

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

Order Instituting Rulemaking to Continue
Implementation and Administration of
California Renewables Portfolio Standard
Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

**SILVERADO POWER LLC'S REPLY COMMENTS ON PROPOSED DECISION
GRANTING, WITH MODIFICATIONS, CLEAN COALITION'S MOTION TO AMEND
THE CREST POWER PURCHASE AGREEMENT**

KEYES & FOX LLP
Kevin Fox
Erica Schroeder
436 14th Street, Suite 1305
Oakland, CA 94612
Telephone: (510) 314-8201
Facsimile: (510) 225-3848
E-mail: kfox@keyesandfox.com

Attorneys for
SILVERADO POWER LLC

November 7, 2011

**SILVERADO POWER LLC’S REPLY COMMENTS ON PROPOSED DECISION
GRANTING, WITH MODIFICATIONS, CLEAN COALITION’S MOTION TO AMEND
THE CREST POWER PURCHASE AGREEMENT**

TABLE OF CONTENTS

I. INTRODUCTION	2
II. SILVERADO POWER SUPPORTS THE CONTRACT MODIFICATIONS SET FORTH IN THE PD, WITH ONE MODIFICATION, AND BELIEVES NO ADDITIONAL MODIFICATIONS ARE NEEDED.....	4
A. Silverado Power Strongly Supports the PD’s Determination that a Developer Should Be Able to Enter a Stand-Alone Interconnection Agreement Separate from the CREST PPA Regardless of the Interconnection Process Completed.	5
B. The Commercial Operation Deadline Should Be Calculated from the Date an Interconnection Agreement Is Entered between the Parties.	7
C. No Additional Modifications Are Needed.	10
III. CONCLUSION.....	11
APPENDIX A: Proposed Changes to the Findings of Fact.....	A-1
APPENDIX B: Proposed Changes to the Findings of Law	B-1
APPENDIX C: Proposed Changes to the Order	C-1

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

Order Instituting Rulemaking to Continue
Implementation and Administration of
California Renewables Portfolio Standard
Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

**SILVERADO POWER LLC’S REPLY COMMENTS ON PROPOSED DECISION
GRANTING, WITH MODIFICATIONS, CLEAN COALITION’S MOTION TO AMEND
THE CREST POWER PURCHASE AGREEMENT**

Pursuant to Rule 14.3(d) of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Silverado Power LLC (“Silverado Power”) respectfully submits these reply comments on the *Proposed Decision Granting, With Modifications, the Motion by Clean Coalition for Immediate Amendments of the Southern California Edison Company AB 1969 CREST Power Purchase Agreement* (“PD”), which was issued by Administrative Law Judge (“ALJ”) DeAngelis on October 11, 2011. Silverado believes the PD, which was issued in response to a motion submitted by the Clean Coalition¹ on August 15, 2011, will introduce a number of beneficial modifications to the Southern California Edison Company (“SCE”) California Renewable Energy Small Tariff (“CREST”) Power Purchase Agreement (“PPA”).

¹ The Clean Coalition describes itself as a California-based advocacy group that advocates for policies and programs that enable the “wholesale distributed generation” market segment.

I. INTRODUCTION

Silverado Power is engaged in the full lifecycle of utility-scale solar project development, from site acquisition through physical plant development, ownership and operation. Silverado Power has over 2,000 megawatts of projects currently under development in California and the western United States, including projects that are attempting to make their way through the SCE CREST interconnection queue. These projects will be directly impacted by the modifications to the existing CREST program proposed in the PD. Accordingly, Silverado Power respectfully files these reply comments to address the modifications proposed in the PD, and in the opening comments of SCE and Clean Coalition, which were filed on October 31, 2011. Silverado Power attaches proposed changes to the Findings of Fact, Conclusions of Law and the proposed Order as Appendices A, B and C, respectively.

Silverado Power has been an active participant in the effort to implement changes to the state's existing AB 1969 feed-in tariff program, as required pursuant to Senate Bill ("SB") 32 and SB 2 1X.² Silverado Power submitted an opening brief on feed-in tariff modifications on March 7, 2011, a reply brief on March 22, 2011, and reply comments on August 26, 2011. Silverado Power also participated in an informal process initiated by SCE in May 2011 to resolve problems with the CREST program that had been identified by stakeholders and Commission Staff.³ Silverado Power submitted proposed PPA modifications to SCE in June,

² SB 2 (1X) (Simitian), Stats. 2011, ch. 1, enacted in the 2011-2012 First Extraordinary Session of the Legislature, will "go into effect on the 91st day after adjournment of the special session at which the bill was passed." Cal. Gov't Code § 9600(a). The 2011-2012 First Extraordinary Session adjourned on September 10, 2011, making SB 2 (1X) effective on December 10, 2011.

