

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

Order Instituting Rulemaking to Continue	)	
Implementation and Administration of California	)	Rulemaking 08-08-009
<u>Renewables Portfolio Standard Program.</u>	)	(Filed August 21, 2008)

**APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 388-E)  
FOR REHEARING OF DECISION 10-12-048**

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Dated: January 18, 2011

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

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	)	) Rulemaking 08-08-009 (Filed August 21, 2008)
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**APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 388-E)  
FOR REHEARING OF DECISION 10-12-048**

Pursuant to Public Utilities Code Section 1731 and Rule 16.1 of the California Public Utilities Commission’s (“Commission” or “CPUC”) Rules of Practice and Procedure, Southern California Edison Company (“SCE”) files this Application for Rehearing of Decision (“D.”) 10-12-048 (the “Decision”), which was mailed on December 17, 2010.

**I.**

**INTRODUCTION AND SUMMARY OF THE REHEARING APPLICATION**

The Decision mandates a new Renewable Auction Mechanism (“RAM”) procurement process as the primary contracting tool for procurement from renewable energy projects 20 megawatts or less that are eligible for the California Renewables Portfolio Standard (“RPS”) program. SCE seeks rehearing of the Decision on the following three grounds.

- The Decision unlawfully fails to treat all load-serving entities (“LSEs”) the same as required by the RPS legislation, Public Utilities Code Section 380(e), and Senate Bill (“SB”) 695 because it only applies the RAM to the three largest investor-owned utilities (“IOUs”).

- The Decision unlawfully requires IOUs to procure additional renewable resources even after meeting statutory RPS goals by failing to suspend RAM requirements for any IOU that reaches its RPS goals.
- The Decision violates California’s RPS by concluding that its limitation on the IOUs’ procurement of renewable energy at prices above the market price referent (“MPR”) after cost limitations have been met does not apply to the RAM.

For these reasons, SCE requests that the Commission grant rehearing and reconsideration of D.10-12-048 to correct the identified legal errors.

## II.

### **THE DECISION VIOLATES CALIFORNIA LAW BY APPLYING THE RAM TO IOUS, BUT NOT OTHER LSES**

California law requires that all LSEs be subject to the same rules with respect to the RPS program. The RPS legislation specifically requires that electric service providers (“ESPs”) and community choice aggregators (“CCAs”) shall be “subject to the same terms and conditions applicable to an electrical corporation.”<sup>1</sup> Moreover, the language in Public Utilities Code Section 399.20 is clear that the Legislature intended that section to apply to “[e]very electrical corporation.”<sup>2</sup> Public Utilities Code Section 380(e) is equally unambiguous: “Each load-serving entity shall be subject to the same requirements for resource adequacy and the renewables portfolio standard program that are applicable to electrical corporations pursuant to this section, or otherwise required by law, or by order or decision of the commission.”<sup>3</sup> SB 695 further strengthened the statutory mandate to impose the same RPS rules on all LSEs. As codified in Public Utilities Code Section 365.1, SB 695 requires the Commission to “[e]nsure that other providers are subject to the same requirements that are applicable to the state’s three largest

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<sup>1</sup> Cal. Pub. Util. Code Sections 399.12(g)(2) & (3) (emphasis added).

<sup>2</sup> Cal. Pub. Util. Code Sections 399.20(c) and (e).

<sup>3</sup> Cal. Pub. Util. Code Section 380(e) (emphasis added).

electrical corporations under any programs or rules adopted by the commission to implement . . . the renewables portfolio standard provisions of Article 16 (commencing with Section 399.11).”<sup>4</sup> Together, these statutory provisions expressly require that the Commission adopt the same regulatory requirements for all LSEs with respect to the State’s RPS program.

