Decision 16-12-030 December 1, 2016

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338E) for Approval of the Results of Its 2013 Local Capacity Requirements Request for Offers for the Moorpark Sub-Area.	Application 14-11-016 (Filed November 26, 2014)

ORDER MODIFYING DECISION (D.) 16-05-050 AND DENYING REHEARING, AS MODIFIED

I. INTRODUCTION

In this Order, we dispose of the applications for rehearing of Decision (D.) 16-05-050 (or "Decision") filed by the City of Oxnard ("Oxnard"), California Environmental Justice Alliance ("CEJA") and Sierra Club (jointly), and Center for Biological Diversity ("Center").

In 2013, the Commission issued what is referred to as the *Track 1 Decision* in the Long-Term Procurement Plan ("LTPP") proceeding. That decision authorized Southern California Edison Company ("SCE") to meet its local reliability/capacity needs by issuing a Request for Offers ("RFO") in both the West Los Angeles sub-area of Los Angeles, and the Moorpark sub-area of Big Creek/Ventura ("Moorpark").[1] The rehearing applications at issue in this Order pertain to the Moorpark solicitation. In

[1] *Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans* (R.12-03-014) [D.13-02-015] ("*Track 1 Decision*") (2013) at pp. 1-4, 130-131 [Ordering Paragraph Numbers 1 & 2] (slip op.). One RFO was issued covering both sub-areas.

All citations to Commission decisions are to the official pdf versions which are available on the Commission's website at: http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx.

Moorpark, SCE was authorized to procure 215-290 megawatts ("MW") of non-resource specific electric capacity to meet local capacity requirements by 2021.[2]

The challenged Decision (D.16-05-050) approved 12 MW of preferred resource load reduction contracts with energy efficiency and solar generation projects.[3] It also approved a 20-year power purchase contract with NRG Energy Center Oxnard LLC ("NRG") for the Puente Project, a 262 MW natural gas-fired peaker facility.

Timely applications for rehearing were filed by the Oxnard, CEJA and Sierra Club (jointly), and the Center.

Oxnard argues that we should have acted as the lead agency under the California Environmental Quality Act ("CEQA") to conduct environmental review before approving the Puente contract.

CEJA and Sierra Club allege the Decision erred in approving the Puente contract because it: (1) failed to adequately consider environmental justice issues; (2) failed to comply with Government Code sections 65040.12(e) and 11135; (3) relied on a procurement plan approved by the Energy Division; (4) approved the contract before environmental review by the California Energy Commission ("CEC") was complete;[4] and (5) failed to adequately apply least-cost best-fit procurement criteria.

Center contends the Decision erred in approving the Puente contract because it: (1) is contrary to the preferred resources Loading Order; (2) approved the contract before environmental review was complete; (3) was tainted by a biased RFO; and (4) failed to assess project need. The Center also requests oral argument.

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[2] *Track 1 Decision* [D.13-02-015], *supra*, at p. 2, 131 [Ordering Paragraph Number 2] (slip op.).

[3] D.16-05-050, at pp. 1, 38 [Ordering Paragraph Numbers 7, 10 & 11].

[4] Pursuant to Public Resources Code sections 25500 – 25542, the CEC has exclusive jurisdiction to certify the construction and operation of all thermal electric power plants 50 MW or larger. Thus, as discussed elsewhere in this order, the CEC is the lead agency for environmental review of the Puente Project.

SCE filed a public response and a motion for leave to file a confidential response. It is not necessary to grant SCE's motion because its public response already identifies where in the record the confidential information it relies on can be found. That information is readily accessible, and already has confidential status under seal. Therefore, the confidential response is not necessary to thoroughly consider SCE's positions.

We have carefully considered the arguments raised in the applications for rehearing and are of the opinion that good cause has not been established to grant rehearing. However, as set forth in the blow ordering paragraphs, we modify D.16-05-050 to clarify our discussion regarding consideration of environmental justice issues, and add and/or modify certain findings of fact and conclusions of law for clarity. With these clarifications we deny the applications for rehearing of D.16-05-050, as modified, because no legal error was shown.

II. DISCUSSION

A. City of Oxnard Application for Rehearing

Oxnard's application for rehearing does not meet the statutory criteria for a permissible application for rehearing. Pursuant to Public Utilities Code section 1732, applications for rehearing must "set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful."[5] The purpose for requiring specific and supported claims is to "alert the Commission to legal error, so that the Commission can correct it…." It is not sufficient for a party to just identify broad legal principles, or make general statements and arguments. The rehearing application must

[5] Pub. Util. Code, § 1732; see also Rule 16.1, subd. (c) of the Commission's Rules of Practice and Procedure (Cal. Code of Regs., tit. 20, § 16.1, subd. (c).). All subsequent section references are to the Public Utilities Code unless otherwise specified.

explain how the law and its arguments apply to the case and facts in question.[6]

Oxnard did not do this. It submitted a cursory one page rehearing application purporting to join in certain arguments raised by CEJA and Sierra Club, and summarily asserting the Commission should have conducted CEQA review before approving the Puente contract.[7] (Oxnard Rhg. App., at p. 1.)

Section 1732 does not contemplate nor allow a rehearing applicant to simply piggyback on arguments raised by other parties. A party must submit its own stand-alone document that meets the requirement stated in section 1732. Because Oxnard failed to do this, we reject its application for rehearing.

B. CEJA and Sierra Club Application for Rehearing

1. Environmental Justice

a. Procurement Criteria

If certified, the Puente Project will be located in the City of Oxnard. Oxnard is designated as an environmentally disadvantaged community by the California Environmental Protection Agency.[8]

CEJA and Sierra Club contend that we failed to adequately consider environmental justice issues in approving the Puente contract, because the Decision found that past decisions have not provided sufficient guidance about how this issue should be considered. (CEJA/Sierra Club Rhg. App., at pp. 6-8, citing *Order Instituting Rulemaking to Integrate Procurement Policies and Consider Long-Term Procurement*

[6] See, e.g., *Application of Channel Islands Telephone Company for Rehearing of Portion of Resolution T-17402 Affirming the Rejection of Resolution T-17382 that Resulted in the Denial of the Rural Telecommunication Infrastructure Grant Program Request for the Channel Islands Telephone Company Grant Project* [D.14-06-054] (2014) at pp. 3-4 (slip op.).

[7] Oxnard also cites to a brief it filed earlier in this proceeding, presumably to incorporate by reference all or some of the arguments previously made in the proceeding. Citing to past pleadings as a substitute for presenting thoroughly articulated factual and legal arguments in a rehearing application does not comply with section 1732. It also inappropriately shifts the burden to the Commission to determine what exact arguments a rehearing applicant intended to make. Thus, such attempts are rejected.