³ PD at p. 4.

but, unfortunately, the stakeholder process was ended one month later and a revised CREST PPA was never issued.

Silverado Power appreciates the Commission's effort to modify the CREST PPA expeditiously so that developers that have projects languishing in the CREST interconnection queue will have an opportunity to execute a PPA prior to the expiration of the § 1603 federal cash grant at the end of this year.⁴ The PD correctly observes that the process of executing a PPA with SCE continues to be lengthy, in large part due to delays in the interconnection process.⁵ Silverado Power's CREST projects have experienced significant delays in navigating the CREST interconnection process, which has made it difficult for Silverado Power to execute PPAs with SCE.

The PD introduces modifications that will make it easier for developers like Silverado Power to execute a PPA earlier in the interconnection process, prior to executing an interconnection agreement. This should allow a few additional projects to obtain federal cash grants before they expire at the end of the year. However, these modifications will not resolve delays in the interconnection process that are undermining the effectiveness of the CREST program and necessitating the issuance of this PD. Silverado Power understands that interconnection modifications are beyond the scope of this PD and encourages the Commission to pursue interconnection reforms through the recently established Rule 21 rulemaking⁶ to help

⁴ As note on Page 5 of the PD, under § 1603, developers must meet certain milestones by the end of 2011 to preserve their eligibility for federal cash grants, such as completing work of a significant nature on the project or investing 5% of a project's tax basis in equipment destined for that project by the end of 2011.

⁵ PD at p. 5.

⁶ See Rulemaking 11-05-011 (filed September 27, 2011).

break the logjam of interconnection requests so that developers can finally start developing CREST projects.

II. SILVERADO POWER SUPPORTS THE CONTRACT MODIFICATIONS SET FORTH IN THE PD, WITH ONE MODIFICATION, AND BELIEVES NO ADDITIONAL MODIFICATIONS ARE NEEDED.

The PD directs SCE to make six specific modifications to the CREST PPA:⁷

- (1) Modify Section 2.8 (Date of Initial Operation) and Section 4.2(d)(3) (Term and Termination) by incorporating the Commercial Operation Deadline requirements from the Commission-approved RAM PPA;
- (2) Replace Section 4 (Term & Termination) with the Termination and Remedies section of SCE's Commission-approved 2010 SPVP PPA;
- (3) Replace Section 12 (Assignment) with the Assignment provision of the 2010 SPVP PPA;
- (4) Remove Section 14.2 (future modifications) and Section 14.4 (application for modifications);
- (5) Add the Force Majeure and Indemnification provisions from the 2010 SPVP PPA; and
- (6) Provide more options regarding interconnection, including (i) allowing developers to enter a CREST PPA prior to executing an interconnection agreement, and (ii) allowing Rule 21 interconnection customers to sign an interconnection agreement.

Silverado Power did not file opening comments on the PD because it generally agrees with the modifications set forth in the PD. However, after reviewing parties' comments on the PD, Silverado Power feels it necessary to file these reply comments to address two critical issues. First, Silverado Power believes it is critical to support the PD's determination that a

⁷ PD at p. 9.

developer should be allowed to execute an interconnection agreement that is separate from the CREST PPA, regardless of the interconnection process that is completed. Second, Silverado Power believes fairness requires the Commercial Operation Deadline to be calculated from the date an interconnection agreement is entered. Silverado Power does not believe any additional modifications are needed and encourages the Commission to act expeditiously to approve the PD.

A. Silverado Power Strongly Supports the PD’s Determination that a Developer Should Be Able to Enter a Stand-Alone Interconnection Agreement Separate from the CREST PPA Regardless of the Interconnection Process Completed.

The PD requires SCE to offer developers that interconnect under Rule 21 an option to enter into the Generator Interconnection Agreement (“GIA”) that is used for generators studied through the serial Independent Study Process under SCE’s Wholesale Distribution Access Tariff (“WDAT”).⁸ Silverado Power strongly supports this determination.

