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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4453

February 16, 2012

R E S O L U T I O N

Resolution E-4453. Southern California Edison Company.

PROPOSED OUTCOME: This Resolution approves with modifications various changes to Southern California Edison Company's Solar Photovoltaic Program.

ESTIMATED COST: Actual costs are unknown at this time.

By Advice Letter 2571-E filed on April 5, 2011 and Advice Letter 2571-E-A filed on December 9, 2011.

SUMMARY

This Resolution implements changes to Southern California Edison Company's (SCE) Solar Photovoltaic Program (SPVP or Program). The SPVP is a five-year program adopted by the California Public Utilities Commission (Commission) in Decision (D.) 09-06-049 to spur the development of distributed solar photovoltaic (PV) projects in SCE's service territory. The Program primarily consists of commercial rooftop projects in the one to two megawatt (MW) range. Specifically, D.09-06-049 authorized Independent Power Producer (IPP) solicitations and a Utility-Owned Generation (UOG) program, with an overall program cap of 500 MW.

SCE submitted Advice Letter (AL) 2571-E on April 5, 2011, requesting that the Commission approve changes to the following documents used in its SPVP Request for Offers (RFO) process: the 2011 RFO Participant Instructions, the 2011 standard Power Purchase Agreement (PPA) for contracts 5 MW or less, and the standard PPA for projects greater than 5 MW but less than 10 MW. While AL 2571-E was filed in 2011, this Resolution is dated 2012. For this reason, all references herein to the modified Participant Instructions and Standard PPAs

will be cited as the 2012 Participant Instructions and 2012 SPVP Standard PPAs. The 2012 RFO Participant Instructions and standard PPAs will replace documents currently being used as part of the IPP portion of the SPVP.

On April 7, 2011, SCE filed substitute sheets, which corrected non-substantive errors in AL 2571-E. On April 13, 2011, SCE filed additional substitute sheets, which included minor revisions to the confidentiality provision in the PPA for projects 5 MW or less. On December 9, 2011, SCE filed supplemental AL 2571-E-A, which corrected several errors in the standard PPA for projects 5 MW or less.

This Resolution approves the majority of changes SCE has proposed to its Participant Instructions and Standard PPAs because they are consistent with D.09-06-049 and Resolution E-4299. This Resolution also responds to a party's protest, rejects some of SCE's requested changes, and accepts some changes with modifications. In order to make the standard SPVP consistent with other recently approved standard contracts for renewable resources, this Resolution makes additional changes beyond those proposed by SCE. Once this Resolution is effective, SCE may proceed with its 2012 SPVP RFO.

The following list is a summary of changes to the 2012 standard PPA for contracts 5 MW or less when compared to the previously approved 2010 standard PPA for contracts 5 MW or less:

- Producer may either own and operate or control the generating facility (§ 1.1 and Throughout).
- Producer shall cooperate with SCE in good faith to assure that SCE is authorized as the Scheduling Coordinator prior to the date the facility first produces the product and no later than any deadline established by CAISO (§ 2.8).
- Producer may change the term start date by providing notice to SCE at least thirty days before the term start date (§ 3.2).
- Producer must submit annual reports listing the race, ethnicity, and gender of Producer's senior officers, and all Women, Minority, Disabled Veteran Business Enterprise (WMDVBE) vendors that supply goods or services to Producer (§ 3.4).

- Producer must post and maintain the collateral requirement with SCE until Producer has satisfied its obligations under the PPA (§ 4.2 & 4.3).
- Producer shall forfeit, and SCE has the right to retain, a portion of the collateral requirement and Gross Power Rating if, on the term start date, Producer has installed only a portion of the equipment or devices necessary for a facility to satisfy the Gross Power Rating (§ 4.3.2).
- SCE may terminate the agreement if the term does not commence within 18 months of Commission approval; a one-time six month extension allowed for regulatory delay is allowed (§ 6.1.2).
- Either party may terminate the PPA in the event that the other party becomes bankrupt or if Commission approval is not obtained (§ 6.2.4 & 6.2.6).
- SCE may retain the collateral requirement if SCE terminates the PPA before the term start date for reasons other than a force majeure occurs, the electrical output ceases for 12 months, or Commission approval is not obtained (§ 6.4).
- Producer is required to install a Telemetry System, subject to a \$20,000 cap on Producer's costs (§ 7.10 & 7.11).
- SCE is not required to purchase energy that is not or cannot be delivered because of an outage, force majeure, or a reduction or curtailment of energy, except as provided for elsewhere requiring payment for curtailment (§ 8.1).
- Producer is required to issue an invoice to SCE and SCE is required to pay via wire transfer (§ 8.5).
- SCE may curtail Producer's energy production for emergencies, as instructed by CAISO or the transmission provider, on a take or pay basis (§ 9).
- Producer agrees that the facility is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff. The Parties agree that any Availability Incentive Payments are for the benefit of Producer and for Producer's account and that any Non-Availability Charges are the responsibility of Producer and for Producer's account (§ 16.7).

- SCE may terminate the contract if Producer fails to post or maintain the collateral requirement, subject to a modification allowing for a reasonable cure period (§ 6.1.5).
- A definition of WMDBVE is added (Appendix A).
- The definition of Gross Power Rating and Net Power Rating is modified (Appendix A).
- Energy forecasting and capacity forecasting is required to be conducted by Producer (Appendix D).

BACKGROUND

Overview of the Solar Photovoltaic Program (SPVP)

On March 27, 2008, Southern California Edison (SCE) filed Application (A.) 08-03-015 seeking authorization for a five-year program to install, own, and operate up to 250 megawatts (MW) of one to two MW solar photovoltaic (PV) facilities on commercial rooftops in its service territory. On June 18, 2009, the Commission approved SCE's SPVP, with modifications, in Decision (D.) 09-06-049 (referred to herein as the SPVP Decision). The SPVP Decision established a 500 MW solar PV program divided equally between a utility owned generation (UOG) program and an Independent Power Producer (IPP) program. The UOG program approved SCE's request to own and operate up to 250 MW of rooftop solar PV facilities in its service territory. The SPVP Decision also authorized SCE to procure ground mounted facilities up to ten percent of the total SPVP program cap of 500 MW.

The IPP program authorized SCE to execute contracts for 250 MW of generation from facilities owned and maintained by IPPs through a competitive solicitation process and to file an advice letter, "...delineating the criteria for selection of the bids, and containing a draft standard 20-year PPA [power purchase agreement] contract" for the Program. Resolution E-4299 approved these program details.

