

*Attachment A – Rationale for PPA Changes*

PPA Section / Change Request	Current CREST Agreement and Proposed Modifications Required for Financing	Rationale for Change
<p>Sections 2.8 and 4.2(d)(3) (Expected Date of Initial Operation)</p> <p><b>Request:</b></p> <p><b>Modify existing contract language</b></p>	<p>The Renewable Generating Facility's expected date of Initial Operation is _____. The actual date of Initial Operation shall be within 18 months of the last date entered in Section 17 of this Agreement, <i>provided however that the 18 month period shall be extended to accommodate any delays by SCE beyond industry standards or as a result of Force Majeure as to which Producer is the Claiming Party (subject to section....).</i></p>	<p>Currently: If Producer fails to achieve Initial Operation within 18 months of the date of execution of the PPA, SCE may elect to terminate the PPA regardless of whether the delay was caused by SCE or by Producer.</p> <p>The suggested modification is to ensure that the Producer is protected in the case where SCE delays interconnection studies, interconnection contracts, construction, and other SCE performance in support of this PPA. As an example SCE's standard for SIS studies (based on FERC guidelines) is 45 business days but SCE has extended the expected timeline to 90 days and most recently to 120 days with an uncertain number of studies extending beyond the 120 day timeline. The revised language is meant to cover all known delays on SCE's part beyond industry standards as well as yet unknown delays associated with contracting and constructing.</p>
<p>Section 4 (SCE Termination Rights)</p> <p><b>Request:</b></p> <p><b>1) Replace Section 4 with Section 6 from SCE's</b></p>	<p>4.1 SCE may terminate this Agreement on Notice, which termination becomes effective on the date specified by SCE in such Notice, if:</p> <p style="padding-left: 40px;">4.1.1 Producer fails to take all corrective actions specified in any SCE Notice, within the time frame set forth in such Notice, provided such time frame is reasonable by industry standards, that any Generating Facility is out of compliance with any term of this Agreement;</p> <p style="padding-left: 40px;">4.1.2 Producer fails to interconnect and Operate a</p>	<p>Under Section 4, as currently drafted, SCE may elect to terminate the PPA if "a change in applicable Tariffs as approved or directed by the [CPUC] or a change in any local, state or federal law, statute or regulation, any of which materially alters or otherwise materially affects SCE's ability or obligation to perform SCE's duties under [the PPA]."</p> <p>Traditional non-recourse financing will not accept this provision as it provides an open right for SCE to terminate the PPA if a material change in law were to occur, but does not introduce a process to</p>

<p><b>SPVP</b></p> <p>2) <b>Modify 4.1.1</b></p> <p>3) <b>Adjust references to other sections to align with the CREST contract</b></p>	<p>Photovoltaic Module within any Generating Facility, in accordance with the terms of this Agreement, within one hundred twenty (120) days after SCE delivers electric energy to such Generating Facility for Station Use;</p> <p>4.1.3 Producer abandons any Generating Facility;</p> <p>4.1.4 Electric output from any Generating Facility ceases for twelve (12) consecutive months;</p> <p>4.1.5 The Term does not commence within eighteen (18) months (subject to Section 2.8);</p> <p>4.1.6 Producer or the owner of a Site applies for or participates in the California Solar Initiative or any net energy metering tariff with respect to any Generating Facility at such Site; or</p> <p>4.1.7 Producer has not installed any of the equipment or devices necessary for any Generating Facility to satisfy the Gross Power Rating of such Generating Facility, as set forth in Section 4.2.2.</p> <p>4.2 A Party may terminate this Agreement:</p> <p>4.2.1 If any representation or warranty in this Agreement made by the other Party is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if such misrepresentation or breach of warranty is not remedied within ten (10) Business Days after</p>	<p>resolve issues associated with change in law.</p> <p>It is requested that the entire Section 4 be replaced with Section 6 from SCE's own SPVP contract which includes generally accepted language for purposes of financing.</p> <p>Further, it is requested that the new Section 4.1.1 be modified to include a "reasonable" standard for time frames provided by SCE so as to protect the Producer from termination based on an unreasonable requirement imposed by SCE.</p> <p>Other changes are (as noted) are for purpose of mechanical alignment to the CREST contract.</p>
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	<p>Notice thereof from the non-breaching Party to the breaching Party;</p> <p>4.2.2 Except for an obligation to make payment when due, if there is a failure of the other Party to perform any material covenant or obligation set forth in this Agreement (except to the extent such failure provides a separate termination right for the non-breaching Party or to the extent excused by Force Majeure), if such failure is not remedied within thirty (30) days after Notice thereof from the non-breaching Party to the breaching Party;</p> <p>4.2.3 If the other Party fails to make any payment due and owing under this Agreement, if such failure is not cured within five (5) Business Days after Notice thereof from the non-breaching Party to the breaching Party; or</p> <p>4.2.4 In accordance with Section (replace reference to 9.4 with reference to new Force Majeure section).</p> <p>4.3 This Agreement automatically terminates on the Term End Date.</p> <p>4.4 If a Party terminates this Agreement in accordance with Section 4, such Party will have the right to immediately suspend performance under this Agreement and pursue all remedies available at law or in equity against the other Party (including seeking monetary damages).</p>	
<p>Section 12 (Assignment)</p> <p><b>Request:</b></p>	<p>12. Producer may not assign this Agreement or its rights or obligations under this Agreement without SCE’s prior written consent, which consent will not be unreasonably withheld; <u>provided</u>, <u>however</u>, that Producer may, without</p>	<p>As currently drafted this section provides that “Producer shall not voluntarily assign its rights nor delegate its duties under [the PPA] without SCE’s prior written consent” and that “SCE shall not unreasonably withhold its consent to Producer’s</p>

