



February 15, 2024

Via Electronic Mail

CPUC Energy Division
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Subject: Protest to Southern California Edison Company's Tier 3 Advice Letter 5207-E, *Submission of Southern California Edison Company's Mid-Term Reliability Renewable Resource Contracts for Review and Approval Pursuant to Decision 21-06-035, as Modified by Decision 23-02-040 (Public Version).*

INTRODUCTION

Pursuant to General Order (GO) 96-B, Rule 7.4, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits this protest to Southern California Edison Company's (SCE) Tier 3 Advice Letter (AL) 5207-E: *Submission of Southern California Edison Company's Mid-Term Reliability Renewable Resource Contracts for Review and Approval Pursuant to Decision 21-06-035, as modified by Decision 23-02-040*, submitted January 26, 2024. SCE AL 5207-E seeks approval of three energy-only solar contracts ("Atlas V," "Atlas VI," and "Atlas X") and two geothermal contracts ("Cape Station 3" and "Cape Station 4," or the Fervo contracts).¹ SCE submitted SCE AL 5207-E pursuant to Decision (D.) 21-06-035² (Midterm Reliability (MTR) Decision) and D.23-02-040³ (Supplemental MTR Decision); issued in R.20-05-003, the Integrated Resource Planning (IRP) proceeding.

¹ SCE AL 5207-E at 2-3.

² D.21-06-035, *Decision Requiring Procurement to Address Mid-Term Reliability (2023-2026)*, June 24, 2021; issued in Rulemaking (R.) 20-05-003, *Order Instituting Rulemaking to Continue Electric Integrated Resource Planning and Related Procurement Processes*.

³ D.23-02-040, *Decision Ordering Supplemental Mid-Term Reliability Procurement (2026-2027) and Transmitting Electric Resource Portfolios to California Independent System Operator for 2023-2024 Transmission Planning Process*, February 23, 2023; issued in R.20-05-003, *Order Instituting Rulemaking to Continue Electric Integrated Resource Planning and Related Procurement Processes*.

The Commission should reject SCE AL 5207-E and require SCE to renegotiate the pricing of the Fervo contracts and, if necessary, conduct new solicitation activities for competing resources with expected in-service dates through June 1, 2031. Cal Advocates does not take issue with the Atlas V, Atlas VI, and Atlas X contracts.

BACKGROUND

The Commission has issued three procurement decisions in the IRP proceeding: D.19-11-016,⁴ the MTR Decision, and the Supplemental MTR Decision. The MTR Decision orders SCE to procure 687 megawatts (MW) of so-called “long-lead-time” (LLT) resources by June 1, 2026.⁵ The MTR Decision also allows load-serving entities (LSEs) to seek an extension of this LLT deadline to June 1, 2028, upon a showing of good-faith procurement efforts.⁶

The MTR Decision divides the LSEs’ LLT procurement obligations between long-duration energy storage resources and “firm zero-emitting” resources. The latter are not weather dependent or use limited, that have at least an 80 percent capacity factor, and produce no on-site emissions unless they are otherwise eligible to count under the RPS requirements.⁷

Subsequently, the return of the customers of Western Community Energy and the City of Baldwin Park to SCE bundled service further increased SCE’s LLT obligations.⁸ SCE estimates that the Fervo contracts in SCE AL 5207-E, if approved, would contribute 297 MW to SCE’s total 352 MW obligation for firm zero-emitting resources.⁹

After receiving a significant volume of LSE requests for LLT deadline extensions, the Commission’s Supplemental MTR Decision adopted a blanket June 1, 2028 deadline for all LSEs’ LLT obligations, while adding new generic net qualifying capacity (NQC) obligations for 2026 and 2027.¹⁰

⁴ D.19-11-016, *Decision Requiring Electric System Reliability Procurement for 2021-2023*, November 7, 2019; issued in R.16-02-007, *Order Instituting Rulemaking to Develop an Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements*.

⁵ D.21-06-035 at 57.

⁶ D.21-06-035 at 95-96, Ordering Paragraph 5.

⁷ D.21-06-035 at 88, Finding of Fact 15.

⁸ SCE AL 5207-E at 6, Table 1.

⁹ SCE AL 5207-E at 2 and 7, variously referencing either 297 MW or 298 MW. SCE explains its use of a 93% qualifying capacity adjustment to the contract capacities of the Fervo contracts (70 MW and 250 MW, respectively). The difference between 297 MW and 298 MW occurs through rounding.

¹⁰ D.23-02-040 at 87, Ordering Paragraph 2.