Aiming to improve future SPVP solicitations, Resolution E-4299 also instructs SCE to hold a program forum within 60 days following each SPVP solicitation's closing date whereby market participants: can revisit elements of the SPVP design, identify elements that are overly restrictive or blocking participation, and

propose refinements to the solicitation process.¹ If SCE then seeks to make modifications to the SPVP or associated documents based on the results of each program forum, and in consultation with Energy Division, Resolution E-4299 directs SCE to file an advice letter.

SCE launched the 2010 SPVP request for offers (RFO) on March 18, 2010 and executed contracts on July 26, 2010. SCE filed and served the executed contracts with the Commission on September 24, 2010 through AL 2513-E, which the Commission approved with an effective date of October 25, 2010. Pursuant to Resolution E-4299, SCE held a program forum on December 2, 2010 and received input from the market participants for the next IPP SPVP RFO. By AL 2571-E and AL 2571-E-A, SCE now seeks Commission approval of changes to the IPP portion of the SPVP RFO instructions and PPAs based on SCE's experience and the feedback SCE received in the program forum.

NOTICE

Notice of AL 2571-E and AL 2571-E-A was made by publication in the Commission's Daily Calendar. SCE states that a copy of the Advice Letter was mailed and distributed in accordance with Section IV of General Order 96-B.

PROTESTS

Commercial Solar Solutions (CSS) served a timely protest of AL 2571-E on April 25, 2011. SCE replied to CSS's protest on May 2, 2011.

DISCUSSION

Energy Division evaluated the requested changes in AL 2571-E using the following criteria:

- Consistency with the Commission approved Request for Offers schedule.
- Consistency with prior Commission Decisions and Resolutions on Southern California Edison's Solar Photovoltaic Program.

¹ Resolution E-4299, page 3-4. For example, a program forum may address whether the level of development security required and the frequency of solicitations should be refined.

- Consistency with other Commission Decisions addressing similar renewable programs.

SPVP Solicitation Framework

Request for Offers (RFO) Schedule

In adopting SCE's SPVP, the Commission ordered SCE to hold at least one IPP solicitation every year for five years for approximately 50 MW. Pursuant to this direction, SCE launched its 2010 SPVP RFO on March 18, 2010, and executed contracts on July 26, 2010. SCE submitted the executed contracts in September 2010, which staff approved in October 2010. SCE is required to hold a program forum within 60 days of the close of the solicitation, which SCE has defined as the date that SCE receives approval for its executed contracts. SCE held the program forum on December 2, 2010 and submitted Advice Letter 2571-E to modify the standard contract on April 5, 2011.

In its protest to AL 2571-E, California Solar Solutions (CSS) states that SCE did not comply with the timeframe established for the SPVP solicitation. According to CSS, SCE failed to hold its program forum within 60 days of the closing of its solicitation and took over four months after the program forum to file an advice letter seeking changes to the program. CSS also contends that the language in Resolution E-4299 requiring SCE to hold "at least one IPP solicitation . . . per year," means that SCE must hold at least one IPP solicitation every 12 months, not every calendar year.

In response to CSS's protest, SCE notes that CSS has not cited any Commission authority in support of its contention that the second RFO should have been scheduled within 12 months of the first solicitation. SCE also states that its proposed RFO schedule takes into account the time needed for Commission staff to review and approve the proposed SPVP refinements and the time required to complete interconnection studies. Specifically, SCE would accept offers in the second SPVP solicitation two weeks after CAISO Cluster 4 Phase I interconnection studies have been completed, or four months after the launch of the RFO, whichever is later. SCE states that completion of interconnection studies is useful information that can be incorporated into offers submitted to the RFO, and will significantly increase the potential pool of projects.

The Commission finds that SCE complied with the schedule established in D.09-06-049. SCE submitted the executed contracts in September 2010, which staff approved in October 2010. SCE reasonably defined the close of its solicitation as the date it received approval of its executed contracts, and held its program forum within 60 days of that date. SCE held the program forum on December 2, 2010 and submitted Advice Letter 2571-E to modify the standard contract on April 5, 2011. Since SCE held the program forum within 60 days of the close of the solicitation, SCE is in compliance with Resolution E-4299.

Regarding CSS's second contention that SCE failed to hold the 2010 and 2011 solicitations within 12 months of each other, neither the SPVP Decision nor the Resolution require a solicitation every 12 months, but rather every year. CSS's argument that SCE failed to comply with the Commission approved SPVP schedule and that SCE must hold at least one IPP solicitation every 12 months is denied. However, CSS's underlying concern that the solicitation process can be long and arduous for small developers has merit. Because it took SCE a year from the first solicitation to file the advice letter requesting approval of changes to the standard contracts and because of limited Commission staff resources to review the advice letter, SCE did not hold a solicitation in 2011. In order to prevent delay in the future, SCE should streamline its schedule so that if an advice letter is to be filed, it is filed sooner than a year from the close of the solicitation.

In addition, when requesting changes to the SPVP contract or Program, SCE should file a Tier 2 advice letter, which would go into effect 30 days from filing unless staff suspends the advice letter. SCE filed the advice letter 2571-E with a Tier 3 designation. Resolution E-4299 ordered SCE to file a Tier 2 advice letter when seeking Commission approval of SPVP projects executed using the Commission approved standard SPVP PPA.² Resolution E-4299 also ordered SCE to file an advice letter when seeking changes to the standard SPVP PPA, but did not specifically state what Tier designation should be used.³ D.09-06-049 also did not specify what Tier advice letter should be filed in this instance, but

² Resolution E-4299, page 21.

³ Resolution E-4299, pages 4, 28.

“encourage[d] SCE to include in its proposed RFO process a means for expediting Commission review and approval of the resulting contracts, such as the use of Tier 2 advice letters.”⁴ Requiring a Tier 2 advice letter comports with the Commission’s General Order 96-B on advice letter filings, which allows utilities to file Tier 1 or Tier 2 advice letters that conform to Commission orders authorizing a contract or program.

Because an advice letter seeking changes to standard PPA documents for the SPVP will be changes consistent with the authority previously granted to it by the Commission, SCE should file a Tier 2 advice letter.

SCE should streamline its RFO schedule in order to decrease the time between the second and third solicitations; SCE should file a Tier 2 advice letter for future advice letters requesting changes to the SPVP. In addition, SCE’s requested schedule to wait for Cluster Study 4 Phase I interconnection study results, or four months after the launch of the RFO, whichever is later, is granted. Finally, SCE is allowed slight modifications to its RFO schedule in order to accommodate any new circumstances that have arisen since SCE filed AL 2571-E in April 2011.

SPVP Standard PPA Terms and Conditions for Contracts 5 MW or Less

Table 1 below summarizes the proposed changes from the CPUC-approved 2010 SPVP PPA to the 2012 SPVP PPA for projects of 5 MW of less.