[8] See D.16-05-050, at p. 15, citing CalEnviroScreen 2.0.

Plans [D.07-12-052] (2007), at p. 157 (slip op.).) As discussed below, we will modify the Decision to clarify our discussion of environmental justice. However, in view of other factors warranting contract approval, we find no legal error.

The Puente Project will be sited on a brownfield site where the Mandalay Generating Station is currently located. Commission policy directs utilities to take advantage of brownfield sites, stating:

> *IOUs are to consider the use of Brownfield sites first* and take full advantage of their location before they consider building new generation on Greenfield sites. If IOUs decide *not to use Brownfield, they must make a showing that justifies their decision*….

(D.07-12-052, *supra*, at p. 307 [Ordering Paragraph Number 35] (slip op.) (emphasis added.).)

We are aware this contract did raise environmental justice issues, but that is only one factor to be considered in making procurement selections. Procurement evaluations must also take into account: capacity and energy benefits; resource diversity; portfolio fit; local reliability/resource adequacy; congestion costs; credit and collateral; environmental impacts/benefits (including Greenfield vs. Brownfield development); debt equivalence; and transmission costs/savings.[9]

CEJA and Sierra Club are silent on these issues, and the evidence in the record regarding these factors did support contract approval.[10] It was also beneficial that the Puente Project will be a reliable peaker plant with fast-start, fast ramping capabilities which provide important grid support services.[11] Overall, the contract's economics and general terms and conditions were found to represent the best resource available from the RFO, and the energy is needed to meet local reliability needs in Moorpark given pending

[9] D.07-12-052, *supra*, at pp. 155-157 (slip op.).

[10] D.16-05-050, at p. 9. See also Exh. SCE-2, Appendix D, Independent Evaluator Report, at pp. 4-9, 18-22, 37-39, Appendix A to Appendix D, Independent Evaluator Report, at pp. A-1 to A-8.

[11] D.16-05-050, at p. 9.

retirement of Mandalay Units 1 and 2, and the Ormond Beach once-through cooling ("OTC") generation units.[12] Thus, on balance, it was reasonable to approve the Puente contract.

There is, however, some merit to CEJA and Sierra Club's criticism that the Decision erred in characterizing the discussion of environmental justice in D.07-12-052 as "dicta." (CEJA/Sierra Club Rhg. App., at pp. 6-8, citing the Energy Division's 2010 Procurement Policy Manual, at pp. 4-8 to 4-9.)[13]

Even if prior procurement decisions have provided little guidance regarding the consideration of this issue, D.07-12-052 did not suggest it is any less (or more) important than other procurement criteria.[14] Therefore, to help clarify the role of how environmental justice issues should be considered in future procurement applications, we will modify the Decision as set forth in the below ordering paragraphs.

b. Public Utilities Code 399.13(a)(7)

Section 399.13 is part of the California Renewables Portfolio Standard ("RPS") Program and requires, among other things, that in procuring renewable energy resources, the utilities:

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[12] D.16-05-050, at pp. 24-25, 36 [Finding of Fact Numbers 9 & 13].

[13] The Procurement Policy Manual can be located at: http://docs.cpuc.ca.gov/efile/RULINGS/118826.pdf.

[14] Furthermore, in D.16-05-050 we balanced the factors necessary to any procurement decision. As stated in D.07-12-052:

> We discuss below certain bid evaluation metrics that we urge the utilities, in conjunction with Independent Evaluators, Procurement Review Groups and Energy Division, to consider when developing the RFO bid documents and process….We agree with the IOUs that it may prove counterproductive to be too prescriptive in identifying specific RFO bid evaluation criteria. A 'one-size-fits-all' approach may not be achievable and, therefore, may not truly 'fit all.' However, we are concerned that the other extreme – allowing the IOUs too much leeway in determining the criteria…is also problematic….the IOU must be able to fully justify why a particular project wins a solicitation, and *we provide here some general guidance as to the IOUs regarding the types of evaluation criteria that should be applied*….

(D.07-12-052, *supra*, at pp. 155-156 (slip op.) (emphasis added.).)

> …give preference to renewable energy projects that provide environmental and economic benefits to communities afflicted with poverty or high unemployment, or that suffer from high emission levels of toxic air contaminants, criteria air pollutants, and greenhouse gasses.

(Pub. Util. Code, § 399.13, subd. (a)(7).)

CEJA and Sierra Club concede that gas-fired generation is not subject to RPS requirements. But they argue the Decision should have applied the statute anyway, and erred in stating the statute does not apply to all-source procurement contracts. (CEJA/Sierra Club Rhg. App., at pp. 8-9.)

The Decision did not engage in a broad discussion of all-source contracts. It said only that the plain language of the statute pertains only to review of renewables procurement, which the Puente contract was not.[15]

2. Government Code Sections 65040.12(e) and 11135

CEJA and Sierra Club contend that approval of the Puente contract violated Government Code sections 65040.12(e) and 11135, and the Commission ignored those statutory requirements. (CEJA/Sierra Club Rhg. App., at pp. 9-10.)

In relevant part, Government Code Section 65040.12 provides:

> (e) For purposes of this section, "environmental justice" means the fair treatment people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

(Gov. Code, § 65040.12, subd. (e).)

In addition, Government Code section 11135 provides:

> (a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to

[15] D.16-05-050, at p. 17.

> the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or any state agency, is funded directly by the state, or receives any financial assistance from the state….

(Gov. Code, § 11135.)

We agree these provisions reflect State environmental justice and anti-discrimination policies. However, CEJA and Sierra Club do not establish how these statutes apply to Commission energy procurement proceedings.

Government Code section 65040.12 applies to the Office of Planning and Research ("OPR") in connection with its planning and research functions.[16] It imposes no requirements on this Commission.

Government Code section 11135 is a general anti-discrimination statute applicable to California State Agencies.[17] But CEJA and Sierra Club fail to explain or establish how the Puente contract would constitute discrimination within the meaning of that statute. Accordingly, we find no legal error.

3. Procurement Plan Approval

a. Delegation to Staff

The *Track 1 Decision* directed SCE to submit its procurement plan to the Energy Division for approval before SCE could begin the Moorpark and Western LA Basin solicitations.[18]

CEJA and Sierra Club contend this was an unlawful delegation of Commission authority. They argue consistent with *Southern California Edison Company v. Public Utilities Commission* ("*SCE v. PUC*") (2014) 227 Cal.App.4th 172, 195-196, the

[16] Gov. Code, Title 7. Planning and Land Use [65000-66499.58], Division 1. Planning and Zoning [65000-66103], Chapter 1.5 Office of Planning and Research [65025-65059].