Despite acknowledging the arguments that the RAM program must be applied to all LSEs and the requirement of Section 365.1 to ensure that other providers be treated the same as the three largest IOUs under the RPS program, the Decision concludes “RAM should apply only to the three largest IOUs.”<sup>5</sup> The Commission declines to apply RAM to ESPs, small and multi-jurisdictional utilities (“SMJUs”) or CCAs because (1) it would be impractical to impose the RAM requirement on SMJUs given their size; (2) the RAM is not relevant to ESPs because the Commission lacks regulatory authority over their contracting processes; and (3) CCAs are exempted by Section 365.1 and did not have an opportunity to comment in this proceeding.<sup>6</sup>

California law does not afford the Commission discretion to exempt certain LSEs from RPS requirements imposed on the largest three IOUs. The “same” requirements must apply to all LSEs under any program adopted to implement the RPS program.<sup>7</sup> Additionally, requiring San Diego Gas & Electric Company (“SDG&E”) to hold a solicitation to procure 20.2 megawatts hardly qualifies as practical and undermines the argument that ESPs, SMJUs, and CCAs should be exempted due to impractically small procurement obligations.<sup>8</sup>

By excusing certain LSEs from RPS-related obligations that IOUs are required to fulfill, the Commission is creating different standards for different LSEs in a discriminatory manner in violation of California law. Imposing a mandatory purchase obligation only on the IOUs provides the other LSEs with an advantage in the market for renewables because they will be able to procure resources without any of the constraints the Commission has placed upon the

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<sup>4</sup> Cal. Pub. Util. Code Section 365.1(c)(1) (emphasis added).

<sup>5</sup> Decision at 87, COL 7; *see also* Decision at 23-25.

<sup>6</sup> *See* Decision at 23-25.

<sup>7</sup> CCAs are not exempt from the statutory mandates of the RPS legislation. *See* Cal. Pub. Util. Code Sections 380(e) & 399.12(g)(2) & (3).

<sup>8</sup> Decision at 31.

IOUs. Accordingly, the Commission must modify the Decision to impose the same RPS rules and requirements upon SMJUs, ESPs and CCAs that are placed upon IOUs.

### III.

#### **THE DECISION UNLAWFULLY REQUIRES IOUS TO PROCURE ADDITIONAL RENEWABLE ENERGY AFTER THEIR RPS TARGETS ARE MET**

The current RPS program administered by the Commission requires any retail seller to increase its procurement of renewable energy resources until such resources account for 20% of its retail sales.<sup>9</sup> Under the RPS legislation, “[a] retail seller with 20 percent of retail sales procured from eligible renewable energy resources in any year shall not be required to increase its procurement of renewable energy resources in the following year.”<sup>10</sup> Since the law provides that retail sellers do not have to procure in excess of 20% renewables, any requirement to procure beyond 20% renewables under the RAM would impose an obligation directly contrary to California law.<sup>11</sup> The Decision imposes just such an obligation by failing to include a RAM program suspension for participants that have met their RPS goals. Accordingly, the Decision’s implementation of the RAM program violates the RPS legislation.

The Decision’s rationale for failing to allow an IOU to suspend its RAM when its RPS program goal has been met is that “RPS program targets are minimums, not maximums” and that “the risk of over-procurement given the amount of allocated RAM MW is minor.”<sup>12</sup> The Commission’s speculation regarding the risk of IOUs’ being required to overprocure does not permit the Commission to design a program that plainly violates the express language of Section 399.15(b)(1). Although IOUs may be allowed to voluntarily procure renewable energy over the current RPS goals, the Commission cannot require the IOUs to do so through a program with Commission-mandated specifications.

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<sup>9</sup> Cal. Pub. Util. Code Section 399.15(b)(1).

<sup>10</sup> *Id.* (emphasis added).

<sup>11</sup> Further renewables procurement may be voluntarily undertaken by the IOU.

<sup>12</sup> Decision at 28.

Accordingly, the Decision must be modified to provide that RAM requirements are suspended for any participant that reaches its RPS goal of 20% renewables.

#### IV.

#### **THE DECISION VIOLATES THE RPS LAW'S COST PROVISIONS**

Public Utilities Code Section 399.15(d) establishes a cost limitation on electrical corporations' obligation to procure renewable energy at costs above the MPR. Section 399.15(d) provides, in pertinent part, as follows:

(d) The commission shall establish, for each electrical corporation, a limitation on the total costs expended above the market prices determined in subdivision (c) for the procurement of eligible renewable energy resources to achieve the annual procurement targets established under this article.