Even with this blanket LLT deadline extension, LSEs continued to experience challenges in their solicitations for LLT resources. On May 30, 2023, the California Energy Storage Alliance (CESA) and Western Power Trading Forum (WPTF) filed a Petition for Modification (PFM) of the MTR Decision and the Supplemental MTR Decision to extend the LLT procurement deadline from 2028 to 2031.¹¹ On January 10, 2024, the Commission issued a proposed *Decision Adopting 2023 Preferred System Plan and Related Matters, and Addressing Two Petitions for Modification* (PD) in the IRP proceeding. The PD would adopt the extension of LSEs' LLT deadlines from 2028 to 2031 upon the LSE's filing of a "Tier 2 advice letter seeking an extension based on LLT cost considerations, and including confidential pricing and bid data"¹²

DISCUSSION

The Commission should require SCE to renegotiate the pricing of the Fervo contracts and, if necessary, conduct new solicitation activities for competing resources with expected in-service dates through June 1, 2031. SCE's Fervo contracts for Cape Station 3 and Cape Station 4 are priced at [REDACTED] per megawatt-hour (MWh). While the Fervo contracts are [REDACTED]

[REDACTED] Pricing is the key issue in the Fervo contracts, not only for its direct ratepayer impact but also because the PD specifically allows that "high, non-competitive, or unreasonable pricing"¹³ is grounds for LSEs to seek extensions of their LLT procurement obligations.

Cal Advocates remains supportive of the MTR procurement effort and recognizes that resource diversity can provide some qualitative benefits. However, the price of the Fervo contracts [REDACTED], and SCE AL 5207-E lacks evidence and argument that qualitative benefits or other procurement prerogatives outweigh [REDACTED]. SCE's ratepayers are ill-served by the prospect of Commission approval of the Fervo contracts.

Moreover, while SCE found itself in the position of negotiating with Fervo without knowing if, when, or how the Commission would address the CESA-WPTF PFM, the Commission should consider that the PD is now available and appears on the

¹¹ CESA and WPTF, *Petition for Modification of Decisions 23-02-040 and 21-06-035 of the California Energy Storage Alliance and the Western Power Trading Forum to Address Long Lead-Time Resource Compliance Deadlines*, May 30, 2023; filed in R.20-05-003, *Order Instituting Rulemaking to Continue Electric Integrated Resource Planning and Related Procurement Processes*.

¹² PD at 121, Ordering Paragraph 16.

¹³ PD at 96.

Commission voting meeting agenda for February 15, 2024.¹⁴ Thus, the timing of SCE AL 5207-E is such that if the PD is adopted, there is sufficient time for the Commission to weigh the Fervo contracts against the prospect of new, potentially better offers pursuant to the PD. In weighing this tradeoff, the PD would have the Commission focus on ratepayer impacts – a priority that the Commission can and should apply to SCE AL 5207-E as well. As the PD makes clear, LSE compliance with the LLT obligations should not come at any cost:

Our intent was never to require procurement of LLT resources at all costs, which must be borne by ratepayers, but rather to encourage their development on a reasonable and steady timetable.¹⁵

Finally, Commission rejection of the Fervo contracts in the name of pricing would support the overall health of the firm zero-emitting market and, in turn, the success of the Commission’s experiment in the MTR Decision to jump-start the firm zero-emitting market by setting LSE procurement obligations. To the extent that other LSEs are also in the market for firm zero-emitting capacity, their ratepayers will benefit if the Commission signals to suppliers [REDACTED], particularly where an investor-owned utility (IOU) has not met its burden of proof in the corresponding advice letter. On the other hand, approval of the Fervo contracts as-is could send an equally consequential message entrenching the current seller’s market for firm zero-emitting capacity.

A. The price of the Fervo contracts [REDACTED].

If approved, SCE’s Fervo contracts would [REDACTED] for the fifteen-year term of the Fervo contracts. SCE’s total notional cost estimate for the Fervo contracts is [REDACTED]. At [REDACTED], the unit price of the Fervo contracts is [REDACTED]¹⁶ [REDACTED] incremental binary geothermal capacity. The range of binary geothermal levelized costs in the recurring National Renewable Energy

¹⁴ California Public Utilities Commission, *Public Agenda 3541*, Item 56. Available at: <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M525/K367/525367361.pdf>.

¹⁵ PD at 96.