<p>1) <b>Replace with Section 18 from SCE's SPVP contract</b></p>	<p>SCE's consent (and without relieving Producer from liability under this Agreement), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its Lender in connection with any financing for a Generating Facility if (i) such Lender assumes the payment and performance obligations provided under this Agreement with respect to Producer, (ii) such Lender agrees in writing to be bound by the terms and conditions of this Agreement, and (iii) Producer delivers such tax and enforceability assurance as SCE may reasonably request. Any assignment of this Agreement by Producer without SCE's written consent is not valid.</p>	<p>assignment of [the PPA]".</p> <p>Traditional non-recourse project financing requires assignment to lenders. The language in SCE's SPVP contract appropriately recognizes this need and provides for such assignment without the uncertainty of SCE consent.</p>
<p>Section 14.2 (Future Modifications)</p> <p><b>Request:</b></p> <p>1) <b>Remove</b></p>		<p>This provision is an obstruction to obtaining traditional financing as providers are concerned by the possibility that the PPA could be amended by the CPUC materially changing the economics of the contract and adversely affecting both the Producer and its financing providers. Removal of this paragraph is intended to provide a quick and simple solution to the financing uncertainty it introduces.</p>
<p>Section 14.4 (Application for Modifications by SCE)</p> <p><b>Request:</b></p> <p>1) <b>Remove</b></p>		<p>This provision is an obstruction to obtaining financing as providers are concerned by the possibility that the PPA could be amended by request of SCE to the CPUC, possibly introducing material changes to the economics or governance of the contract and adversely affecting both the Producer and its financing providers. Removal of this paragraph is intended to provide a quick and simple solution to the financing uncertainty it introduces.</p>
<p>Indemnification Force Majeure</p>	<p>Add boilerplate language as currently included in the SPVP contract for Force Majeure and Indemnification</p>	<p>It is requested that some of the standard "boilerplate" language from SCE's SPVP contract be added to the CREST contract to cover Force Majeure and Indemnification issues under the contract. Note that while this is a request that will</p>

		<p>ease financing concerns and benefit both the SCE and the Producer it is not seen as necessary (unlike the provisions above) to financing.</p>
<p>Tariff &amp; IFFOA</p> <p><b>Request:</b></p> <ol style="list-style-type: none"> <li>1) <b>Modify requirement for PPA execution</b></li> <li>2) <b>Provide option for use of any other SCE interconnection contract other than the IFFOA</b></li> </ol>		<p>It is requested that the Tariff be modified to accommodate:</p> <ol style="list-style-type: none"> <li>1) Signature of the PPA upon completion of Interconnection Application and initial Scoping meetings, and execution of the System Impact Study contract for the project, but prior to completion of the IFFOA. Further, the PPA should be made available to Producer for signature within two weeks of Producer's written request for the PPA on all projects under contract for System Impact Study.</li> <li>2) Option to select use of another SCE interconnection contract other than the IFFOA</li> </ol> <p>Given extended and unusual interconnection processing times by SCE and an untested timeline to complete IFFOA and other contracts it is important that Producers have the opportunity to sign the modified PPA upon contracting for the System Impact Study. The PPA is required in order for Producers to make necessary investments in preparing the project for Construction as well as, in the case of 2011, preserving Federal Tax Grant eligibility.</p> <p>Similarly, the use of the IFFOA as a contract for interconnection is untested and uncertain. It is important to allow each Producer the option to utilize another commercial interconnection contract offered by SCE and do so in connection with the CREST contract.</p>