[17] Gov. Code Title 2. Government of the State of California [8000-22980], Division 3. Executive Department [11000-15986], Part 1. State Departments and Agencies [11000-11894], Chapter 1. State Agencies [11000-11148.5.].

[18] *Track 1 Decision* [D.13-02-015], *supra*, at pp. 89-90 (slip op.).

Commission was required to review and approve the plan itself. (CEJA/Sierra Club Rhg. App., at pp. 11-14.)

We find no violation of *SCE v. PUC*. Consistent with that decision we exercised and retained all policymaking power (i.e. discretionary power) over the terms, conditions and requirements for SCE's procurement plan. Nothing in our decision delegated such power to Energy Division. For example, in the *Track 1 Decision* we directed that SCE's plan must conform with all previously adopted procurement rules as established in D.07-12-052 and elsewhere.[19] And we explicitly enumerated many of the requirements the plan must satisfy.[20]

Having done that, subsequent Energy Division approval was a ministerial compliance task. Energy Division was not called upon to exercise its own judgment or discretion to determine what SCE's plan should include.[21]

We also point out that CEJA and Sierra Club's challenge of the review process at this juncture is untimely. The process was developed and adopted in the Track 1 proceeding. CEJA and Sierra Club were parties to that proceeding and had they believed the review process was unlawful, the proper time to object was during that proceeding and/or in an application for rehearing of the *Track 1 Decision*. They did not and D.13-02-015 is now final. Thus, lawful challenge of that decision is now precluded by sections 1709 and 1731(b), and cannot be impermissibly used as a means to invalidate D.16-05-050.[22]

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[19] *Track 1 Decision* [D.13-02-015], *supra*, at p. 90 (slip op.). See also D.07-12-052, *supra,* approving the long-term procurement plans of Pacific Gas and Electric Company, SCE, and San Diego Gas & Electric Company for the 2007-2016 time period.

[20] *Track 1 Decision* [D.13-02-015], *supra*, at pp. 90-92, 130-134 [Ordering Paragraph Numbers 1-7] (slip op.).

[21] *Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans* [D.14-08-08] at pp. 6-7.

D.16-05-050, at p. 37 [Conclusion of Law Number 1].

[22] See also *Coast Truck Line v. Asbury Truck Co.* (1933) 218 Cal. 337, 340.

CEJA and Sierra Club also contest how we characterized the purpose of this proceeding. The Decision stated the goal of this proceeding was to determine whether SCE followed its procurement plan, not to determine whether the underlying plan itself was adequate. CEJA and Sierra Club quote the following language from D.14-08-008 to argue that was wrong:

> Approval of SDG&E's procurement plans by Energy Division, once they are deemed to be consistent with D.14-03-004, does not infringe on the due process rights of parties to contest any specific procurement contracts or methods proposed by SDG&E in forthcoming applications.

(*Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans* [D.14-08-008] (2014) at p. 11 (slip op.).)

Based on this language, CEJA and Sierra Club assert it was irrelevant to determine whether SCE followed its procurement plan, because that would not show the procurement process was legitimate or that the Puente contract was reasonable. We do not agree these issues can be so finely parsed.

Combined, decisions such as D.07-12-052 and the *Track 1 Decision* reflect procurement plan requirements to ensure that utility solicitations will reflect the State's energy policies, will ensure a legitimate, fair and open solicitation process, and will result in contracts that comply with the established requirements.[23]

Here, SCE's plan was subject to all Commission adopted procurement rules and RFO requirements.[24] Those included not only the specific substantive requirements set out in the *Track 1 Decision*, but the requirements in D.07-12-052 and other decisions concerning the RFO process, Peer Review Group coordination, Independent Evaluator review, bid evaluation, and transparency, etc.[25]

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[23] See also, e.g., *Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans* ("*Track 4 Decision*") [D.14-03-004].

[24] *Track 1 Decision* [D.13-02-015], *supra,* at p. 90, fn. 230 (slip op.).

[25] D.07-12-052, *supra,* at pp. 119-167 (slip op.).

While we may not approve all contracts that result from an RFO, when a utility ultimately seeks approval of its solicitation results, establishing compliance with an approved procurement plan is generally a fairly reasonable measure that a solicitation was legitimate and the proposed contracts are reasonable.

Additionally, the requirements for SCE's procurement plan were litigated and determined in the *Track 1 Decision.* If CEJA and Sierra Club believed those requirements would result in an inadequate plan, they should have contested the *Track 1 Decision.* Here, having determined that SCE's solicitation substantially complied with the procurement requirements, it was past the time to revisit the adequacy of the requirements or the plan. The task was to determine the merits of each proposed contract, and whether SCE properly implemented its procurement plan and its requirements.

b. Due Process

Due process requires the Commission to ensure that parties receive adequate notice and opportunity to be heard.[26] CEJA and Sierra Club contend they did not have that here, alleging the procurement plan was developed through a confidential process. They assert that their first opportunity to evaluate the plan's "contents" was in this proceeding. (CEJA/Sierra Club Rhg. App., at pp. 10, 13-14.)

Although CEJA and Sierra Club do not define what they mean by"contents," for practical purposes, the "contents" of a plan would identify how the utility would implement and achieve the requirements set out in the *Track 1 Decision.* As stated above, the solicitation requirements ("contents") were publically litigated and prescribed during the *Track 1 Decision* process.[27] CEJA and Sierra Club had notice and

[26] See, e.g., *Railroad Commission of California v. Pacific Gas and Electric Company* (1937) 302 U.S. 388, 393; *People v. Western Air Lines, Inc.* (1954) 52 Cal.2d 621, 632.

[27] *Track 1 Decision* [D.13-02-015], *supra*, at pp. 89-92, 130-136 [Ordering Paragraph Numbers 1-15] (slip op.).

availed themselves of the opportunity to review and participate in developing the plan's "contents."

Ultimately, however, it is for the Commission to approve a utility's procurement plan consistent with the requirements that have been established.[28] That approval does not equate to a confidential process as CEJA and Sierra Club suggest. As explained above, once the "contents" had been established, Energy Division review was a compliance check.[29]

CEJA and Sierra Club disagree, arguing the *Track 1 Decision* gave SCE flexibility to independently develop its plan.[30] CEJA and Sierra Club either misinterpret or misrepresent what the *Track 1 Decision* stated. It said:

> SCE seeks flexibility to choose the exact circumstances and timing under which it would utilize an RFO or bilateral contract negotiation in its LCR solicitation process....We agree with SCE that it is difficult in advance to know which method would be most advantageous to ratepayers….We will allow SCE the flexibility it seeks, subject to review of its procurement plan by Energy Division and a subsequent Commission application.