Table 1. Proposed Changes from the 2010 SPVP PPA and the 2012 SPVP PPA, for Contracts 5 MW or Less

#	PPA Section	2010 SPVP PPA	2012 SPVP PPA	Accepted, Rejected, or Modified	SCE or Commission Proposed Change
1	Producer	Requires the	Same provision	Modified to	Commission

⁴ D.09-06-049, pages 43.

	must own and operate the generating facility (§ 1.1 and Throughout)	producer to own the generating facility.	included.	allow the developer or producer to either own or control the facility.	modification.
2	Producer must assure that SCE is authorized as the Scheduling Coordinator (§ 2.8)	Requires producer to cooperate in good faith to assure that SCE is authorized as the Scheduling Coordinator.	Establishes a timeline by which Producer must assure that SCE is authorized to act as the Scheduling Coordinator.	Accepted without modification.	SCE suggested change.
3	Changes to Term Start Date (§ 3.2)	Allows producer to change the term start date by providing at least three days notice to SCE before the term start date.	Allows producer to change the term start date by providing at least thirty days notice to SCE before the term start date.	Accepted without modification.	SCE suggested change.
4	Women, Minority, Disabled Veteran Business Enterprise (WMDVBE) Reporting Requirements (§ 3.4)	Not included.	Requires annual reporting listing the race, ethnicity, and gender of Producer's senior officers, and all WMDVBEs that supply goods/services to Producer during previous calendar year.	Accepted without modification.	SCE suggested change.
5	Development	Requires \$20/kW	Requires \$50/kW	Rejected.	SCE

	Security/ Collateral Requirement (§ 4)	in development security.	in development security.		suggested change.
6	Posting and Return of Development Security/ Collateral Requirement (§ 4.2 & 4.3)	Requires Producer to post the development security to SCE and maintain it until installation of necessary equipment/devic es; SCE must return upon installation.	Requires Producer to post the collateral requirement to SCE and maintain it until Producer has satisfied all monetary obligations under the PPA that survive any termination, not to exceed one year following the end of term.	Accepted without modification.	SCE suggested change.
7	Term Start Date; Necessary Equipment/ Devices (§ 4.3.2)	If by the term start date, producer has only installed a portion of the necessary equipment and devices, SCE shall return within thirty days, a portion of the development security equal to the product of \$20/kW of the portion of the Gross Power	If by the term start date, producer has only installed a portion of the necessary equipment and devices, producer shall forfeit, and SCE shall have the right to retain, a portion of the collateral requirement equal to the product of \$50/kW and the Gross Power	Rejected. No change from 2010 contract.	SCE suggested change.

		Rating.	Rating.		
8	Termination; Operation Deadline (§ 6.1.2)	SCE may terminate the agreement if the term does not commence within 18 months of Commission approval.	Same provision included.	Modified to allow for a one-time six month extension due to regulatory delay.	Commission modification.
9	SCE's Termination Right (§ 6.1.5)	Not included.	SCE can terminate if Producer fails to post/maintain collateral requirement.	Accepted with modifications requiring a reasonable cure period.	SCE suggested change.
10	Mutual Termination Rights (§ 6.2.4 & 6.2.6)	Not included	Allows either party to terminate the PPA in the event that the other party becomes bankrupt or if Commission approval is not obtained.	Accepted without modification.	SCE suggested change.
11	Effect of Certain Terminations on the Collateral Requirement (§ 6.4)	Not included.	SCE can retain collateral requirement if SCE terminates the PPA other than because electrical output ceases for 12 months, a force majeure occurs, or Commission	Accepted without modification.	SCE suggested change.

			approval is not obtained.		
1 2	Incorporating Transmission Costs in Bid Ranking and Full Capacity Deliverability (§ 7.1)	Not included.	Requires Producer to demonstrate that is has obtained Full Capacity Deliverability Status before the Term Start Date.	Rejected.	SCE suggested change.
1 3	Producer's Obligations (§ 7.10 & 7.11)	Requires producer to install a Telemetry System.	Same provision included.	Modified to delete provision requiring a Telemetry System.	SCE suggested change.
1 4	No Requirements to Purchase Undelivered Energy (§ 8.1)	Not included.	SCE will not be required to purchase energy that is not or cannot be delivered because of an outage, force majeure, or a reduction or curtailment of energy, except as provided for elsewhere requiring payment for curtailment.	Accepted without modification.	SCE suggested change.
1 5	Invoices (§ 8.5)	Requires Producer to issue a payment statement to SCE	Requires Producer to issue an invoice to SCE and requires SCE	Accepted without modification.	SCE suggested change.

		and requires SCE to pay via check.	to pay via wire transfer.		
1 6	Curtailement (§ 9)	Not included.	Allows SCE to curtail Producer's energy production for emergencies, as instructed by CAISO or the transmission provider or on take or pay basis.	Accepted with modification.	SCE suggested change; Commission modification to suggested change.
1 7	Applicability of CAISO Availability Incentives (§ 16.7)	Not included.	States that Producer agrees that the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff and that the Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for	Accepted without modification.	SCE suggested change.

			Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account.		
18	Appendix A	Not included.	Added definition of WMDBVE.	Accepted without modification.	SCE suggested change.
19	Appendix A	Defines Gross and Net Power Rating	Adds to the definition of Gross and Net Power Rating to provide that each may be adjusted pursuant to Section 4.3.2 of the standard PPA.	Accepted without modification.	SCE suggested change.
20	Appendix D	Only requires energy forecasting.	Requires energy forecasting and, at SCE's request, capacity forecasting.	Accepted without modification.	SCE suggested change.

The following discussion provides in more detail the significance of a proposed change to a contract term, whether a term was protested, or if staff recommends modifying a term.⁵ In general, terms that are accepted without modifications or are not significant are not discussed below.

1. Requirement that the Producer Either Own or Control the Generating Facility (Throughout)

SCE's standard Program PPAs provide that the producer shall own and operate the generating facility.

⁵ Paragraphs are numbered to correspond to Table 1.

Staff recommends modifying this requirement throughout the standard PPAs to allow the producer to either own or control the facility. This modification will help to accommodate different financing structures such as a sale-leaseback as opposed to outright ownership.

The standard PPAs are modified to allow Producer to either own or control the generating facility.

4. Women, Minority, Disabled Veteran-owned Business Enterprises (WMDVBEs) Reporting Requirements (§ 3.4)

Among the changes made to SCE's 2012 PPA is an added requirement that project developers annually file a report listing:

The race, ethnicity, and gender of the developer's senior officers, and members who are natural persons, if any; and . . . All WMDVBEs that supply goods or services to Producer during the previous calendar year, including any certifications or other documentation of such WMDVBEs' status.

This requirement was not included in SCE's prior 2010 SPVP PPA.