(1) The cost limitation shall be equal to the amount of funds transferred to each electrical corporation by the Energy Commission pursuant to subdivision (b) of Section 25743 of the Public Resources Code and the 51.5 percent of the funds which would have been collected through January 1, 2012, from the customers of the electrical corporation based on the renewable energy public goods charge in effect as of January 1, 2007.

(2) The above-market costs of a contract selected by an electrical corporation may be counted toward the cost limitation if all of the following conditions are satisfied:

(A) The contract has been approved by the commission and was selected through a competitive solicitation pursuant to the requirements of subdivision (d) of Section 399.14.

(B) The contract covers a duration of no less than 10 years.

(C) The contracted project is a new or repowered facility commencing commercial operations on or after January 1, 2005.

(D) No purchases of renewable energy credits may be eligible for consideration as an above-market cost.

(E) The above-market costs of a contract do not include any indirect expenses including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades.

(3) If the cost limitation for an electrical corporation is insufficient to support the total costs expended above the market prices determined in subdivision (c) for the procurement of eligible renewable energy resources satisfying the conditions of paragraph (2), the commission shall allow the electrical corporation to limit its

procurement to the quantity of eligible renewable energy resources that can be procured at or below the market prices established in subdivision (c).<sup>13</sup>

Section 399.15(d)(3) precludes the Commission from requiring any electrical corporation to procure renewable energy resources at a cost that exceeds the MPR after its cost limitation has been exhausted.

In the Decision, however, the Commission concludes that “[t]he limitation imposed by Pub. Util. Code Section 399.15(d) on procurement of renewable energy at prices above the MPR does not apply to RAM.”<sup>14</sup> The Commission reasons that RAM does not violate state law because “[t]he limitation imposed by Pub. Util. Code Section 399.15(d) on procurement of energy used for RPS compliance at prices above the MPR applies to contracts selected through the IOUs’ annual RPS solicitations.”<sup>15</sup> The Commission’s interpretation of Section 399.15(d) wrongly focuses only on Section 399.15(d)(2), which addresses the types of contracts that may count towards the cost limitation, but ignores Section 399.15(d)(3), which addresses what happens when the cost limitation is exhausted. SCE agrees that only contracts selected through the IOUs’ annual RPS solicitations count towards meeting the cost limitation under Section 399.15(d)(2). However, Section 399.15(d)(3) provides that after that cost limitation is exhausted, “the commission shall allow the electrical corporation to limit its procurement to the quantity of eligible renewable energy resources that can be procured at or below the market prices established in subdivision (c).”<sup>16</sup> The reference to “procurement” is not limited to the IOUs’ annual RPS solicitations; it covers all procurement. Therefore, once an electrical corporation’s cost limitation is exhausted, the Commission can no longer require that electrical corporation to procure renewable resources at a cost above MPR, regardless of whether it is through an annual RPS solicitation or some other mechanism.

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<sup>13</sup> Cal. Pub. Util. Code Section 399.15(d) (emphasis added).

<sup>14</sup> Decision at 86, COL 4.

<sup>15</sup> Decision at 21, note 38.

<sup>16</sup> Cal. Pub. Util. Code Section 399.15(d)(3) (emphasis added).

The Commission’s interpretation of Section 399.15(d) would allow the creation of any number of mandatory procurement programs outside the RPS solicitation process with costs that exceed the MPR and the statutorily mandated cost limit on meeting the State’s RPS goals, which would render the RPS legislation’s cost limitation meaningless. The legislature’s explicit intent in enacting the cost containment provisions of the RPS statute was to “continue meaningful ratepayer protections through limits on the total costs of meeting the renewable energy goals established under [California’s RPS program].”<sup>17</sup> The Assembly Utilities and Commerce Committee’s Bill Analysis of SB 1036 (Chapter 685, Statutes of 2007), which adopted this section, explained that the purpose of the language is to act “as a de facto cost cap” and “ensure that the RPS [is] not a renewable energy at all costs program.”<sup>18</sup> As the Supreme Court of California has made clear, the Commission’s “exercise of its ratemaking authority cannot be contrary to legislative directives or statutory limits on the Commission’s authority.”<sup>19</sup>

Moreover, the Commission itself has already recognized that Section 399.15(d) allows IOUs to limit procurement of renewable resources to contracts at or below the MPR after the cost limitation is reached. Resolution E-4199, which implemented Section 399.15(d) and established the relevant cost limitation for the IOUs, again makes clear that Section 399.15(d) is a “statutory ‘waiver’ that allows an IOU to limit RPS procurement to contracts that are at or below the MPR, after the IOU has exhausted its AMFs.”<sup>20</sup>

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<sup>17</sup> Sen. Bill. No 1036 (2007-2008 Reg. Sess.) § 1.