Track 1 Decision [D.13-02-015], *supra*, at pp. 89-90 (slip op.).)

Allowing flexibility as to the circumstances and timing for the RFO is not the same as giving SCE flexibility to determine the plan's substantive requirements. And nothing in the *Track 1 Decision* gave SCE the flexibility to change or eliminate those.

Further, in this proceeding parties did have notice and opportunity to comment on whether the RFO process was properly implemented, and whether the

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[28] Pub. Util. Code, § 454.5, subd. (a).

[29] CEJA and Sierra Club suggest public review and comment was also required at that juncture. But they offer no legal authority requiring multiple levels of public review, and/or particularly a requirement for public review at the compliance filing juncture. That is appropriately an agency function.

[30] CEJA and Sierra Club also cite Commission Rule of Practice and Procedure 2.6 to argue when deciding an application, the Commission must allow for participation. Rule 2.6 allows for protests, responses and replies to formal applications. CEJA and Sierra Club were not denied that process here.

proposed contracts merited approval. CEJA and Sierra Club may disagree with our conclusions, but that is not grounds for legal error.[31]

4. Environmental Review

Because the CEC has exclusive jurisdiction to certify the construction and operation of all thermal electric power plants 50 MW or larger, CEC is the "lead agency" for Puente Project CEQA review.[32] CEJA and Sierra Club argue the Commission was required to act as a "responsible agency" and await completion of CEC's review before approving the Puente contract. (CEJA/Sierra Club Rhg. App., at pp. 14-15.)

We have considered this issue on several occasions and found no legal requirement to conduct CEQA review in connection with review and approval of power purchase contracts.[33] CEQA defines a "project" as "activities" involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.[34] We agree certification and construction of the Puente generating facility is a "project" for purposes of CEQA.

However, the Commission does not act as "responsible agency" in approving an energy contract with such a facility. CEQA defines a "responsible agency" as a public agency other than the lead agency which has discretionary approval over the project."[35] We have no discretionary power to approve or deny any aspect of the

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[31] *Southern California Edison Company v. Public Utilities Commission* (2005) 128 Cal. App. 4th 1, 8.

[32] Pub. Resources Code, §§ 25500-25542. CEC licensing is considered a certified regulatory program under CEQA, and the functional equivalent of preparing an environmental impact report ("EIR"). (See, e.g., CEC Energy Facility Licensing Process Staff Report, dated November 2000, located at: http://www.energy.ca.gov/siting/guide_license_process.html.)

[33] See, e.g., *Application of San Diego Gas & Electric Company (U902E) for Authority to Partially Fill the Local Capacity Requirement Need Identified in D.14-03-004 and Enter into a Purchase Power Tolling Agreement with Carlsbad Energy Center, LLC* [D.15-05-051] (2015) at pp. 29-31 (slip op.), as modified by D.15-11-024 (2015), at pp. 2-5 (slip op.).
fn. 5 (slip op.).

[34] Pub. Resources Code, § 21065.

[35] Pub. Resources Code, § 21069.

certification or construction of the Puente Project. Nor do we have any jurisdiction over the project proponent (NRG).

Our involvement is limited to the utility's request to procure power from the Puente facility *if* it is ultimately certified and constructed. Our approval confers no lease, permit, license, certificate, or other entitlement on NRG. It means only that should the project become operational, SCE may take energy deliveries from that resource and recover certain costs in rates.

CEJA and Sierra Club counter that contract approval virtually guarantees the facility will be certified, thus we effectively have discretionary approval.[36] (Rhg. App., at p. 14, citing RT Vol. 2, NRG/Gleiter, at pp. 336-337.)

Even if contract approval were to improve the overall risk profile for a developer, many more factors go into whether a project ultimately comes to fruition. Further, the CEC has an independent responsibility to conduct a thorough and neutral certification process. And the Commission has been clear that its approval of a power purchase contract should not be used by any parties to influence whether the CEC determines to certify the project and find it CEQA compliant. For these reasons, we find no legal error.

5. Least-Cost Best-Fit

Utilities must employ least-cost best-fit criteria to evaluate procurement bids. The criteria are comprised of both quantitative and qualitative factors.[37] CEJA and

[36] CEJA and Sierra Club suggest that absent Commission approval, it is highly unlikely the facility would obtain sufficient financing or generate sufficient revenue to merit construction. They offer nothing to substantiate this view, however. Their speculation in that regard is not grounds for error. (See, e.g., *Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company Regarding anti-Smart Meter Consumer Groups* [D.14-12-027] (2014) at pp. 2-3 (slip op.).)

[37] See, e.g., *Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning* [D.04-12-048] (2004), at p. 217 [Finding of Fact Number 86] & p. 244 [Ordering Paragraph Number 26(d) (slip op.) (See also SCE-1, at pp. 34-48; SCE-2, Appendix A to Appendix D, Independent Evaluator Report, at pp. 5-9 & Appendix D, Attachment A, at pp. A-1 to A-8.)

Sierra Club argue that approval of the Puente contract was flawed because we relied on prepared written testimony in which SCE maintained the contract was supported by both qualitative and quantitative factors. They assert that in fact: (1) the testimony was uncorroborated out of Court hearsay that cannot be relied upon for the truth of what was asserted; (2) the quantitative evidence showed the contract did not merit approval; and (3) the only thing supporting approval was SCE's qualitative assumption of a resource shortage. (CEJA/Sierra Club Rhg. App., at pp. 15-17, citing *The Utility Reform Network v. Public Utilities Commission* ("*TURN v. PUC*") (2014) 223 Cal.App.4th 945.) These issues are addressed below.

a. SCE's Testimony

CEJA and Sierra Club contend that *TURN v. PUC* establish SCE's testimony could not be relied because it was uncorroborated out of court statement. We agree that *TURN v. PUC* prohibits reliance on uncorroborated testimony where the truth of an out of court statement is disputed. But we do not agree that the testimony in question violated that prohibition.

In this case, SCE's testimony was effectively corroborated. It was subject to cross-examination, and the fact that SCE's bid evaluation relied on both a quantitative and qualitative assessment was verified by the Independent Evaluator.[38]

b. The Quantitative Evidence

CEJA and Sierra Club assert the quantitative assessment did support contract approval because debt equivalence considerations forced SCE to restructure the contract.[39] (CEJA/Sierra Club Rhg. App., at pp. 15-16, citing SCE-1, at p. 48.)

It is true SCE restructured the contract. However, that does not mean the contract was unsupportable. The testimony showed that restructuring was beneficial.[40]

[38] SCE-2, Attachment D, Independent Evaluation Report, at p. 3, 5-12, 38-39.