A developer that has successfully navigated the lengthy and costly interconnection process under Rule 21 should be able to execute an interconnection agreement, even if the developer is unable to execute a CREST PPA. This is critical given that not all developers that have entered the Rule 21 interconnection process will be able to obtain a CREST PPA due to existing program caps. These generators should still be allowed to interconnect. The safety and reliability impacts that are studied and mitigated as part of the Rule 21 interconnection process, with the costs of distribution system upgrades and interconnection facilities paid by the developer, are not specific to participation in the CREST program. Thus, there is no reason to

⁸ PD at p. 26.

prevent these developers from interconnecting and selling output following a Rule 21 interconnection, even if the CREST program is not available.

Moreover, a developer that completes the Rule 21 interconnection process and participates in the CREST program should be provided a stand-alone interconnection agreement that allows for continued interconnection past the term of an economic arrangement to sell output. A developer that completes the interconnection process and executes a CREST PPA should not be required to disconnect and reapply for interconnection simply because the CREST PPA under which the generator is selling output has reached the end of its term. A developer should not be exposed to unknown future costs by being required to disconnect and reconnect a generator whose impacts have already been studied and mitigated under Rule 21.

The Interconnection Facilities Financing and Ownership Agreement (“IFFOA”) used by SCE for Rule 21 interconnection is not a stand-alone interconnection agreement,⁹ and it has not been reviewed or vetted through a stakeholder process.¹⁰ Silverado Power agrees with the PD that developers would be more comfortable signing the GIA, which SCE offers to generators that apply for interconnection through the WDAT.¹¹ The PD correctly observes that all other renewable programs require developers to use the WDAT if interconnecting to the distribution system, which contains the GIA.¹²

SCE states that a generator should not be allowed to begin the interconnection process under Rule 21 procedures and then when it comes time to execute an interconnection agreement

⁹ SCE Comments at p. 10.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

switch to the WDAT procedures.¹³ Silverado Power does not believe such a switch to the WDAT procedures is required, or even contemplated, in the PD. Instead, the PD simply proposes to adopt the GIA attached to the PD as a stand-alone interconnection agreement that can be executed by generators that emerge from the Rule 21 interconnection process. The GIA will require some non-substantive changes, for example, modifying certain section references and references to the Federal Energy Regulatory Commission.¹⁴ Regardless, adoption of the GIA does not require a switch to a different process, but rather the simple ability to enter a well vetted and entirely appropriate stand-alone interconnection agreement as a result of completing the Rule 21 interconnection process. The IFFOA can be attached to the GIA upon execution, enabling the GIA to act as a stand-alone interconnection agreement that can survive the expiration of the CREST PPA term.

B. The Commercial Operation Deadline Should Be Calculated from the Date an Interconnection Agreement Is Entered between the Parties.

Silverado Power does not oppose the PD's decision to incorporate the Commercial Operation Deadline requirement from the Commission-approved RAM PPA into the CREST PPA.¹⁵ This will provide developers an 18-month online date plus one 6-month extension for regulatory delays. Silverado Power supports reasonable development timeframes so long as those timeframes are realistic and achievable, which means they must be within a developer's reasonable control.

¹³ SCE Comments at p. 9.

¹⁴ Silverado Power suggests that SCE work with stakeholders to modify the GIA as necessary and to submit it along with SCE's Tier 1 advice letter implementing the changes required by the PD.

¹⁵ PD at p. 11. SCE and Clean Coalition also support this modification. *See* SCE Comments at p. 10, Clean Coalition Comments at pp. 3-4.

In opening comments, a question arose as to when the Commission should begin holding a developer responsible for meeting a required timeframe to reach commercial operation. The PD proposes to incorporate RAM provisions that would initiate this responsibility at the time the CPUC approves a PPA. However, unlike the RAM program, CREST PPAs do not require Commission approval, so the RAM program requirements are not directly applicable in this instance.

SCE proposes to advance a developer's responsibility to the time at which a CREST PPA is executed. However, the ability of a developer to bring a project online in 18 months, even with a 6-month extension, is still beyond the control of a developer at the time a System Impact Study, Fast Track process,¹⁶ or Phase 1 of a Cluster Study is completed, which is the time at which the PD proposes to allow a developer to execute a CREST PD.¹⁷ The Commission's stated intent in adopting the PD is to allow projects languishing in the CREST interconnection queue to execute a CREST PPA prior to the end of the year.¹⁸ This intent will be undermined if developers are simply provided estimated interconnection completion dates that are well beyond the 24-month period within which developers would be required to reach commercial operation.

The PD recognizes the importance of avoiding PPA provisions that provide SCE with excessive control over termination in the event the processing of interconnection requests is unduly delayed.¹⁹ Developers were directed to use the Rule 21 interconnection process to

¹⁶ Silverado agrees with the opening comments of the Clean Coalition that eligible projects should complete the Fast Track process rather than simply completing the Fast Track screens. *See* Clean Coalition Comments at p. 3.

