

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

In the Matter of the Application of Southern California Edison Company (U338E) for a Permit to Construct Electrical Substation Facilities with Voltage over 50 kV: Mesa 500 kV Substation Project

Application 15-03-003
(Filed March 13, 2015)

**RESPONSE TO MOTION TO SET ASIDE SUBMISSION AND REOPEN THE RECORD
FOR THE TAKING OF ADDITIONAL EVIDENCE AND REQUEST FOR OFFICIAL
NOTICE**

Pursuant to Commission Rules of Practice and Procedure 11.1(e), the California Independent System Operator Corporation (CAISO) files this response to the Bay Area Municipal Transmission (BAMx) group’s Motion to Set Aside Submission and Reopen the Record for the Taking of Additional Evidence and Request for Official Notice.

I. BAMx’s Motion

Pursuant to Rule 13.14, BAMx requests that the Commission set aside submission and reopen the record in this proceeding to take official notice of the Commission’s RPS Calculator (Final Version 6.2) pursuant to Rule 13.9. BAMx provides no justification for its request to set aside submission and, in any event, fails to justify its claim that the Commission should take official notice of the RPS Calculator. As a result, the Commission should deny BAMx’s Motion.

A. BAMx Cites No Reason to Set Aside Submission.

Rule 13.14 of the Commission’s Rules of Practice and Procedure states that a “motion to set aside submission and reopen the record for the taking of additional evidence...*shall specify the facts claimed to constitute grounds in justification thereof, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing.*” (emphasis added). BAMx’s motion makes no attempt to argue that there have been material changes of fact or law since the hearings in this proceeding concluded. To the contrary, BAMx admits that its sole basis to set aside submission is its own failure to offer the RPS Calculator into evidence because its “importance to this proceeding was only known to BAMx following the close of evidentiary

hearings.”¹ A party’s failure to understand the factual basis for its own argument is not justification to set aside submission and reopen the record.²

BAMx cites no material changes of fact or law that have occurred since the close of hearing, as is required by Rule 13.14. BAMx’s failure to cite material changes is expected given that the evidentiary hearings closed less than four weeks ago. In this four week span, the CAISO is unaware of any factual or legal changes related to the RPS Calculator (or the Mesa Loop-In Project more generally). Because there have been no changes in fact or law, BAMx’s motion to set aside submission is wholly unjustified and should be denied.

B. BAMx’s Request for Official Notice is Unsupported and Improper.

BAMx’s motion not only fails under Rule 13.14, the request for official notice is also deficient under Rule 13.9. Rule 13.9 provides that “[o]fficial notice may be taken of such matters as may be judicially noticed by the courts of the State of California pursuant to Evidence Code section 450 et seq.” BAMx cites Evidence Code Section 452(c) and (h)³ as the basis for its claim that the Commission should take official notice of the RPS Calculator. These subsections note that a court may take judicial notice of:

(c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States; and

(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

BAMx asserts that because the RPS Calculator is a “recognized tool used by the CPUC in planning resource needs” and “has been used in Commission decisions” it is “therefore an official act of the executive department” and “is not reasonably subject to dispute.”⁴

BAMx’s assumption that the RPS Calculator is an “official act” of the executive department is both logically and legally flawed. First, Commission *decisions* are considered “official acts” of the Commission that may be judicially noticed, but it is not appropriate to take judicial notice of matters simply because they have been mentioned in a prior Commission

¹ BAMx Motion, p. 1.

² Further, BAMx did not even sponsor a witness in this proceeding who could have incorporated the RPS Calculator into testimony.

³ BAMx’s Motion refers to Evidence Code Section 351, but the quotation provided in BAMx’s Motion appears to be excerpted from Evidence Code Section 452.

⁴ BAMx Motion, p. 2.

process.⁵ California law is clear that evidence submitted in the course of a Commission proceeding is not necessarily judicially noticeable in a later action.⁶ BAMx fails to cite specific language in a Commission decision that adopts the RPS Calculator, but instead points to proceedings in which some prior version of the RPS Calculator was “used to develop RPS scenarios.”⁷ “Use” and mere reference in a Commission proceeding is not the equivalent of an “official act” of the Commission and does not constitute grounds for judicial notice.

Second, even in the Commission proceedings BAMx cites to support its claim that the RPS Calculator is an “official act,” the Commission never directed the use of RPS Calculator Version 6.2 (*i.e.*, the specific version that BAMx has requested be officially noticed). In fact, the Ruling BAMx cites specifically states that the updated RPS Calculator values should *not* be used for transmission planning purposes.⁸ This undercuts BAMx’s argument that the RPS Calculator Version 6.2 is an “official act” of the Commission.

Lastly, even if the RPS Calculator is judicially noticeable, it is only noticeable to prove the existence of the database, not the truth of the specific information in it or how such information should be interpreted.⁹ BAMx has provided no evidence regarding the accuracy of the RPS Calculator values nor any evidence regarding how those values should be modeled and reflected in power flow analysis. Because BAMx provides no evidence, expert opinion, or witness regarding the use of the RPS Calculator (and for the reasons previously addressed in the CAISO’s reply brief¹⁰), the Commission should give no weight to BAMx’s unsupported speculation regarding the RPS Calculator’s impact on the CAISO’s power flow analysis.

⁵ *Wise v. Pac. Gas & Elec. Co.*, 77 Cal. App. 4th 287, 297, 91 Cal. Rptr. 2d 479, 485 (1999). (“Evidence Code section 452, subdivision (c) (official acts) permits the Court of Appeal to take judicial notice of a PUC decision.”)

⁶ *Citizens Utilities Co. v. Superior Court*, 56 Cal. App. 3d 399, 410–11, 128 Cal. Rptr. 582, 591 (Ct. App. 1976). (Denying a request to take judicial notice of letters that were accepted into evidence in a Commission proceeding).

⁷ BAMx Motion, p. 2. BAMx’s Motion does not cite any Commission decision that adopts the RPS Calculator.

⁸ R.13-12-010, ASSIGNED COMMISSIONER’S RULING ADOPTING ASSUMPTIONS AND SCENARIOS FOR USE IN THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR’S 2016-17 TRANSMISSION PLANNING PROCESS AND FUTURE COMMISSION PROCEEDINGS, issued May 17, 2016. (“For 2016-17 TPP modeling purposes, the current Resource Adequacy exceedance methodology should continue to be utilized to model output levels of variable resources in the power flow (load flow) and stability studies typical of the CAISO’s TPP.”)

⁹ *Fremont Indem. Co. v. Fremont Gen. Corp.*, 148 Cal. App. 4th 97, 113, 55 Cal. Rptr. 3d 621, 633 (2007). (“Although the existence of a document may be judicially noticeable, the truth of statements contained in the document and its proper interpretation are not subject to judicial notice if those matters are reasonably disputable.”)

¹⁰ See CAISO Reply Brief, p. 3-6.

II. Conclusion

BAMx admits that it failed to provide evidence into the record because it did not appreciate the “importance” of the information until the close of hearings. Allowing a party to reopen the record based on that party’s own failure to conduct due diligence (or sponsor a witness) is counter to both the spirit and the letter of the Commission’s Rules of Practice and Procedure. Furthermore, the RPS Calculator is not judicially noticeable under Rule 13.9 and the California Evidence Code. As a result, the Commission should deny BAMx’s motion.

Respectfully submitted,

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