[39] Debt equivalence affects a utility's credit rating.

[40] SCE-1C (Confidential), at p. 48. A citation to the record that is labelled confidential does not mean disclosure of any confidential information contained therein.

In addition, debt equivalence is just one quantitative factor. CEJA and Sierra Club do not address any other quantitative factors and establish why on whole, they did not support contract approval.

c. The Qualitative Evidence

CEJA and Sierra Club assert SCE relied solely upon an assumed retirement of the Mandalay and Ellwood peakers, and no evidence supported that conclusion. They also maintain we have never expressed reliability concerns due to the possible retirement of those peakers. We disagree.

The Commission has expressly articulated capacity and reliability concerns in connection with plant retirements. The *Track 1* Decision found a resource shortage would exist in the Moorpark area due to the anticipated retirement of the Mandalay and Ormond Beach OTC units.[41] We also found that procurement was necessary to avoid impacts on transmission voltages and loadings under some operation considerations.[42]

Additionally, like a quantitative analysis, several factors contribute to a complete qualitative analysis. CEJA and Sierra Club do not address any other qualitative considerations and show why they did not merit contract approval. They also ignore evidence presented by SCE and the CAISO regarding reliability issues in the Moorpark area that supported approval of the contract.[43] Thus, they fail to show why contract approval was unreasonable on the whole.

[41] *Track 1 Decision* [D.13-02-015], *supra,* at pp. 6, 68-73, 124 [Finding of Fact Numbers 38-40] (slip op.).

[42] *Track 1 Decision* [D.13-02-015], *supra,* at p. 72 (slip op.).

[43] See, e.g., SCE-1, at pp. 6-8, 90; RT Vol. 1, SCE/Bryson, at pp. 89 l:21 to 90 l: 16, pp. 112 l:17 to 113 l: 3, pp. 123 l:14 to 124 l:17; RT Vol 2, SCE/Chinn, at pp. 214 l: 17 to 223 l:27; CAISO-1, at pp. 3-4; CAISO-2, at pp. 7-8; CAISO-3, at pp. 2-3.

C. Center for Biological Diversity Application for Rehearing

1. Loading Order

a. Track 1 Decision

Center contends the *Track 1 Decision* failed to require SCE to comply with the preferred resource Loading Order, and failed to mandate that any of the resources for the Moorpark sub-area be of any certain character.[44] Thus, we left compliance to SCE. (Center Rhg. App., at pp. 2-3.) That is incorrect.

The *Track 1 Decision* clearly required compliance with the Loading Order.[45] And while we often do prescribe what resources a utility must obtain, we need not always do so. In some instances it may not be possible or practical to predetermine the specific type of resources that should be procured in a given area. For example, in this case, we recognized that gas-fired (i.e., non-preferred) resources may be reasonable or necessary to meet the area's local reliability needs.[46]

In Center's view we should have found that SCE failed to comply with the Loading Order. However, the Independent Evaluator Report confirms that SCE included preferred resources in its evaluation process, and conducted fairly substantial outreach to solicit all resource types.[47] Despite that, SCE received nowhere near enough cost-effective preferred resource final offers to meet the minimum required capacity need. It accepted all cost-effective offers, but then had to meet remaining need with gas-fired

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[44] See also the Commission's Energy Action Plan located at: http://www.cpuc.ca.gov/PUC/energy/resources/Energy+Action+Plan/. As stated in section 454.5(9)(C), that means that in meeting its energy needs, a utility must:

> first meet its unmet resource needs through all available energy efficiency and demand-side resources *that are cost effective, reliable, and feasible.*

(Pub. Util. Code, § 454.5, subd. (9)(C), emphasis added.)

[45] See, e.g., *Track 1 Decision* [D.13-02-015], *supra*, at pp. 10-11, 78-83, 131-132 [Ordering Paragraph Number 4(g)] (slip op.).

[46] *Track 1 Decision* [D.13-02-015], *supra,* at pp. 123 Finding of Fact Number 26], & p. 124 [Finding of Fact Numbers 38 & 39] (slip op.).

[47] SCE-2, Appendix D, Independent Evaluator Report, at pp. 31-36.

resources.[48] Thus, there was simply no basis to conclude SCE had failed comply with the Loading Order to the extent it was possible.

While we find no error or deficiency, we will modify the Decision as set forth in the below ordering paragraphs to clarify this point.

b. Material Issue

Center contends that Loading Order compliance was a material issue that we failed to address in any fashion. (Center Rhg. App., at p. 3.)

We agree this issue is important in any procurement decision. But in any given proceeding we have discretion to determine what issues are considered material, and many times Loading Order compliance is simply subsumed in the overall evaluation of solicitation results.[49] Here, the issue was indirectly subsumed in the following broad scoping issue:

> 2. Does the Application comply with the procurement authority granted by the Commission in D.13-02-015?[50]

We did in fact render a formal finding and conclusion on this issue, finding that that SCE substantially complied with the procurement directives (which included Loading Order considerations).[51] It is also important to point out that what constitutes Loading Order compliance is not necessarily the same in all cases. It cannot be assumed that *any* preferred resource merits approval simply because it is a preferred resource. As section 454.5(9)(C) makes clear, acceptable preferred resources must also be cost-effective, reliable, and feasible. And preferred resource considerations must be balanced

[48] As previously noted, SCE was required to obtain between 215-290 MW of capacity in the Moorpark subarea. SCE received only 12 MW of available cost-effective preferred resources. One additional offer was eliminated as not cost-effective. (SCE-2C (Confidential), Appendix D, Independent Evaluator Report, Appendix B, at pp. B-11 to B-26, Table B-6.).

[49] See, e.g., *Pacific Telephone and Telegraph Company v. Public Utilities Commission* (1965) 62 Cal.2d 634, 648, 659-661.

[50] D.16-05-050, at p. 7 [Listing the formal Scope of Issues to be determined.].

[51] D.16-05-050, at p. 35 [Finding of Fact Number 1], & p. 37 [Conclusion of Law Number 1].

with the Commission's paramount obligation to ensure a safe and reliable electrical system, as well as just and reasonable rates.[52] If these things cannot be achieved by the preferred resources bid into a solicitation, they should not be selected despite our goal of utilizing preferred resources over conventional generation.

In this instance we already recognized that in light of the retiring OTC plants, gas-fired or OTC-like generation on those sites might be a reasonable and cost-effective option.[53] And the record evidence showed SCE's ability to utilize Loading Order resources was limited by the actual offers received. Thus, Center fails to establish error.

c. Record evidence

Center contends the Decision ignored evidence it presented regarding 200 MW of potential preferred resources in the Moorpark area. Center argues those resources would have eliminated any need for gas-fired generation (the Puente contract).