The Commission's General Order Number 156 requires utilities to track information relating to the number of women, minority, and disabled veteran owned business enterprises in utility contracting. This information must be filed in annual reports with the Commission. SCE's proposed change to its standard PPA will help SCE track this information and will thus help to comply with Commission orders. This change is also consistent with Resolution E-4299, which urged SCE "to ensure that its RFO is made widely available to all interested parties, including WMDVBE suppliers. . ."⁶

SCE's proposed requirement that developers file annual WMDVBE reports is reasonable, consistent with General Order 156, and is accepted without modification.

⁶ Resolution E-4299, page 26.

5. Development Security/Collateral Requirement (§ 4)

Resolution E-4299 required a development security in the amount of \$20/kilowatt (kW). SCE proposes to raise the development security requirement in its 2012 PPA to \$50/kW. SCE states this increase is being requested due to market feedback and in order to bring the PPA more in line with SCE's market risk exposure and industry standards.

CSS protests the \$50/kW security deposit increase, arguing that it presents a barrier for small developers. The independent evaluator (IE), Accion Group, agrees with SCE that a \$50/ kW development security is reasonable.

Security requirements have varied between the Commission's various renewable programs from roughly \$20/kW to \$60/kW for intermittent resources. In Resolution E-4299 implementing SPVP, staff revised the development security proposed in SCE's draft standard PPA from \$30/kW to \$20/kW. Similarly, in PG&E's solar PV program, the Commission adopted a security deposit of \$20/kW for projects less than 3 MW and \$35/kW for projects 3 MW or greater.⁷ In D.10-12-048 (referred to herein as the RAM Decision), which adopted the RAM program, the Commission found "it reasonable to require a \$20/kW development security deposit for projects 5 MW and smaller, and a \$60/\$90 per kW deposit for intermittent and baseload resources, respectively, for projects greater than 5 MW and up to 20 MW in size."⁸

The RAM Decision discussed the need to balance "the risk that if [development security is] set too high, we will exclude projects that might be reasonably viable but which lack the necessary capital to post a large security amount."⁹ The Commission also noted multiple benefits of development security costs, including that a deposit subject to forfeiture provides an additional incentive for

⁷ The Commission adopted PG&E's Solar PV Program in D.10-04-052.

⁸ D.10-12-048, page 55.

⁹ D.10-12-048, page 54.

the developer to complete the project within the allotted timeframe, and helps filter out projects that investors believe have no chance of success.¹⁰

Based on the RAM Decision, a \$20/kW security deposit is reasonable for projects up to 5 MW in size. Thus, SCE's request to increase the security deposit from \$20/kW to \$50/kW for projects up to 5 MW is denied.

The collateral requirement for projects up to 5 MW should remain \$20/kW.

6. Posting and Return of Development Security/Collateral Requirement (§§ 4.2 & 4.3)

The 2010 SPVP PPA required the producer to post the development security to SCE and maintain it until installation of necessary equipment and devices. Upon installation of necessary equipment and devices, SCE was required to return the development security. The 2012 proposed PPA would require the producer to post the collateral requirement to SCE and maintain it until the producer has satisfied all monetary obligations under the PPA that survive any termination not to exceed one year following the end of the term. SCE states that it is attempting to adopt the RAM program strategy of rolling the development security into ongoing performance assurance. This is a reasonable change since it is consistent with the RAM Decision.

Requiring Producer to post the collateral requirement to SCE until Producer has satisfied its obligations is reasonable.

9. SCE's Termination Rights (§ 6.1.5)

SCE requests a termination right in the 2012 RFO PPA if the producer fails to post or maintain its collateral requirement. This requirement was not included in SCE's 2010 PPA.

¹⁰ D.10-12-048, page 54.

In the IE's evaluation of AL 2571-E, the IE stated that the failure to post or maintain collateral is a reasonable cause for contract termination. However, the IE also states that it is reasonable to provide some cure period for failure to maintain collateral, an opportunity that it is not explicitly given in the SPVP PPA.

SCE's proposed change is reasonable, subject to a modification whereby the energy producer is given a reasonable time to cure its failure to post or maintain collateral prior to contract termination. See Appendix B for sample contractual language regarding this cure period.

Allowing SCE to terminate the contract if Producer fails to post or maintain the agreed upon collateral requirement is reasonable, provided however, that the standard PPA allow for a reasonable cure period prior to contract termination. SCE shall modify § 6.1.5 of the PPA for contracts up to 5 MW to allow for a minimum 15 day cure period.

10. Termination; Operation Deadline (§ 6.1.2)

SCE's 2010 PPA provides that SCE may terminate the agreement if the term start date does not commence within 18 months of Commission approval, subject to a force majeure extension. With the goal of having the SPVP PPA reflect more recent Commission approved standard contracts, this language should be modified to allow for a one-time six month extension if the developer can successfully demonstrate the delay is due to regulatory processes outside of its control, such as permitting or interconnection delays not caused by the developer.¹¹ See Appendix A for the exact contract language used in the RAM contract.

SCE shall modify the SPVP PPA for contracts up to 5 MW so that a 6 month extension due to regulatory delays is allowed if the 18-month online date is not achieved.

SCE's standard PPA for contracts 5 MW or less is modified to allow SCE to terminate the contract if the term does not commence within 18 months of Commission approval, with a one-time six month extension if the project can

¹¹ See e.g., D.10-12-048, page 50.

successfully demonstrate that the cause of delay is due to regulatory processes outside of its control. SCE should include the language in Appendix A with non-substantive revisions to align internal references.

11. Effect of Certain Termination on the Collateral Requirement

SCE proposes to add a provision in its standard PPA that allows it to retain the collateral requirement if SCE terminates the PPA other than because electrical output ceases for 12 months, a force majeure occurs, or Commission approval is not obtained.

SCE asserts that this change is being proposed in order to bring the SPVP PPA more in-line with SCE's market risk exposure and with industry standards, including the RAM PPA.

Allowing SCE to retain the collateral requirement should it terminate the PPA is a reasonable change given that the provision provides for exceptions for factors such as a force majeure. This change is also reasonable considering that this Resolution modifies other provisions regarding termination such as requiring a six-month extension to the 18 month online date, and a cure period for failure to post or maintain the collateral requirements.

Allowing SCE to retain the collateral requirement if, before the term start date, it terminates that PPA for reasons other than because electrical output ceases for 12 months, a force majeure occurs, or Commission approval is not obtained, is reasonable and accepted without modification.