¹⁶ California Public Utilities Commission, *2023 Padilla Report: Costs and Cost Savings for the RPS Program (Public Utilities Code §913.3)*, May 2023 at 16 and 27. Available at: <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/office-of-governmental-affairs-division/reports/2023/2023-padilla-report.pdf>.

Laboratory (NREL) Annual Technology Baseline (ATB) materials, which are the main source of resource cost inputs for the IRP, has been [REDACTED] in recent ATB vintages.¹⁷

SCE, using its own evaluation methodology, finds that the price of the Fervo contracts results in a net present value (NPV) of [REDACTED] for the Cape Station 3 contract and an NPV of [REDACTED] for the Cape Station 4 contract.¹⁸ Using its own methodology, SCE's Independent Evaluator (IE), Sedway Consulting, finds an NPV of [REDACTED] for the Cape Station 3 contract and an NPV of [REDACTED] for the Cape Station 4 contract.¹⁹ Neither SCE nor the IE make any argument that [REDACTED] of the Fervo contracts.²⁰ These results support a Commission finding that the price of the Fervo contracts [REDACTED]

B. [REDACTED]

For Fervo, SCE's Fervo contracts represent [REDACTED]. Cal Advocates reiterates the following information, which Cal Advocates previously provided in its response to the CESA-WPTF PFM seeking to extend LSEs' LLT compliance deadlines from 2028 to 2031:

- [REDACTED]

¹⁷ The 2023 NREL ATB includes a range of levelized costs for new binary geothermal projects of \$69-84/MWh (see: <https://atb.nrel.gov/electricity/2023/geothermal>). Prior versions of the NREL ATB, available for consideration in the development of the MTR and Supplemental MTR Decisions, had somewhat lower ranges.

¹⁸ SCE AL 5207-E, Attachment C at C-4 (confidential).

¹⁹ SCE AL 5207-E, Attachment D at A-70 (confidential).

²⁰ SCE and the IE describe qualitative attributes to the extent that SCE and the IE assessed Fervo's bidder qualifications, the project viability of Cape Station 3 and 4, and any disadvantaged community nexus. See SCE AL 5207-E at 17-19 and Attachment D at 19 (public).

²¹ *Response of the Public Advocates Office to the Petition for Modification of Decisions 23-02-040 and 21-06-035 of the California Energy Storage Alliance and the Western Power Trading Forum to Address Long Lead-Time Resource Compliance Deadlines (Confidential Version)*, June 29, 2023 (Cal Advocates Confidential Response to PFM) at 10; filed in R.20-05-003, *Order Instituting Rulemaking to Continue Electric Integrated Resource Planning and Related Procurement Processes*.

- [REDACTED]

²²

- [REDACTED]

²³

[REDACTED]

[REDACTED]

²² Cal Advocates Confidential Response to PFM at 10 and 13.

²³ Cal Advocates Confidential Response to PFM at 12-13.

C. [REDACTED]

[REDACTED]

[REDACTED]

The Commission should consider that Fervo itself may be a source of additional firm zero-emitting capacity, [REDACTED]

[REDACTED]

²⁴

[REDACTED]. While other firm zero-emitting project developers may lack specific information regarding the Fervo contracts, the issuance of a Commission Resolution on SCE AL 5207-E directing price renegotiation of the Fervo contracts may also caution other firm zero-emitting project developers [REDACTED].

²⁴ Cal Advocates Confidential Response to PFM at 13.

D. The Commission should require SCE to pursue price renegotiation as the appropriate remedial next step.

The Commission should require SCE to pursue renegotiation of the Fervo contracts' pricing. Renegotiation is preferable to outright denial of the contracts, [REDACTED]

[REDACTED]. Such an outcome would leave the Commission in a similar position as the Commission now faces with SCE AL 5207-E.

Furthermore, Cal Advocates takes no issue with the Fervo contracts aside from the pricing. SCE's contracting has resolved certain outstanding risks associated with firm zero-emitting procurement, especially transmission risk – an issue Cal Advocates previously raised.²⁵ SCE's Fervo contracts have addressed this concern to Cal Advocates' satisfaction, and preserving such favorable elements of the contract is an additional factor that supports renegotiation over contract denial.

[REDACTED]

[REDACTED]

[REDACTED]

²⁵ *Response of the Public Advocates Office to the Petition for Modification of Decision 23-02-040 and 21-06-035 of the California Energy Storage Alliance and the Western Power Trading Forum (Public Version)*, June 29, 2023 at 5-6; filed in R.20-05-003, *Order Instituting Rulemaking to Continue Electric Integrated Resource Planning and Related Procurement Processes*.

