

**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)

**SUNEDISON LLC'S REPLY COMMENTS ON PROPOSED DECISION GRANTING,  
WITH MODIFICATIONS, THE MOTION BY CLEAN COALITION FOR IMMEDIATE  
AMENDMENTS OF THE SOUTHERN EDISON CALIFORNIA COMPANY AB 1969  
CREST POWER PURCHASE AGREEMENT**

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COMPANY AB 1969 CREST POWER PURCHASE AGREEMENT**

SunEdison LLC (“SunEdison”) hereby respectfully submits these Reply Comments in the above-captioned proceeding responding to the October 31, 2011 Opening Comments filed by Southern California Edison (“SCE”) 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 (“Proposed Decision”).

**I. PRICING IS BEYOND THE SCOPE OF THE PROPOSED DECISION**

In its Opening Comments, SCE argues that the current CREST pricing based on the MPR is unlawful and offers two alternative pricing proposals. CREST pricing was established in D. 07-07-027 and is not at issue here. This Proposed Decision, and the Motion that it addresses, are confined to the narrow issue of contract provisions that have proven to be barriers to program success by preventing renewable project developers from obtaining financing. The Commission should reject SCE’s pricing proposals as out of scope. Many of the arguments SCE raises are being addressed as part of the Commission’s ongoing efforts to implement legislative directives set forth in §§ 399.11 - 399.22.

## **II. SCE'S PROPOSAL TO REPLACE THE CREST PPA WITH THE RAM PPA IS OUT OF SCOPE**

Similar to SCE's pricing proposals, SCE's proposal to replace the CREST PPA with the PPA adopted for the RAM program is out of scope of the Proposed Decision and should be rejected. CREST and the RAM are two distinct programs that address two very different market segments. Contrary to SCE's assertion that the RAM is a thoroughly vetted contract, it has not been vetted in the context of the CREST program. The Commission should reject SCE's proposal to use the RAM, and instead only consider modifications to CREST that facilitate a financeable PPA that will enable projects to leverage federal cash grants under § 1603 of the American Recovery and Reinvestment Tax Act before those grants expire at the end of 2011.

## **III. SCE'S PROPOSED MODIFICATIONS TO THE CREST PPA**

SCE proposes several changes to the CREST PPA, which seek to address additional stakeholder concerns not addressed in the Proposed Decision. These specific contract change proposals are discussed below.

In Section III of their Opening Comments, SCE proposes additional termination rights, dispute waivers, and interconnection clarifications. The Commission should reject SCE's proposed additional termination provisions.

### **A. Estimated Interconnection Date Termination Right**

SCE's proposal to deny the CREST PPA to potential generators whose initial interconnection studies indicate a forecasted interconnection date more than 24 months from the execution date of the CREST PPA is unjustified and is not reflective of the realities of the interconnection process. It is our experience that very often the forecasted interconnection date is excessively conservative. In addition, SCE currently retains all control over that date.

Allowing SCE to terminate the CREST PPAs if the studies and construction estimates, which are also prepared by SCE, provide an interconnection date more than 24 months beyond the PPA's Commercial Operation Date ("COD") would put this entire process beyond the control of the developer. While SunEdison has faith that SCE will not abuse its discretion, we would like to propose a different approach. Instead of a firm 24-month COD window, we believe that there should be a day-for-day extension granted for any delays in COD that are attributable to completion of interconnection upgrades, regardless of what interconnection date was estimated in the study phase. The right to terminate the PPA, and associated dispute waiver, if the interconnection date estimate is more than 24 months after contract execution should be rejected.

**B. Transmission Costs Termination Right**

SCE also proposes to include an additional termination right in the CREST contract if projects trigger excessive transmission costs. SCE references a proposal submitted in its February 25, 2011 RAM filing. The proposed termination right was not accepted by the Commission in RAM, and should not be adopted here.

**C. Section 1603 Cash Grant Termination Right**

Finally, SCE proposes the addition of a termination right and dispute waiver that allows SCE to terminate the PPA if the producer does not obtain the Section 1603 cash grant. While the timeline of this cash grant is driving the hasty need for resolution, the current CREST PPA creates financing problems for all projects, not just those that need the cash grant to assist with financing. Since the revised PPA will apply to projects that are not even pursuing the cash grant, SCE should have no right to terminate the contract if a producer either never applies for the cash grant, or fails to get one.

SCE's proposal to further restrict generators rights by including dispute waivers is not appropriate and should be rejected. These dispute waivers do not exist in the current CREST contract and there is no justification to include those now.