12. Incorporating Transmission Costs in Bid Ranking and Full Capacity Deliverability Status (§ 7.1)

Incorporating Transmission Costs in Bid Ranking

Draft Resolution E-4453 directed SCE to only select or reject bids solely on the basis of price. In comments on the draft resolution, SCE contends that there is no legal basis to prohibit it from utilizing its renewable premium calculation in its valuation of bids. SCE requested at a minimum that it be allowed to incorporate transmission upgrade costs into its bid ranking, as the Commission allowed in Resolution E-4414 for the RAM program. Silverado Power, LLC and the

Interstate Renewable Energy Council (IREC) also submitted comments on the draft resolution supporting SCE's ability to add transmission costs when ranking bids. This is a reasonable request given that a similar authorization is already provided for in the RAM PPA.

In order to select bids based on their total ratepayer costs (contract price plus ratepayer funded transmission costs), SCE is authorized to add an individual bid's transmission upgrade costs to the bid price for ranking purposes.

Full Capacity Deliverability Status (§ 7.1)

One significant change SCE proposes to make to the 2012 PPA for both contracts is the requirement that the producer demonstrate that it has obtained Full Capacity Deliverability Status (FCDS) before the Term Start Date. This requirement was not included in the 2010 SPVP PPA.

The IE states that requiring a producer to demonstrate FCDS is reasonable but that it would also be reasonable "to provide an explicit limited extension for specific events such as failure by the Transmission provider to complete Interconnection for the project or delay in receiving necessary permits due to actions or inactions of any Governmental Authority."

The investor-owned utilities (IOUs) requested this type of provision in their RAM implementation advice letters, but the Commission rejected this request in Resolution E-4414.¹² Specifically, the Commission rejected the IOUs' request to require renewable generators to achieve FCDS because the IOUs did not show a need for resource adequacy from small renewable generators. In addition, the IOUs did not compare the costs of procuring resource adequacy from a renewable generator to the costs of procuring resource adequacy from another non-renewable source. Because ratepayers bear the costs of deliverability network upgrades needed to qualify for resource adequacy, this type of economic analysis is an important factor in determining how to procure resource adequacy. In addition, achieving resource adequacy can be an expensive and time consuming burden for small renewable projects and could cause undue risk and uncertainty.

¹² Resolution E-4414, page 16.

Draft Resolution E-4453 proposed to resolve this issue by rejecting SCE's request to require Full Capacity Deliverability Status prior to commercial operation or at any point in the future for projects resulting from the SPVP. The draft resolution, instead, would have required SCE to require the Producer to apply for a deliverability study, as ordered in the RAM Resolution E-4414. The Producer would then have only been required to achieve full deliverability status in instances where no additional upgrades for deliverability purposes were needed or if the Producer could obtain full deliverability at no additional cost.

The Interstate Renewable Energy Council (IREC) submitted comments proposing the following change to the draft resolution:

- SCE should be allowed to consider deliverability status in its evaluation of SPVP bids until a timely and cost-effective methodology is developed to establish resource adequacy value for distributed generation projects. Further, if SCE is to request deliverability studies, it should reimburse the developer for the cost. Additionally, completion of such a study should not be a condition precedent for beginning operation.

In response, SCE offered a counter-proposal:

- It is too costly, and therefore unreasonable, to require SCE to reimburse FCDS study costs for developers. Instead, SCE proposes that developers have two options, either choosing to bid their projects as energy-only or choosing to bid their projects with FCDS. If choosing to bid with FCDS, SCE should not be required to reimburse these study costs and the project must achieve FCDS before its online date.

IREC's concern that FCDS costs are a financial burden for producers of small renewable projects is reasonable, but SCE's concern that it would be unfair to require ratepayers to reimburse these costs is also reasonable. Also, projects that can deliver resource adequacy provide more value to ratepayers and should be recognized for that value. As a result, this resolution adopts SCE's proposal to allow producers two options for bidding, either as energy-only or with FCDS,

and that any project bidding with FCDS must have achieved that status before its commercial online date.

SCE's proposed change to require FCDS for all producers is rejected. Instead, Producers will have two options, either to bid their project as energy-only or to bid their project with FCDS. Producer is required to achieve FCDS before the commercial online date in the instances where producer chooses to bid with FCDS. Finally, in order to recognize the value of the resource adequacy benefits of a producer that has FCDS, SCE is authorized to add the value of the resource adequacy benefits in the instance that a bid participates in the RFO as FCDS.

Thus SCE shall rank bids using the following formula: bid price + transmission upgrade costs (network upgrade costs and deliverability upgrade costs) – resource adequacy benefits.

13. Installation of a Telemetry System (§ 7.10 & 7.11)

Both the 2010 and 2012 standard PPAs require the producer to install a telemetry system in order to facilitate the remote collection of quality meter data. While the collection of data from a telemetry system is useful information for SCE to obtain, it also presents an expensive and burdensome requirement for small producers. While the Commission did not expressly reject this requirement in SCE's California Renewable Energy Small Tariff (CREST) PPA, it also did not approve SCE's request for use of telemetry for projects up to 1.5 MW.¹³

The draft resolution adopted a similar approach, modifying the SPVP PPA for projects 5 MW or less to delete the requirement that the producer install a telemetry system in an effort to align contractual requirements with the CREST PPA.

In SCE's comments to the draft resolution, however, it contends that it cannot schedule a resource into the CAISO without these telemetry systems in place, thus resulting in a decrease in the value of these contracts to SCE's customers if they are unable to deliver accounted-for scheduled energy. In comments, SCE

¹³ See D.11-11-012.

proposed a compromise to limit the financial burden on small producers. Specifically, SCE proposed that the producers install a telemetry system subject to a cost cap for the Producer of \$20,000. Should costs be greater than this amount, SCE has the option to pay the excess.

SCE's compromise is reasonable and accepted. Accordingly, the Commission adopts SCE's proposed contract language, found in Appendix B, implementing this telemetry cost cap for the 2012 SPVP PPA.

The PPA for projects 5 MW or less should be modified to adopt SCE's proposal that Producers install a telemetering system, subject to a \$20,000 cost cap.

16. Curtailment (§ 9)

The 2010 SPVP PPA for projects 5 MW or less did not contain language regarding curtailment. For its 2012 SPVP PPA, SCE has proposed curtailment language allowing it to curtail delivery, but requiring it to pay for the curtailed product.

CSS protests SCE's curtailment language, arguing that it does not go far enough in ensuring financing for renewable projects. CSS urges the Commission to adopt PG&E's curtailment policy, which pays the seller up to 5 percent of the project's expected annual generation, with PG&E paying the seller the contract price for curtailed energy.

In support of its argument, CSS cites the proposed decision accepting the utility's 2011 Renewable Portfolio Standard Procurement Plans in Rulemaking 08-08-009 requiring that "all three IOUs include economic curtailment provisions equivalent to those proposed by PG&E."¹⁴ However, as SCE notes in its response, D.11-04-030, the decision that adopted the 2011 RPS Procurement Plan, deleted this language, finding that the Commission would not pick one IOU's curtailment approach over another and that "SCE may use its preferred

¹⁴ Proposed Decision of ALJ Mattson in R.08-08-009 (Feb. 11, 2011), page 14.