We did not ignore Center's testimony, but it did not appear that the resources Center referred to were actually bid into the solicitation and/or even would have qualified for final selection. The record showed there were fewer overall offers in the Moorpark sub-area, and SCE accepted all cost-effective preferred resources that were offered.[54] That was still far short of the identified need. SCE could not select or propose approval of resources that are not bid into the RFO. Nor were we required to discuss resource options that were merely speculative possibilities.

[52] See, e.g., *Track 1 Decision* [D.13-02-015], *supra,* at pp. 79-80; *Track 4 Decision* [D.14-03-004], *supra,* at pp. 12-15; p. 139 [Conclusion of Law Number 37] (slip op.).

[53] *Track 1 Decision* [D.13-02-015], *supra,* at p. 123 [Finding of Fact Number 26], & p. 124 [Finding of Fact Numbers 38 & 39] (slip op.).

[54] RT Vol. 1, SCE/Bryson, at p. 80 l:5-28, pp. 112 l:17 to 113 l:3; SCE-1, at p. 50. (See also SCE-1C (Confidential), at pp. 26-29, 40.)

2. Environmental Review

Center asserts that whether the Commission was required to conduct CEQA review was material to this proceeding, but we made no findings or conclusions on this issue. (Center Rhg. App., at p. 4.)

This issue was identified in the scope of this proceeding.[55] And we did make a related finding, stating:

> There is no clear or compelling reason based on the record in this proceeding to modify the process of allocating responsibilities between this Commission and the CEC that has been used successfully for many years, by deferring Commission contract review until the CEC environmental review is complete.

(D.16-05-050, at p. 37 [Conclusion of Law Number 5].)

Although we do not find error, we will modify the Decision as set forth in the below ordering paragraphs to clarify our rationale regarding the need for CEQA review.

Center acknowledges the CEC's CEQA role, but argues we should also have conducted environmental review. Center reasons that Commission capacity need determinations, as well as subsequent contract approvals act as a "catalyst for foreseeable future development" that will almost certainly to have a significant effect on the environment. (Center Rhg. App., at pp. 4-11, citing *City of Antioch v. City Council of the City of Pittsburg* ("*City of Antioch*") (1986) 187 Cal.App.3d 1325, 1337-1338.)

We do not find *City of Antioch* to be analogous. There, a negative declaration was prepared for an approved road and sewer construction project. The Court found that a full EIR should have been prepared, because the sole reason the road and sewer were built was to facilitate further development. (*Id.* at p. 1337-1338.)

Commission need determinations do not act in the same way. The sole reason for a need determination is not to facilitate the development of new generation. It

[55] D.16-05-050, at p. 8, Issue 4.

is to identify when and where local energy capacity needs may impact grid reliability. That action is simply consistent with our statutory obligation to ensure reliable electric service.

Further, at the time of a need determination it is entirely unclear how the capacity need will be filled. At best, one could speculate or opine as to possible new generation projects. But argument, speculation, and unsubstantiated opinion are not substantial evidence for purposes of CEQA.[56]

Similarly, approval of a power purchase contract does not trigger CEQA review. As explained above, it merely authorizes a utility to purchase energy from a facility that may, or may not, ultimately be constructed. And the Commission has no discretionary approval to bring such a project to fruition.

Center argues, however, that the CEC limits its analysis of project alternatives if the Commission has already approved a contract for a particular project that has been proposed. (Center Rhg. App., at pp. 11-13.)

Even if that is true, which Center does not prove, that is an issue that should be addressed before the CEC and in any challenge of its CEQA review and certification process. It does not mean this Commission is required to preempt the CEC or circumvent its CEQA conclusions as the lead agency by conducting its own CEQA review.[57]

Finally, Center contends the Decision failed to offer a legally cognizable rationale for declining to conduct CEQA review, because it cited to a case involving a writ denial to find no CEQA was required. Center argues that cursory writ denials (with no Court opinion) cannot be relied because the issue was never fully decided. (Center

[56] See, e.g., *County Sanitation District No. 2 of Los Angeles County v. County of Kern* (2005) 127 Cal.App.4th 1544, 1580-1581; *Citizens Committee to Save Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157, 1171-1172.

[57] Center also argues the Puente contract was unreasonable because it contained a penalty clause tied to whether and when the project is approved. (Center Rhg. App., at p. 10.) But it offers no law to establish such a clause is unlawful or triggers CEQA review of the contract.

Rhg. App., at pp. 16-22, citing *Consumers Lobby Against Monopolies v. Public Utilities Commission* ("*CLAM*") (1979) 25 Cal.3d 891, 902-905.)

Center ignores there is a substantial body of Commission precedent finding that CEQA review is not required for power purchase contract approvals. As such, it was not unreasonable or unlawful to rely on the Commission's precedent to deny Center's challenge.

While we find no error, we will modify the Decision as set forth in the below ordering paragraphs to provide clarity on this issue.

3. RFO Bias

Center contends it was error to approve the Puente contract because SCE's RFO process was biased against preferred resources.[58] (Center Rhg. App., at pp. 25-30.) Center's specific allegations are addressed below.

a. Contract Dates

Center contends that the *Track 1 Decision* precluded SCE from taking energy deliveries before 2021, but SCE solicited contracts as early as 2016 and 2018.

Nothing in the *Track 1Decision* prohibited deliveries before 2021. We said only that SCE must fill the identified capacity need *by* 2021. And it noted that need could occur prior to 2021 due to the anticipated closure of certain once-through cooling plants.[59]

Similarly, the *Track 1 Decision* expressed concerns regarding the long lead time needed for some resources to actually be capable of delivering electricity. Thus SCE was encouraged to conduct its solicitation and file its applications as soon as

[58] Center suggests the Moorpark RFO process was flawed because more preferred resource offers were received for the LA Basin than for Moorpark. (Center Rhg, App., at pp. 23-26.) But this ignores that the exact same RFO process was vetted and used for both the LA Basin and Moorpark. It may be difficult to know with certainty why one area received less offers, but that does not mean there was a flaw in the solicitation.

[59] *Track 1 Decision* [D.13-02-015], *supra,* at pp. 2, 6, 68, 131 [Ordering Paragraph Number 2] (slip op.).

possible (2013-2014). And the Energy Division was authorized to allow some procurement to move forward faster.[60]

Center criticizes SCE's reasons for needing some deliveries sooner.[61] But it offers no facts to refute SCE's rationale. Nor does it show it was unlawful given the authorization and process approved in the *Track 1 Decision.*

b. Time Allowed for Bids

Center asserts that the 91-day window allowed for offers prejudiced preferred resource companies, because they are smaller and have less staffing resources to prepare bids. (Center Rhg. App., at pp. 27-28.) Center fails to establish error.

