("LCR") need exists for the San Diego area. This claim is based on studies conducted by SDG&E and CAISO which use N-1-1 as the limiting critical contingency rather than the CAISO's official, board-approved G-1, N-1 limiting critical contingency (the limiting critical contingency that was used by SDG&E to justify the construction of the Sunrise Powerlink line).

SDG&E and CAISO have justified their use of N-1-1 by arguing that the N-1-1 of Sunrise Powerlink and Southwest Powerlink transmission lines is now the most severe NERC/WECC Category C contingency, and as such N-1-1 must be used as the limiting critical contingency for the San Diego area in order to comply with mandatory NERC/WECC transmission planning standards.<sup>11</sup>

In making this argument, SDG&E and CAISO have presented a false and incomplete version of the NERC/WECC regulatory scheme. SDG&E and CAISO have selectively ignored the existence and applicability of the PBRC process, an essential element of the FERC/NERC/WECC regulatory scheme that allows for individual exceptions to NERC/WECC contingency categorizations. The existence and applicability of the PBRC is thus fatal to SDG&E and CAISO's claim that they are required to use of N-1-1 as the limiting critical contingency in order to comply with NERC/WECC standards. The Joint Utilities have

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<sup>11</sup> See, e.g., SDG&E Opening Brief, [http://www.cpuc.ca.gov/~/media/CPUC/Files/2012/02/02120222](#)

aggressively attempted to suppress POC’s efforts to bring the existence of this official regulatory policy before the Commission, both by opposing POC’s Motion for Official Notice<sup>12</sup> of these documents, and through the instant Motion to Strike.

The Commission must not allow the Joint Utilities to “pick and choose” which NERC/WECC regulations the Commission considers. If the Commission is to consider the NERC/WECC regulatory scheme at all, it must consider all elements of it, both those elements that support the Utilities’ position and those that conclusively undermine it. The Commission must not allow the Joint Utilities to suppress POC’s proper citations to WECC regulations as authority based on the Joint Utilities erroneous and legally irrelevant claim that the *authorities* that POC cites to are not part of the evidentiary record.

## VI. CONCLUSION

For the foregoing reasons, POC requests that the Commission deny the Joint Utilities’ Motion to Strike in its entirety.

Respectfully Submitted,

Dated: November 12, 2013

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/S/  
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<sup>12</sup> [REDACTED] at [REDACTED] p. [REDACTED] 2230, [REDACTED] line [REDACTED] 2 [REDACTED] p. [REDACTED] 2232, [REDACTED] line [REDACTED] 19.

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