¹⁵ D.11-04-030, pages 17-18.

approach.”¹⁵ Thus, D.11-04-030 does not support CSS’s contention that SCE must adopt PG&E’s curtailment language.

SCE’s proposed curtailment language in Section 9.1 of its standard PPA provides that the energy producer shall curtail production of the facility in several circumstances, including: (i) upon Notice from SCE that it has been instructed by California Independent System Operator (CAISO) or the transmission provider to curtail deliveries; (ii) upon notice that producer has been given a curtailment order in response to an emergency; and (iii) if no schedule was awarded in either the Day-Ahead or Real-Time Market.

Section 9.2 of the PPA also provides that if no schedule is awarded and the generating facility has not been curtailed, then as long as a producer’s availability establishes that the facility would have been able to deliver but for not receiving a schedule, SCE must pay the producer for the amount of energy it would have been able to deliver. SCE’s supplemental filing, AL 2571-E-A, also corrected two typographic errors in the originally proposed curtailment provision.

In sum, the PPA allows SCE to curtail delivery, but requires SCE to pay for the curtailed product.

In reviewing the PPA, the Commission accepts SCE’s proposed curtailment language with one modification. SCE’s language as proposed would require the facility to curtail production if it does not receive a CAISO schedule. However, because the Commission has previously rejected the utility’s proposed telemetry requirement, as does this Resolution, it is not possible for SCE to schedule these resources. Thus, this Resolution modifies SCE’s curtailment provision to reflect the recommended rejection of a telemetry requirement by adding a provision requiring SCE to provide notice to the facility to curtail production. See Appendix B for the modification to the PPA’s curtailment provision Section 9.

Because SCE’s language is simpler and similar to what the Commission has previously approved for both SCE and PG&E, SCE’s proposed curtailment

¹⁵ D.11-04-030, pages 17-18.

language is reasonable and approved with the modification discussed above and contained in Appendix A.

SPVP Standard PPA Terms and Conditions for Contracts Greater than 5 MW and Less than 10 MW

Use of the 2011 RAM Pro Forma PPA with Modification

In AL 2571-E, SCE filed its 2011 RAM Pro Forma PPA as a basis to create the SPVP standard PPA for contracts between 5 and 10 MW.

Since SCE filed AL 2571-E in April of 2011, the Commission issued Resolution E-4414, which approved with modifications SCE's RAM PPA for contracts between 5-20 MW. The Resolution made multiple changes to contract terms that SCE proposed, and thus provides SCE with the most up to date Commission approved standard contracting terms and conditions on which to base its SPVP PPA.

In comments on the draft resolution, SCE requested inclusion of a termination right that is not currently in the 2011 RAM agreement. Specifically, SCE is requesting a unilateral termination right for SCE to terminate an agreement in the event that the cost of network upgrades from one interconnection study to the next goes up by more than 10%. SCE is requesting this right in order to ensure ratepayers do not pay excessive transmission upgrade costs not accounted for during bid selection. SCE is allowing for a 10% cost increase in order to account for insignificant changes in cost estimates.

The Commission recognizes that uncertainty can exist in the projection of transmission upgrade costs from one study to the next and that ratepayers should not fund excessive transmission upgrade costs that would make a project uneconomic. That said, the Commission also agrees with SCE that it would be unjust to terminate a Producer's PPA on account of an insignificant increase in the cost of projected network upgrades. As a result, the Commission adopts SCE's proposal to include a unilateral termination right for SCE to terminate a PPA when the cost of transmission upgrades increases by more than 10% from one study to the next. Since this resolution also authorizes SCE to take into account deliverability upgrade costs if a producer claims FCDS, this termination

right applies to all ratepayer funded transmission upgrade costs, including network and deliverability.

SCE will use the terms and conditions contained in the RAM PPA approved by Resolution E-4414 for contracts up to 20 MW to create the 2012 SPVP PPA for projects greater than 5 and up to 10 MW. In addition, SCE is authorized to include a unilateral termination right for SCE in circumstances where the cost of transmission upgrades increases by more than 10% from one interconnection study to the next. Beyond this addition, SCE may also make non-substantive edits in order to align internal references and may delete terms inapplicable to solar PV technology or inapplicable to the SPVP program.

Provision Regarding Electricians, Contractors, and Subcontractors (§ 3.30)

Resolution E-4299 approved language in SCE's proposed standard PPA for up to 5 MW projects requiring sellers to comply with the prevailing wage requirements established for public works projects under the California Labor code. Resolution E-4299 also requires that SCE "modify its original clause to clarify that sellers shall undertake reasonable efforts to pay the prevailing wage for electricians set pursuant to the cited Labor Code provisions. Nothing herein shall require sellers, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of the Labor Code."¹⁶

SCE has proposed to add a provision in its standard PPA for projects above 5 MW regarding the hiring of electricians, contractors, and subcontractors. Section 3.30 would require that the seller "use reasonable efforts to ensure that all Electricians hired by Seller and its contractors and subcontractors are paid wages at rates not less than those prevailing for Electricians performing similar work in the locality," for the construction, alteration, demolition, installation, and repair work of the generating facility, and that "[n]othing herein shall require Seller or its contractors or subcontractors to comply with, or assume liability created by other inapplicable provisions of the California Labor Code." Accordingly, the Commission accepts this additional provision in the standard PPA.

¹⁶ Resolution E-4429, page 21.

For the SPVP contract for projects greater than 5 MW and up to 10 MW, the provision requiring that sellers undertake reasonable efforts to comply with prevailing wage requirements under the California Labor Code for the hiring of electricians, contractors, and subcontractors is reasonable and is approved without modification.

COMMENTS

Public Utilities Code Section 311(g)(1) provides that this Resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on December 22, 2011.

Timely comments were received on January 11, 2012 from SCE; Commercial Solar Solutions, LLC (CSS); and, SunEdison, LLC (SunEdison). Timely reply comments were then received on January 17, 2012 from SCE; the Interstate Renewable Energy Council (IREC); and, Silverado Power, LLC (Silverado).

This resolution is modified to reflect comments from SCE, IREC, and Silverado, allowing SCE to include transmission upgrade costs and resource adequacy when ranking bids. This resolution adopts substantive comments from SCE concerning inclusion of a unilateral termination right in instances where network upgrades costs exceed a certain threshold, as described above. This resolution also adopts SCE's proposed change to require Producers to install telemetry systems, subject to a \$20,000 cap on the Producer's costs.

Comments from SunEdison, CSS, and Silverado concerning extension of term start dates and exclusion of a termination right are denied.