²⁶ Board of Governors of the Federal Reserve System, *Selected Interest Rates (Daily) - H.15* (rolling). Accessed February 6, 2024. Available at: <https://www.federalreserve.gov/releases/h15/>. See "Federal Funds Rate" for core interest rates.

E. The Commission should require SCE to solicit new firm zero-emitting resources with expected in-service dates through June 1, 2031, if SCE is unable to renegotiate the Fervo contracts and if the PD is adopted.

While the Commission should direct SCE to first pursue renegotiation of the Fervo contracts, SCE's ability to achieve renegotiation is dependent on its contract counterparty, Fervo. The Commission cannot compel Fervo's participation in SCE's contract renegotiation efforts. In the event that (1) SCE is unable to succeed at contract renegotiation, and (2) the PD is adopted, then SCE should avail itself of the relief offered in the PD by soliciting additional firm zero-emitting resources with expected in-service dates through June 1, 2031. Fervo itself could participate in this solicitation and/or SCE could pause negotiations with its current firm zero-emitting offerors so as to wrap their offers into the new solicitation.

SCE's ability to achieve better results from a new MTR solicitation phase is uncertain, and other aspects of the Fervo contracts are reasonable or favorable to ratepayers; therefore, Cal Advocates views price renegotiation as preferable, as described above. However, the possibility of improved results for LSEs' ratepayers is the core motivation of the PD's granting of additional time for LSEs to procure LLT resources. The PD even notes specific factors that would tend to improve LSEs' firm zero-emitting solicitation results if the CESA-WPTF is adopted, such as the potential for projects that are lower in the California Independent System Operator's interconnection queue to compete for contracts.²⁸

Cal Advocates notes two additional factors, besides those described in the PD, that support the possibility that SCE could achieve better outcomes from a new solicitation phase. First, LSEs' offerors currently face the highest interest rates – i.e., the highest

²⁷ SCE AL 5207-E, Attachment C at C-4 (confidential).

²⁸ PD at 96.

costs of capital – seen in many years.²⁹ Yet both the Federal Reserve³⁰ and the markets³¹ view today’s interest rates as a likely peak, with significant and continued interest rate cuts in the immediate future. Depending on the specific timing of a future firm zero-emitting solicitation by SCE, SCE’s offerors may be able to pass lower capital costs through into more favorably priced bids.

Second, the Fervo contracts’ [REDACTED]³² Projects located in other areas may be able to receive an additional 10% “energy community” bonus tax credit. For example, a project located nearly anywhere in the state of Nevada would count for energy community status.³³ The Nevada Energy generator interconnection queue contains hundreds of megawatts of geothermal resources that are under development, as well as new geothermal interconnection requests, dated as recently as September 2023.³⁴ An additional SCE solicitation could hypothetically enable offers from some of these projects, with a potential pricing advantage due to the 10% energy community tax credit bonus.

F. SCE’s IE report provides inadequate basis for informing the Commission on the quality of SCE’s firm zero-emitting solicitation efforts.

In its report on the SCE AL 5207-E contracts, the IE describes the Fervo contracts as [REDACTED]³⁵

²⁹ Board of Governors of the Federal Reserve System, *Selected Interest Rates (Daily) - H.15*. Accessed February 6, 2024. Available at: <https://www.federalreserve.gov/releases/h15/>. See “Federal Funds Rate” for core interest rates.

³⁰ Federal Reserve, Federal Open Market Committee, *Summary of Economic Projections*, December 13, 2023. Available at: <https://www.federalreserve.gov/monetarypolicy/files/fomcproptabl20231213.pdf>.

³¹ CME Group, *CME FedWatch Tool*. Accessed February 6, 2024. Available at: <https://www.cmegroup.com/markets/interest-rates/cme-fedwatch-tool.html>.

³² SCE AL 5207-E, Confidential Attachment E at 15 [REDACTED]

³³ U.S. Department of Energy, National Energy Technology Laboratory, *Energy Community Tax Credit Bonus Map*. Accessed February 6, 2024. Available at: <https://energycommunities.gov/energy-community-tax-credit-bonus/>.

³⁴ Nevada Power Company dba Nevada Energy, *Nevada Power Company OASIS Site*. Accessed February 6, 2024. Available at: <https://www.oasis.oati.com/NEVP/>.

³⁵ SCE AL 5207-E, Attachment D at A-69 (confidential).