#### **IV. INTERCONNECTION AGREEMENT**

The language in the Proposed Decision regarding the appropriate interconnection agreement is difficult to follow. From SunEdison's perspective the Proposed Decision should seek to accomplish two things in modifying the language in the CREST PPA regarding Interconnection (see Section 7). First, the Proposed Decision should ensure that the developers have the opportunity to sign a freestanding Interconnection Agreement that is not tied to the success or life of their PPA. Secondly, the Commission should make clear what Interconnection Agreement will be available so that developers have a chance to review the terms of such an agreement before signing the PPA. Since a freestanding PPA does not currently exist under Rule 21, SunEdison's preference is that the Commission adopt the WDAT Independent Study Process GIA, with necessary non-substantive modifications, to work as the Interconnection Agreement for those projects that have applied under Rule 21. Alternately, the current IFFOA should be modified such that it can stand-alone and function as an interconnection agreement. There does not appear to be a reason to require that the interconnection agreement be incorporated into the PPA itself.

SunEdison would like to be able to sign the PPA regardless of the interconnection process used, but is centrally concerned at this time by the fact that there is no clear free-standing agreement available for projects who have proceeded under Rule 21 as the program previously required.

## V. SCE'S PROPOSED CONTRACT ADDITIONS

In Section IV B of its Opening Comments, SCE proposes to include four additional provisions to address stakeholder concerns.

SCE proposes to include a new Telemetry requirement. SunEdison is not opposed to telemetry requirements, but notes that Rule 21 already requires telemetry for systems > 1MW. The Commission is also addressing this issue in ongoing efforts to implement legislative directives set forth in §§ 399.11 - 399.22.

SunEdison supports SCE's proposal to clarify the curtailment rights in the contract, specifically that SCE has the right to curtail the producer, but is obligated to pay for any curtailed product.

SunEdison is not opposed to the additional requirement of development security, but notes that the proposed level of \$50/kW exceeds that adopted for projects <5MW in the RAM program, which was \$20/kW.

SunEdison appreciates the importance of Resource Adequacy, but disagrees with SCE's proposal that Producers who elect to apply for interconnection under the WDAT must attain Full Capacity Deliverability Status (FCDS) as a condition precedent to the project's Term Start Date. The Commission determined in RAM that the IOUs shall not require sellers to achieve full capacity deliverability status unless the seller can obtain full deliverability with no additional costs to the seller. The same principle should be adopted here. To the extent the Commission allows projects to proceed under WDAT, they should be required to apply for FCDS, but should not be required to obtain FCDS unless the cost is zero. Since there is not currently any process

under Rule 21 for achieving FCDS, there should be no corresponding requirement for projects interconnecting under Rule 21.

## **VI. CONCLUSION**

The Proposed Decision rightly acknowledges the urgency of addressing CREST contract deficiencies in order to enable small renewable developers to take advantage of federal cash grants under § 1603 of the American Recovery and Reinvestment Tax Act before those grants expire at the end of 2011. The Commission should reject proposals that are out of scope of this narrow issue and that would delay implementation of program changes. SunEdison believes adoption of a freestanding interconnection agreement to be used for project's interconnecting under Rule 21 is necessary. We also believe that the extensions for achieving commercial operation need to be expanded to allow developers a day-for-day extension if the installation of interconnection facilities exceeds the current 24-month window. Please find proposed changes to the Findings of Fact and Conclusions of Law in Appendix A and B to this filing.

Respectfully submitted on November 7, 2011.

*/s/ Curtis Seymour* \_\_\_\_\_

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**APPENDIX A**  
**Propose Changes to the Findings of Fact**

(add) 2. Estimates given for Commercial Operation early in the study process are often overly conservative and are outside of the control of the developer.

(add) 23. There is not currently a process for achieving Full Capacity Deliverability Status under Rule 21.



## APPENDIX B

### Proposed Modifications to the Conclusions of Law

(add) 2. Recognizing that contract COD can be delayed by the timing of interconnection upgrades, there should be a day-for-day extension granted for any delays in meeting the COD that are attributable to completion of interconnection upgrades.

7. ~~By Offering developers and producers additional contract options for interconnection, delays in processing may be shortened.~~ that have pursued interconnection under Rule 21 the option to sign a freestanding interconnection agreement modeled after the WDAT Independent Study Process GIA will give developers more certainty in the interconnection process ~~delays in processing may be shortened.~~

(add) 11. Since there is not currently any process under Rule 21 for achieving Full Capacity Deliverability Status, there should be no corresponding requirement for projects interconnecting under Rule 21 to achieve Full Capacity Deliverability Status.

Reorder remaining paragraphs accordingly.

## VERIFICATION

I am an attorney representing SunEdison LLC and am authorized to make this verification on its behalf. I have read the foregoing “SunEdison LLC’s Reply Comments on 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,” 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/ Sky C. Stanfield* \_\_\_\_\_

By: Sky C. Stanfield