<sup>18</sup> Assembly Utilities and Commerce Committee Bill Analysis, SB 1036, July 2, 2007, at 4 (“**Keeping costs in check**: This bill maintains another goal of the RPS, which was to ensure that the RPS was not a renewable energy at all costs program. The SEPs provision in current law that provide that retail electricity sellers are not required to procure renewable electricity above the MPR if there are no funds available for SEPs acts as a de facto cost cap since there is a limited amount of funding allocated to the SEPs accounts. This bill leaves that same cost cap in place by imposing a direct cost cap on renewable procurement that equals the amount of funds the IOUs would have been obligated to collect for SEPs.”).

<sup>19</sup> *Southern California Edison Co. v. Peevey*, (2003) 31 Cal. 4<sup>th</sup> 781, 801; *Assembly v. Public Utilities Commission*, (1995) 12 Cal. 4<sup>th</sup> 87, 103.

<sup>20</sup> Resolution E-4199 at 18-19.

As the Commission is aware, SCE has already reached its cost limit established by law.<sup>21</sup> Accordingly, the Commission cannot require SCE to procure renewable energy resources at a cost above the MPR, through an annual RPS solicitation or through any other mechanism. The Commission's conclusion in the Decision that Section 399.15(d) does not apply to RAM is legally flawed and must be removed. Any program that requires electrical corporations to procure renewable resources at a cost above MPR after their cost limitation has been exhausted violates Section 399.15(d).

V.

**CONCLUSION**

For all of the foregoing reasons, the Commission should grant rehearing of the Decision.

Respectfully submitted,

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/s/JONI A. TEMPLETON

By: Joni A. Templeton

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January 18, 2011

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<sup>21</sup> See Letter dated November 2, 2009 from Julie A. Fitch to Cathy Karlstad (stating that SCE's AMFs have been exhausted). The letter is attached here as Attachment 1.

# **ATTACHMENT 1**

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



November 2, 2009

Cathy Karlstad  
Southern California Edison  
P.O. Box 800  
2244 Walnut Grove Ave.  
Rosemead, CA 91770

**RE: Southern California Edison's Above-Market Funds Balance**

Dear Ms. Karlstad:

On February 20, 2009, the Commission adopted Resolution E-4199, which set forth cost limitations for the investor-owned utilities and guidelines for approving requests for above-market funds (AMFs) of eligible renewable energy contracts. Based on the inputs for calculating the cost limitation as set forth in Public Utilities Code §399.15(d)(1), the Commission calculated and adopted \$322,107,744 as SCE's total AMFs. The Resolution ordered the Director of Energy Division to "notify a utility and relevant service lists if a utility exhausts its AMFs."<sup>1</sup>

On September 24, 2009, the Commission adopted Resolution E-4253, approving three renewable energy contracts with Caithness Shepherds Flat, LLC. As stated in the resolution, approval of these contracts has exhausted SCE's AMFs.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie A. Fitch".

Julie A. Fitch  
Director, Energy Division

CC: R.06-02-012, R.08-08-009

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<sup>1</sup> Ordering Paragraph 11

**VERIFICATION**

I am a manager in the Renewable and Alternative Power Department of Southern California Edison Company and am authorized to make this verification on its behalf.

I am informed and believe that the matters stated in the foregoing pleading are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this **18th day of January, 2011**, at Rosemead, California.

/s/LAURA I. GENAO

By: Laura I. Genao

SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue  
Post Office Box 800  
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**CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of **APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 388-E) FOR REHEARING OF DECISION 10-12-048** on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this **18th day of January, 2011**, at Rosemead, California.

/s/MERAJ RIZVI  
MERAJ RIZVI  
Project Analyst  
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