¹⁷ PD at pp. 25-26.

¹⁸ PD at pp. 2-7.

¹⁹ PD at p. 10 ("Based on SCE's existing backlog in completing interconnection studies and other project development challenges that may delay a project from coming online in 18-

participate in the CREST program, and there are currently 420.46 MW of projects in SCE’s Rule 21 interconnection queue awaiting interconnection results as a result.²⁰ Rule 21 does not impose any study requirement deadlines on SCE. Accordingly, SCE has the ability to control the length of time to complete the Rule 21 interconnection process. It would be unfair to hold developers responsible for achieving a timeline that is outside their control.

Clean Coalition proposes that the timeframe to reach commercial operation should commence upon execution of the Interconnection Agreement (“IA”) between the developer and SCE, rather than upon CREST PPA execution.²¹ Clean Coalition states that “[s]ince current processes put SCE in sole control of the IA timing, . . . IA completion is the fairest point, for all parties, to start the 18-month clock.”²²

Silverado Power agrees that the date of interconnection agreement execution is the fairest place for the Commission to begin holding a developer responsible for meeting a required timeframe to reach commercial operation. The PD recognizes that SCE’s existing backlog in completing interconnection studies and other project development challenges can delay a project from coming online in 18 months.²³ Until the interconnection process is completed and an

months, we find merit in Clean Coalition’s claim that the existing contract language provides SCE with excessive control over termination in the event SCE has unduly delayed the processing of interconnection requests by generators or it the project faces other legitimate delays outside of the producer’s control. Accordingly, we find it appropriate to consider contract modifications suggested by Clean Coalition.”).

²⁰ <http://www.sce.com/EnergyProcurement/renewables/crest.htm>.

²¹ Clean Coalition Comments at p. 5.

²² *Id.* at pp. 3-4.

²³ PD at p. 10 (“Based on SCE’s existing backlog in completing interconnection studies and other project development challenges that may delay a project from coming online in 18-months, we find merit in Clean Coalition’s claim that the existing contract language provides SCE with excessive control over termination in the event SCE has unduly

interconnection agreement is executed, developers have limited control over the ability to reach commercial operation within a fixed timeframe. Accordingly, Silverado Power believes the Commercial Operation Deadline should be calculated from the date an interconnection agreement is entered between the parties.

C. No Additional Modifications Are Needed.

SCE proposes a number of additional modifications to the CREST contract, including several new termination provisions that SCE claims are necessary to balance the risks between the parties.²⁴ These provisions are not in the existing CREST contract, and SCE did press to include these provisions when it had the opportunity to do so through the informal stakeholder process SCE unilaterally terminated earlier this year or in responding to Clean Coalition's August 15 motion. Silverado Power believes these provisions are unnecessary and their inclusion would only shift additional risk onto the developer.

Silverado Power also believes the Commission should reject proposals to modify the current CREST pricing.²⁵ The Commission has an ongoing proceeding that is considering modifications to the existing feed-in tariff program pursuant to SB 32 and SB 2 1X. The existing CREST price is set at the Commission-determined market-price referent ("MPR"), which is the price currently required by state statute. Silverado Power has supported moving away from the MPR once SB 32 and AB 2 1X are implemented.²⁶ Until that time, the Commission should

delayed the processing of interconnection requests by generators or if the project faces other legitimate delays outside of the producer's control.").

²⁴ SCE Comments at p. 7-9.

²⁵ SCE Comments at pp. 3-6

²⁶ See Silverado Power LLC's Reply Comments on Section 399.20 Ruling Dated June 27, 2011, which were filed with the Commission on August 26, 2011

maintain the existing pricing established in Commission Decision 07-07-027. That pricing reflects a consistent approach that is applied across all three investor-owned utilities subject to that Decision and does not unsettle the reasonable expectations of the developers responsible for the nearly 420.46 MW of projects in SCE's CREST queue who have invested considerable resources based on current expectations.

III. CONCLUSION

Silverado Power believes the state's feed-in tariff program can provide an efficient and cost-effective means of procuring renewable energy in California, particularly from smaller scale renewable generators. However, for the feed-in tariff program to be effective, interconnection reforms are needed to break the logjam in processing interconnection requests. The CREST PPA modifications introduced by the PD will allow developers to execute a CREST PPA earlier in the development process, prior to executing an interconnection agreement. Silverado Power supports this modification and the other modifications proposed by the PD. In particular, Silverado Power strongly supports the PD's determination that a developer should be allowed to execute an interconnection agreement separate from the CREST PPA, regardless of the interconnection process that is completed. Silverado Power also believes fairness requires the commercial operation deadline to be calculated from the date an interconnection agreement is entered. Silverado Power does not believe any additional modifications are needed and encourages the Commission to act expeditiously to approve the PD.