As noted above, we encouraged a fast solicitation process. And Center offers nothing to show that a 91-day window for offers was unusually short or improper. The record also showed that SCE had lengthened the time for bidders to provide offers in order to increase competition and the ability to receive offers.[62] In addition, the record showed that SCE conducted sufficient outreach to ensure adequate participation by all potential bidders.[63] Thus, there was no evidence that potential bidders were prejudiced in terms or timing or process.

c. Pro Forma Contracts

Center claims that SCE marginalized distributed generation ("DG") vendors because it had pro forma contracts for other resource types, but not for DG bidders. (Center Rhg. App., at pp. 28-29.)

Utilities are not required to provide separate pro forma contracts for every resource type. In this instance, SCE reasonably explained that it first wanted to see if one

[60] *Track 1 Decision* [D.13-02-015], *supra,* at pp. 4, 90, 92-93, 133 [Ordering Paragraph Number 8] (slip op.).

[61] See, e.g., RT Vol. 1 SCE/Bryson, at pp. 89 l:21 to 90 l:16, 123 l:14 to 124 l: 17; RT Vol. 2 SCE/Chinn pp. 221l:28 to 223 l:23.

[62] SCE-10, at p. 2, Ch. III, pp. 16-33.

[63] SCE-7, at pp. 12-13; RT Vol. 1 SCE/Bryson, at pp. 71 l:10 to 74 l:4, 77 l:28 to 78 l:22.

of the other seven formats could accommodate DG bids. It also said it would work with bidders on acceptable terms if needed.[64]

Center concedes that may have been a reasonable explanation, but argues vendors had no way to know this. We disagree. The solicitation materials did advise potential bidders that some proposals may not fit the pro forma formats, but that SCE would work with bidders to address their needs. Thus, it is not clear how any participant was prejudiced.

d. Security

Center objects to the fact SCE required RFO bidders to post a security. Center argues even SCE acknowledged some bidders may not be used to such a requirement. Thus, the security "surely" prevented bidders with less financial ability from participating. (Center Rhg. App., at p. 29.)

There is nothing unlawful or unusual about requiring bidders to post a security. They are often sought as credit and performance assurances. Here, SCE appeared to have tailored the security requirements based on resource types. Center offers nothing to show that the amounts sought were unreasonable or burdensome.[65] Nor do they show any potential bidders were in fact excluded from bidding due to this requirement. Thus, we find no error.

e. Excluded Resources

Center contends we gave undue deference to CAISO's "worthless opinions," as a result of which SCE was allowed to exclude two-hour demand response products from consideration. (Center Rhg. App., at pp. 29-30.)

It was not unreasonable to defer somewhat to the CAISO's views given its role in managing California's electric grid.[66] Indeed, the *Track 1 Decision* explicitly

[64] SCE-3, Appendix E: Solicitation Materials, at pp. E-11, E-25, E-137.

[65] SCE-3, Appendix E: Solicitation Materials, at pp. E-153.

[66] Pub. Util. Code, §§ 345 – 352.7; *Track 1 Decision* [D.13-02-015], *supra*, at p. 136 [Ordering Paragraph Number 14] (slip op.).

required SCE to seek the CAISO's input concerning performance characteristics for local reliability.[67]

The Independent Evaluator Report confirmed that the RFO did require four-hour bids, but also allowed an option for two-hour bids. Two-hour bids were ultimately excluded, however, because they did not provide sufficient savings. In addition, our resource adequacy ("RA") rules require a resource be able to provide four hours of capacity over a three consecutive days to qualify as an RA resource, and the CAISO had concerns that two-hour products would not meet system reliability needs.[68] Thus, two-hour products were not wrongly or unlawfully excluded.

4. Need

Center contends it was unreasonable to approve the Puente contract because the Decision failed to demonstrate 215-290 MW are needed in Moorpark. (Center Rhg. App., at pp. 30-36.)

This contention is flawed given our framework for utility procurement. The Commission's process flows from the goals of section 454.5 to ensure safe and reliable electric service as well as reasonable service for customers at just and reasonable rates. Based on these objectives, the Commission has developed a two-step Long Term Procurement Planning ("LTPP") process.

In step one, we render a "needs determination" to identify what new system-wide and or local capacity generation should be obtained.[69] Utilities then solicit

[67] See, e.g., *Track 1 Decision* [D.13-02-015], *supra,* at p. 136 [Ordering Paragraph Number 14] (slip op.); *Track 4 Decision* [D.14-03-004], *supra,* at p. 146 [Ordering Paragraph Number 11] (slip op.).

[68] SCE-2, Appendix D, Independent Evaluator Report, at p. 20; SCE-1, at pp. 8, 18; RT Vol. 1, SCE/Bryson pp. 107 l:14 to 108 l:25, 109 l:26 to 110 l:15.

[69] See, e.g., *Rulemaking re Long Term Procurement Plans* (2012) [R.12-03-014], at p. 3; *Track 1 Decision* [D.13-02-015], *supra*, at pp. 4-5 (slip op.).

bids to fill the energy need via an RFO or bilateral contract, monitored by an Independent Evaluator to ensure a fair and reasonable process is used.[70]

In step two, generally a separate proceeding, we evaluate a utility's application for approval of procurement contracts that resulted from the RFO. At this juncture, capacity need is no longer an issue. That has already been determined by a decision such as the *Track 1 Decision.*

Center argues, however, that changed circumstances warranted reconsideration of need here. The Commission has recognized that sometimes certain circumstances may change. But, in the interest of a timely and orderly procurement process, we rarely revisit need at this juncture in the procurement process. As explained on D.06-11-048:

> Our long term procurement proceedings are intended to monitor changes in forecasts. In order to permit timely action in response to Commission determinations of need for new generation resources, *it is crucial that we not be sidetracked by second-guessing recent determinations absent evidence of significant errors.*

(*Results of Long Term RFO* [D.06-11-048] (2006) at p. 10 (slip op.) (emphasis added.).)[71]

Even if Center's concerns here were considered, they do not establish error. Center argues the need determination was flawed because the CAISO failed to consider the McGrath Power Plant (a 47.2 MW facility) in its modeling of need for the *Track 1 Decision.* Center argues that while the CAISO's 2011-2012 Transmission Plan referenced the plant, there were not actual models to prove it was included. Thus, need for Moorpark was actually less and the Commission erred in giving weight to the CAISO's analysis. (Center Rhg. App., at p. 32.)

[70] Pub. Util. Code, § 454.5, subd. (f).