Non-substantive edits suggested by SCE and SunEdison are also incorporated throughout the resolution.

FINDINGS AND CONCLUSIONS

1. Southern California Edison's proposed changes to its 2012 RFO Participant Instructions and its 2012 standard Power Purchase Agreements are reasonable, subject to the modifications in this Resolution.

2. CSS's protest that SCE failed to comply with the Commission approved SPVP schedule and that SCE must hold at least one IPP solicitation every 12 months is denied.
3. SCE should streamline its RFO schedule in order to decrease the time between the second and third solicitations; a Tier 2 advice letter for future advice letters requesting changes to the SPVP is reasonable since it may allow for more expedited approval. In addition, SCE's request to wait for Cluster Study 4 Phase I interconnection study results, or four months after the launch of the RFO, whichever is later, is granted. SCE is allowed slight modifications to its RFO schedule in order to accommodate any new circumstances that have arisen since SCE filed AL 2571-E in April 2011.
4. The standard PPAs are modified to allow Producer to either own or control the generating facility.
5. SCE's proposed requirement that developers file annual WMDVBE reports is reasonable, consistent with General Order 156, and is accepted without modification.
6. The collateral requirement for projects up to 5 MW should remain \$20/kW.
7. Requiring Producer to post the collateral requirement to SCE until Producer has satisfied its obligations is reasonable.
8. Allowing SCE to terminate the contract if Producer fails to post or maintain the agreed upon collateral requirement is reasonable, provided however, this change is approved subject to the modification that the standard PPA allow for a reasonable cure period prior to contract termination. SCE will modify §6.1.5 of the PPA for contracts up to 5 MW to allow for a minimum 15 day cure period.
9. SCE's standard PPA for contracts 5 MW or less is modified to allow SCE to terminate the contract if the term start date does not commence within 18 months of Commission approval, with a one-time six month extension if the project can successfully demonstrate that the cause of delay is due to regulatory processes outside of its control.
10. Allowing SCE to retain the collateral requirement if, before the term start date, it terminates that PPA for reasons other than because electrical output

ceases for 12 months, a force majeure occurs, or Commission approval is not obtained, is reasonable and accepted without modification.

11. SCE is authorized to add an individual bid's transmission upgrade costs to the bid price for ranking purposes.
12. SCE is authorized to add the value of resource adequacy benefits in the instance that a bid participates in the RFO with Full Capacity Deliverability Status. SCE shall rank bids using the following formula: bid price + transmission upgrade costs (network upgrade costs and deliverability upgrade costs) – resource adequacy benefits.
13. SCE's proposed change to require Full Capacity Deliverability Status is rejected. Instead, Producers will have two options, either to bid their projects as energy-only or to bid their projects with Full Capacity Deliverability Status. Producer is required to achieve Full Capacity Deliverability Status before the commercial online date in the instances where Producer chooses to bid its project with Full Capacity Deliverability Status.
14. The PPA for projects 5 MW or less should be modified to adopt SCE's proposal that Producers install a telemetering system, subject to a \$20,000 cost cap.
15. SCE's proposed curtailment language is reasonable and approved with the modification discussed above and contained in Appendix A.
16. SCE will use the terms and conditions contained in the RAM PPA approved by Resolution E-4414 for contracts up to 20 MW to create the 2012 SPVP PPA for projects between 5 and 10 MW. In addition, SCE will amend that PPA to include a unilateral termination right for SCE in circumstances where the cost of network upgrades increases by more than 10% from one interconnection study to the next. Beyond this addition, SCE may also make non-substantive edits in order to align internal references and may delete terms inapplicable to solar PV technology or inapplicable to the SPVP program.
17. For the SPVP contract for projects greater than 5 MW and up to 10 MW, the provision requiring that Seller undertake reasonable efforts to comply with prevailing wage requirements under the California Labor Code for the hiring of electricians, contractors, and subcontractors is reasonable and is approved without modification.

18. Timely comments were submitted on January 11, 2012 from Southern California Edison Company; Commercial Solar Solutions, LLC; and SunEdison, LLC. Timely reply comments were received on January 17, 2012 from Southern California Edison Company; the Interstate Renewable Energy Council; and, Silverado Power, LLC. These comments and reply comments are disposed of in this Resolution.
19. Advice Letters 2571-E and 2571-E-A should be approved with the modifications discussed herein.

THEREFORE IT IS ORDERED THAT:

1. Southern California Edison Company's Advice Letters 2571-E and 2571-E-A, requesting changes to the Solar Photovoltaic Program Request for Offers documents, are approved with modifications.
2. Following its next Solar Photovoltaic Program Request for Offers, Southern California Edison shall submit a Tier 2 advice letter filing with any requests for changes to its standard Request for Offers documents or power purchase agreements.
3. The following changes to the 2012 Solar Photovoltaic Program standard Power Purchase Agreement for contracts 5 megawatts or less requested in Advice Letter 2571-E and 2571-E-A are adopted without modification. SCE is authorized to:
 - Require Producer to assure that SCE is authorized as the Scheduling Coordinator prior to the date the facility first delivers electricity and no later than any deadline established by CAISO (§ 2.8).
 - Require thirty days notice of a changing start date (§ 3.2).
 - Require Producer to file annual Women, Minority and Disabled Veteran Owned Business Enterprises reports (§ 3.4).
 - Require Producer to post the collateral requirement to SCE and maintain it until Producer has satisfied all monetary obligations (§ 4.2 & 4.3).
 - Retain a portion of the collateral requirement and the Gross Power Rating if, by the term start date, Producer has only installed a portion of the necessary equipment and devices.

- Allow either party to a PPA to terminate the contract in the event of bankruptcy or if the PPA is not approved by the Commission (§ 6.2.4 & 6.2.6).
 - Retain the entire collateral requirement should certain termination provisions in the contract be triggered (§ 6.4).
 - Refuse to purchase energy that is not or cannot be delivered because of an outage, force majeure, or a reduction or curtailment of energy. SCE is required to abide by the terms of the contract for curtailment payments.
 - Require Producer to issue an invoice to SCE and to pay via a check or via wire transfer (§ 8.5 & 8.7).
 - Require a generating facility be subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments; and make clear that any Availability Incentive Payments are for the benefit of Producer and any Non-Availability Charges are the responsibility of Producer (§ 16.7).
4. The following modifications are made to provisions in SCE's 2012 standard Power Purchase Agreement for contracts of 5 MW or less. SCE shall:
- Allow Producer to either own or control the generating facility (§ 1.1).
 - Require Producer to install a telemetering system, subject to a \$20,000 cap on Producer's costs (§7.10 & 7.11).
 - Require collateral in the amount of \$20/kW.
 - Terminate the contract if Producer fails to post or maintain the agreed upon collateral requirement (§ 6.1.5). The standard PPA must allow for a reasonable cure period of a minimum of 15 days prior to contract termination.
 - Terminate the contract if the term does not commence within 18 months of Commission approval (§ 6.1.2). SCE must allow a one-time six month extension if the project can successfully demonstrate that the cause of delay is due to regulatory processes outside of its control.
 - Curtail Producer's energy production under certain circumstances, and pay for energy that would have been produced but for Producer not

receiving a schedule (§ 9). This provision is modified to require SCE to provide notice of a curtailment.

