

**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 SDG&E
AND SCE'S JOINT MOTION TO STRIKE THE REPLY BRIEF OF PROTECT OUR
COMMUNITIES FOUNDATION**

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January 2, 2014

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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 Reply Brief of the Protect Our Communities Foundation (the “Motion”) filed by Southern California Edison (“SCE”) and San Diego Gas and Electric (“SDG&E,” together the “Joint Utilities”) on December 20, 2013.

For the reasons articulated below, the Commission must reject the Joint Utilities’ Motion in its entirety.

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II. THE JOINT UTILITIES' MOTION TO STRIKE MUST BE DENIED

The Joint Utilities' Motion to Strike POC's Reply Brief is essentially a "cut and paste" duplicate of their December 4, 2013 Motion to Strike POC's Opening Brief (the "December 4 Motion"). Like the Joint Utilities' December 4 Motion, the instant Motion to Strike includes an Attachment (Attachment A) identifying the specific statements from POC's brief that the Joint Utilities seek to have stricken. The specific statements that the Joint Utilities seek to strike are identified as Statements 1-3 below.

Like the Joint Utilities' December 4 Motion, the current Motion to Strike relies on a single argument - that the disputed sections of POC's Reply Brief "rely on materials excluded from the evidentiary record" in this proceeding. As established below, this argument does not apply to any of the three specific statements identified in Attachment A to the Joint Utilities' Motion. As such, the Commission must reject the Joint Utilities' Motion in its entirety.

A. Statement 1 properly cites to discussion of authority in POC's Opening Brief

The first statement from POC's Reply Brief that the Joint Parties seek to strike is the following statement from Page 6 of POC's Reply Brief:

Jontry's assertions are further contradicted by the official WECC documents setting forth the PBRC, which make clear that the PBRC was intended to be a broad-based policy allowing the probabilistic re-categorization of any contingency.

This statement includes a citation (Footnote 8) to the discussion at Pages 14-15 of POC's Opening Brief.

Statement 1 properly summarizes and cites to discussion of authority from POC's Opening Brief. Pages 14-15 of POC's Opening Brief have not been struck from the record. As explained in POC's Response to the Joint Utilities' December 4 Motion, Pages 14-15 of POC's

Opening Brief properly summarize and cite to the official WECC documents setting forth the PBRC, an official WECC regulatory policy.¹ As such, POC’s citations to these documents at Pages 14-15 of POC’s opening brief constitute proper citations to *authority*, not *evidence*.² The Joint Utilities’ argument that Statement 1 of POC’s Reply Brief, which cites to this discussion “relies on materials excluded from the evidentiary record” thus must be rejected.

B. Statement 2 properly cites to discussion of materials included in the evidentiary record

The second statement from POC’s Reply Brief that the Joint Parties seek to strike is the following statement from Page 7 of POC’s Reply Brief:

Because, by its very nature, an N-1-1 event should be less likely to occur than an N-2 event, it is [sic] follows that if an N-2 event involving two lines is sufficiently unlikely to qualify for Category D treatment, than an even more unlikely N-1-1 event involving the same two lines should also qualify for Category D.

This portion includes two footnotes (FN 11 and FN 11), both of which cite to the discussion at POC Opening Brief, pp. 15-17.

In their Motion to Strike, the Joint Utilities fail to provide any explanation as to why they believe that this statement “[relies] on materials excluded from the evidentiary record.” This failure to provide specifics illuminates the flawed nature of the Joint Utilities objection. In no way does Statement 2 “rely” on the WECC documents that the Joint Utilities Claim have been excluded from the evidentiary record. Rather, the analysis presented at pages 15-17 of POC’s Brief “relies” on Exhibit POC X CAISO – 3, which is part of the evidentiary record for this proceeding. In arguing that Exhibit POC X CAISO – 3 has been excluded from the Evidentiary Record, the Joint Utilities appear to be repeating an error from their December 4 Motion. As discussed in detail in POC’s Response to the December 4 Motion, Exhibit POC X CAISO – 3

¹ POC’s Reply Brief at ¶¶ 10-11; POC’s Motion to Strike at ¶¶ 10-11; POC’s Opening Brief at ¶¶ 10-11, 15-17.

² POC’s Reply Brief at ¶ 8.

has not been excluded from the evidentiary record. In claiming that this exhibit has been excluded from the record, the Joint Utilities appear to be relying on ALJ Gamson’s November 14, 2013 email ruling, which erroneously denied official notice for Exhibits POC-3, POC-4, and POC-5, while ignoring ALJ Gamson’s subsequent November 15, 2013 email ruling, which corrected this error and clarified that the ruling denied POC’s motion for official notice of Exhibits POC-4, POC-5, and POC-6.³

Because Statement 2 does not “rely on materials excluded from the evidentiary record.” The Joint Utilities’ Motion to Strike this statement must be denied.

C. Statement 3 is argument based on materials from the evidentiary record

The third portion that the Joint Parties seek to strike is the following statement from Page 8 of POC’s Reply Brief:

In light of the strong prima-facie evidence that the N-1-1 limiting critical contingency used by SDG&E and CAISO should qualify for a PBRC re-categorization to Category D, the Commission must require that a full probabilistic analysis of the Sunrise/SWPL be conducted prior to authorizing any procurement based on N-1-1.

...
Requiring a full probabilistic analysis of the N-1-1 contingency would likely lead to its re-categorization as a Category D contingency

The Joint Utilities have failed to provide *any* justification for their request to have these statements stricken. Both statements are purely argumentative. In no way do the statements discuss, cite to, or rely on any contested document. The “strong prima-facie evidence” referenced in the statement is a combination of common sense, SDG&E’s own analysis and conclusions in Exhibit POC X CAISO - 3, and SDG&E’s admission that the likelihood of most

³ 2013年11月14日及15日的电子邮件裁决

of the key risk factors identified in the PBRC process decreases as the distance between lines increases.⁴

Because Statement 3 does not “rely on materials excluded from the evidentiary record.”

The Joint Utilities’ Motion to Strike Statement 3 must be denied.

Respectfully Submitted,

Dated: January 2, 2014

 /s/

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⁴ See, e.g., POC’s Ex. 10051 of SDG&E’s testimony p. 1781, Line 17, through p. 1781, Line 17.