Respectfully submitted on November 7, 2011.

/s/ Kevin T. Fox

KEVIN T. FOX
Keyes & Fox LLP
436 14th Street, Suite 1305
Oakland, CA 94612
Telephone: (510) 314-8201
Facsimile: (510) 225-3848
E-mail: kfox@keyesandfox.com

APPENDIX A: Proposed Changes to the Findings of Fact

5. Until the interconnection process is completed and an interconnection agreement is executed, developers have limited control over the ability to reach commercial operation within a fixed timeframe.

[with the following Findings renumbered accordingly]

APPENDIX B: Proposed Changes to the Findings of Law

1. Recognizing that legitimate delays can occur relative to any timeline, the language providing for an 18-month online date plus one six-month extension for regulatory delays, as discussed in D.10-12-048, should be incorporated into the CREST PPA, beginning at the date of execution of the seller's Interconnection Agreement instead of upon contract execution between the IOU and the seller.

APPENDIX C: Proposed Changes to the Order

1. Within five days of the effective date of this decision, Southern California Edison Company shall file a Tier 1 advice letter, effective immediately, incorporating into its California Renewable Energy Small Tariff Power Purchase Agreement the language set forth below, including any non-substantive changes to align internal references.

1.04 Commercial Operation Deadline.

(a) Subject to any extensions made pursuant to Sections 1.04(b), 1.04(c), 3.06(c) or 5.03, and further subject to Section 1.04(d), the Commercial Operation Date must be no later than the earlier of (i) *[sixty (60) days] {for Baseload} [one hundred twenty (120) days] {for Intermittent}* from the Initial Synchronization Date, and (ii) eighteen (18) months from the date of CPUC Approval execution of the Seller's interconnection agreement ("Commercial Operation Deadline").

(b) If all of the interconnection facilities, transmission upgrades and new transmission facilities, if any, described in Seller's interconnection agreement and required to interconnect the Generating Facility to the CAISO Controlled Grid have not been completed and placed into operation by the CAISO or the Transmission Provider on the estimated completion date set forth in Seller's interconnection agreement, then, upon SCE's receipt of Notice from Seller, which Notice must be provided at least sixty (60) days before the date that is eighteen (18) months from the date of CPUC Approval execution of the Seller's interconnection agreement, the Commercial Operation Deadline shall be extended on a day-for-day basis until all of the interconnection facilities, transmission upgrades and new transmission facilities, if any, described in Seller's interconnection agreement and required to interconnect the Generating Facility to the CAISO Controlled Grid have been completed and placed into operation by the CAISO or the Transmission Provider, except to the extent any delay in such completion and placement into operation results from Seller failing to complete its obligations, take all actions and meet all of its deadlines under Seller's interconnection agreement needed to ensure timely completion and operation of such interconnection facilities, transmission upgrades and new transmission facilities.

(c) If Seller has not obtained Permit Approval on or before that date that is ninety (90) days before the date that is eighteen (18) months from the date of CPUC Approval execution of the Seller's interconnection agreement, then, upon SCE's receipt of Notice from Seller, which Notice must be provided at least sixty (60) days before the date that is eighteen (18) months from the date of CPUC Approval execution of the Seller's interconnection agreement, the Commercial Operation Deadline shall be extended on a day-for-day basis until Seller obtains Permit Approval, except to the extent any such delay results from Seller failing to take all commercially

reasonable actions to apply for and meet all of its requirements and deadlines to obtain such Permit Approval.

(d) Notwithstanding anything in this Agreement to the contrary, the Commercial Operation Deadline may not be later than twenty-four (24) months from the date of ~~CPUC Approval~~ execution of the Seller's interconnection agreement.

VERIFICATION

I am an attorney representing Silverado Power LLC and am authorized to make this verification on its behalf. I have read the foregoing “Silverado Power LLC’s Reply Comments on Proposed Decision Granting, with Modifications, Clean Coalition’s Motion to Amend the CREST Power Purchase Agreement,” and am informed and believe that the matters stated therein are true.

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

Executed this 7th day of November, 2011, at Oakland, California.

/s/ Kevin T. Fox

By: Kevin T. Fox