- Revise language in §15.2.1 to clarify that as of the effective date of the PPA, the Generating Facility qualifies to be pre-certified by the CEC as an Eligible Renewable Resource. Following the term start date, the Generating Facility will obtain and maintain CEC certification until the term end date.
 - Revise Full Capacity Deliverability Status (§ 7.1). Producers have two options, either to bid their projects as energy-only or to bid their projects with Full Capacity Deliverability Status. Producer is required to achieve full deliverability status before its project's online date in the instances where Producer chooses to bid its project with full capacity deliverability status. SCE may also consider resource adequacy value when selecting or rejecting contracts, on the basis that it considers the bid price plus a transmission study cost adder, less the value of that project providing resource adequacy benefits.
5. SCE shall use the terms and conditions from its Commission approved RAM PPA for SPVP contracts greater than 5 MW but not greater than 10 MW. SCE is authorized to make the following changes to the SPVP PPA:
- Deletion of terms inapplicable to solar PV technology or the SPVP program (throughout).
 - Add termination right if transmission network upgrade exceed a 10% cushion to the dollar threshold that triggers the termination right.
 - Require that Seller undertake reasonable efforts to comply with prevailing wage requirements under the California Labor Code for the hiring of electricians, contractors, and subcontractors (§ 3.29).
6. Within 30 days of the effective date of this resolution, Southern California Edison Company shall file a Tier 1 advice letter with the Energy Division demonstrating compliance with Ordering Paragraphs 3-5 of this resolution.

This Resolution is effective today.

I certify that the foregoing Resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on February 16, 2012; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners

Appendix A

Modifications to 2012 SPVP PPAs

MODIFICATIONS TO 2012 SPVP PPA for Projects up to 5 MW

Six Month Extension for Regulatory Delays

Add RAM contract language regarding the 18 month deadline with a six month extension, as adopted in D.10-12-048 and modified in Resolution E-4414. SCE may terminate this Agreement on Notice, which termination becomes effective on the date specified by SCE in such Notice, if:

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 (“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, 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, 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, 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.

Modified Curtailment Provision

In order to address the telemetry issue in the PPA, staff proposes the following addition (underlined) to SCE's curtailment language:

9.1 Producer shall promptly curtail the production of the Generating Facility: (i) upon Notice from SCE that SCE has been instructed by the CAISO or the Transmission Provider to curtail energy deliveries; (ii) upon Notice that Producer has been given a curtailment order or similar instruction in order to respond to an Emergency; (iii) if no Schedule was awarded in either the Day-Ahead Market or the Real-Time Market, and SCE provides Notice to curtail the production of the Generating Facility; or (iv) if SCE issues an OSGC Order.

Modified Cure Period for Failure to Maintain Collateral

Staff recommends the following addition (underlined) to the PPA provision regarding SCE's right to terminate following a failure to post or maintain collateral:

6. TERMINATION; REMEDIES.

6.1. SCE may terminate this Agreement on Notice, which termination becomes effective on the date specified by SCE in such Notice, if:

6.1.1.1.1. Producer fails to post and maintain the Collateral Requirement pursuant to Section 4, for fifteen days after the same shall have become due and seller fails to cure such failure to post or maintain within fifteen days after receipt of written demand therefore from Buyer; and Producer fails to cure such failure to post or maintain the Collateral Requirement within fifteen (15) days after receipt of Notice from SCE of such failure to post or maintain the Collateral Requirement.

Modified Telemetry Requirement

Staff is authorized to add the following language to the PPA allowing SCE to require Producer to install a telemetry system, subject to a cost cap of \$20,000:

7.10 Producer shall comply with all rules and regulations regarding PIRP/EIRP if SCE elects to place any Generating Facility in PIRP/EIRP. Producer shall install the Telemetry System that is designed to function in accordance with the CAISO's PIRP/EIRP protocols and SCE's communication system. In no event shall the Telemetry Installation Costs exceed twenty thousand dollars (\$20,000) (the "Telemetry Cost Cap"); provided, however, that if the Telemetry Installation Costs exceed the Telemetry Cost Cap then SCE shall have the right, but no obligation, in its sole discretion, to agree to pay for such costs in excess of the Telemetry Cost Cap. To the extent requested by SCE, Producer shall provide evidence of the Telemetry Installation Costs satisfactory to SCE.

"Telemetry Cost Cap" has the meaning set forth in Section 7.10.

"Telemetry Installation Costs" means the initial costs to Producer for the purchase and installation of the Telemetry System. For the avoidance of doubt, in no event shall

“Telemetry Installation Costs” include ongoing operating expenses of the Telemetry System following its initial installation, including but not limited to communication costs and costs associated with maintaining a T-1 line.

“Telemetry System” means a system of electronic components that collects all required telemetry in accordance with the PIRP/EIRP and SCE operational requirements and communicates this telemetry to the CAISO and SCE as required by applicable tariff or this Agreement. For the avoidance of doubt, the Telemetry System does not include other components of the Generating Facility that do not collect or communicate such required telemetry, including but not limited to, Producer’s system control and data acquisition systems.

Modification Requiring California Energy Commission Certification

SCE is authorized to add the following language to the PPA requiring Producer obtain pre-certification from the CEC that its facility qualifies as an Eligible Renewable Resource:

15.2.1. As of the Effective Date and until the Term End Date: (i) Producer does not, and will not convey, transfer, allocate, designate, award, report or otherwise provide any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than SCE; (ii) Producer will not start-up or Operate any Generating Facility per instruction of or for the benefit of any third party, except as required by other Applicable Laws; and (iii) the output delivered to SCE qualifies under the requirements of the California Renewables Portfolio Standard (the “RPS Requirements”);

15.2.2 Within thirty (30) days after the Effective Date, Producer shall file an application for CEC pre-certification for the Generating Facility as an Eligible Renewable Energy Resource, as such term is defined in Public Utilities Code Section 399.12 or Section 399.16 (“ERR Requirements”). By the Term Start Date, the Generating Facility shall be pre-certified as an

ERR. As soon as practical following the Term Start Date and throughout the Term, the Generating Facility shall qualify and be certified by the CEC as an Eligible Renewable Energy Resource;