[71] See also *Rulemaking re Long-Term Procurement Plans* [R.12-03-014] (2012) at p. 3 (slip op.).

We did not rely solely on the CAISO's analysis to arrive at the need determination. At the same time, it was not unreasonable to give some weight to the CAISO's recommendations given its grid adequacy responsibilities. Further, it is reasonable to conclude that CAISO's reference to the McGrath Power plant in its Transmission Plan indicated that it was indeed considered. At the very least, McGrath was factored into CAISO's 2014-2015 update analysis, and it did not appear to reduce CAISO's need estimate.[72]

Center also contends the *Track I Decision* wrongly assumed closure of the Ormond Beach Generating Station. However, record evidence showed that Ormond Beach will not operate after 2020.[73] Thus, the *Track 1 Decision* did not err.

D. Request for Oral Argument

Center requests that the Commission grant oral argument. (Center Rhg. App., at p. 37.) Such requests are governed by Rule of Practice and Procedure 16.3, which provides:

> (a) If the applicant for rehearing seeks oral argument, it should request it in the application for rehearing and explain how oral argument will materially assist the Commission in resolving the application, and demonstrate that the application raises issues of major significance for the Commission because the challenged order or decision:
>
> (1) adopts new Commission precedent or departs from existing Commission precedent without adequate explanation;
>
> (2) changes or refines existing Commission precedent;
>
> (3) presents legal issues of exceptional controversy, complexity, or public importance; and/or

[72] RT Vol. 2, at p. 235; 26-28. CAISO 2015-2016 Transmission Plan, Appendix D, at p. 5 [Identifying a 234 MW deficit in the Moorpark sub-area in 2025.].

[73] See, e.g., Response of the California Independent System Operator Corporation to Motion to Set Aside the Submission and Reopen the Record to Take Additional Evidence, dated May 13, 2016.

(4) raises questions of first impression that are likely to have significant precedential impact.

(See also Cal. Code of Regs., tit. 20, Rule 16.3.)

We deny Center's request because it neither explained how oral argument will materially assist us in resolving this matter, nor demonstrates how the application raises any issues within the above criteria. Center merely states that it requests the Commission hear oral argument on this motion.

Further, none of the above criteria are even remotely implicated by Decision. Commission decisions approving or denying a utility's proposed procurement contracts are a routine part of the Commission's authority under sections 380, 399.11 *et seq.*, and 454.5. There was nothing particularly unique or unusual about this particular Decision or approval of the Puente Project contract. And all the relevant issues were fully litigated and briefed. Therefore, oral argument would provide no material assistance or benefit.

III. CONCLUSION

For the reasons stated above, we modify D.16-05-050 as specified below, and deny the applications for rehearing of D.16-05-050, as modified, because no legal error was shown.

THEREFORE, IT IS ORDERED that:

1. D.16-05-050 is modified as follows:
   a. The first paragraph on page 17 of D.16-05-050 is modified as follows:

      The Commission's direction in D.07-12-052 provides guidance regarding what types of bid evaluation criteria the Commission expects utilities to consider in their solicitation process. However, neither D.07-12-052 nor subsequent procurement decisions have specified the degree to which environmental justice should be weighed or considered by the utilities. For example, D.07-12-052 did not clarify or determine how environmental justice should be weighed against factors such contract economics, other environmental considerations, the Commission's

obligation to ensure a reliable electric grid, and the obligation to ensure just and reasonable rates.

For purposes of this procurement application, we find that the Puente contract was consistent with our policy to encourage the use of Brownfield sites. In addition, the solicitation results indicate the contract was reasonable in light of other relevant procurement criteria. Accordingly, selection of the Puente contract is reasonable on the whole.

b. The first full paragraph on page 19 of D.16-05-050 is modified as follows:

In future procurement applications, we should endeavor to more explicitly consider environmental justice issues in our review of proposed procurement contracts. However, in order to more efficiently and effectively do that, utility procurement applications should include sufficient information regarding the consideration of this criteria in the RFO process. The Commission's long-term procurement plan (LTPP) proceeding (a Rulemaking proceeding applicable to the industry as a whole) is an appropriate forum to address the type of information the utilities must provide and give further guidance on this issue. The Commission recently opened Rulemaking (R.) 16-02-007 to Develop an Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements. The preliminary scope of R.16-02-007 includes potential procurement rule changes. Additional environmental justice rules or guidance should delineate between the role of this Commission in evaluating the reasonableness of a procurement contract, as opposed to the role of the CEC for purposes of its CEQA-equivalent environmental review. And while we recognize that case specific considerations make it difficult to weigh all proposed procurement contracts with complete uniformity, further guidance should be developed concerning the appropriate balance between issues such as: the policy favoring Brownfield sites; environmental justice considerations; other economic considerations, and grid reliability.

c. Finding of Fact Number 3, on page 35 of D.16-05-050 is modified as follows:

D.07-12-052 included environmental justice as among the criteria utilities were urged to consider in their procurement solicitations.

d. Conclusion of Law Number 3, on page 37 of D.16-05-050 is modified as follows:

D.07-12-052 requires utilities to consider any disproportionate resource sitings in low income and minority communities in their procurement solicitations. Procurement applications should be clear how a utility considered this issue.

e. Finding of Fact Number 13, on page 36 of D.16-05-050 is modified as follows:

The evidence showed there were insufficient cost-effective preferred resource bids in the Moorpark sub-area to meet the identified need. Therefore, the Puente Project contract is necessary to meet the identified local reliability need in the Moorpark sub-area. The need determination for the Moorpark sub-area in D.13-02-015 was largely based on the retirement of Mandalay Units 1 and 2 and the Ormond Beach once-through-cooling generation units.

f. Conclusion of Law Number 6, on page 37 of D.06-05-050 is modified to state:

Because there were insufficient cost-effective preferred resource offers to meet the identified need in the Moorpark sub-area, selection of the Puente Project contract is reasonable and complies with the requirements set out in D.13-02-015.

g. Finding of Fact Number 19, on page 37 of D.16-05-050 is added to state:

The CEC is the lead agency for environmental review of the Puente Project.

h. Finding of Fact Number 20, on page 37 of D.16-05-050 is added to state:

Commission precedent consistently shows that power purchase contract approval by this Commission does

not trigger environmental review or the need to defer approval pending project approval by the CEC.

2. Southern California Edison's motion for leave to file a confidential response to the applications for rehearing is denied.

3. Rehearing of D.16-05-050, as modified, is denied.

4. This proceeding, Application (A.)14-11-016, remains open.

This order is effective today.

Dated December 1, 2016, at San Francisco, California.

MICHAEL PICKER
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
LIANE M. RANDOLPH
Commissioners