[REDACTED]

³⁶

[REDACTED]

³⁷

[REDACTED]

[REDACTED]

³⁸

[REDACTED]

[REDACTED]

[REDACTED]

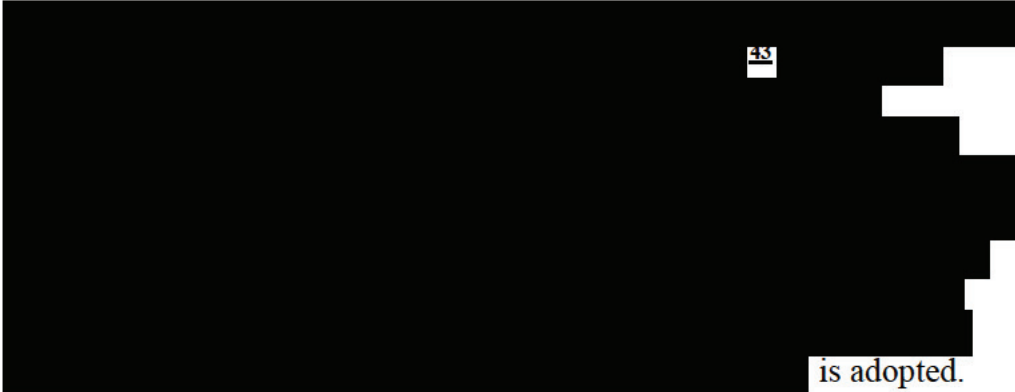
³⁹

[REDACTED] emphasize the general lack of depth and insight in this IE report, which in turn is at odds with the obligations associated with the IE role. While the IE role originated in response to

³⁶ SCE AL 5207-E, Attachment D at A-70 (confidential).
³⁷ SCE AL 5207-E, Attachment D at A-70 (confidential).
³⁸ SCE AL 5207-E, Attachment D at A-69 (confidential).
³⁹ SCE AL 5207-E, Attachment D at A-70 (confidential).

concerns around fairness to merchant offerors, the IE has a broad obligation to examine the overall competitiveness and fairness of the IOU’s solicitation with an eye towards ratepayer benefits. The Commission has explained, “[t]he intent behind this directive [to use IEs] was to ensure a transparent and fair bid selection process that was beneficial to ratepayers . . .”⁴⁰ and “[w]e maintain that the ultimate goal of the IE is to ensure a fair and competitive solicitation process”⁴¹

Despite the obligations of the IE role, the IE for SCE AL 5207-E offers no meaningful assessment of key aspects of SCE’s solicitation efforts. Specifically:

-  ⁴²
- 
-  ⁴³ is adopted.

⁴⁰ D.08-11-008, *Decision on Petitions for Modification of Decision 07-12-052*, November 6, 2008 at 26; issued in R.06-02-013, *Order Instituting Rulemaking to Integrate Procurement Policies and Consider Long-Term Procurement Plans*.

⁴¹ D.08-11-008 at 28.

⁴² SCE AL 5207-E, Attachment D at A-69 (confidential).

⁴³ SCE AL 5207-E, Attachment D at 28 (public).

- The IE report sets for itself the question, “Beyond any quantitative analysis, describe all additional criteria or analysis used in creating its short list (e.g., did the IOU take into consideration supplier concentration risk?)⁴⁴ and responds succinctly in the affirmative, with no discussion.⁴⁵ [REDACTED]

In short, [REDACTED]

[REDACTED]. The IE report is insufficient to inform the Commission as to the reasonableness of the Fervo contracts, and the Commission should weigh the usefulness of the IE report accordingly.

CONCLUSION

Cal Advocates requests that the Commission adopt its recommendation to reject SCE AL 5207-E and require SCE to renegotiate the pricing of the Fervo contracts. If the PD is adopted, the Commission should also require SCE to conduct new solicitation activities for competing resources with expected in-service dates through June 1, 2031, in the event that SCE is unsuccessful at renegotiating the pricing of the Fervo contracts.

Please contact Christian Lambert at Christian.Lambert@cpuc.ca.gov or (415) 703-1419 with any questions regarding this protest.

Sincerely,

/s/ JULIE HALLIGAN
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Program Manager

cc: Connor Flanigan, Managing Director, State Regulatory Operations, SCE
Adam Smith, Director, Regulatory Relations, SCE
Paul Sung, Attorney, SCE
Service Lists: R.20-05-003, R.18-07-003, and GO 96-B

⁴⁴ SCE AL 5207-E, Attachment D at 21 (public).

⁴⁵ SCE AL 5207-E, Attachment D at 22 (public).