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)

RESPONSE OF SILVERADO POWER LLC, SUNPOWER CORPORATION AND IMMODO INTERNATIONAL CORPORATION TO THE MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) FOR CLARIFICATION REGARDING STATUS OF EXISTING ASSEMBLY BILL 1969 FEED-IN TARIFF PROGRAM UNDER DECISION 12-05-035

KEYES, FOX & WIEDMAN LLP 436 14th Street, Suite 1305 Oakland, CA 94612 Telephone: (510) 314-8200

June 26, 2012

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)

RESPONSE OF SILVERADO POWER LLC, SUNPOWER CORPORATION AND IMMODO INTERNATIONAL CORPORATION TO THE MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) FOR CLARIFICATION REGARDING STATUS OF EXISTING ASSEMBLY BILL 1969 FEED-IN TARIFF PROGRAM UNDER DECISION 12-05-035

Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California Public

Utilities Commission (Commission), Silverado Power, LLC,¹ SunPower Corporation² and

ImMODO International Corporation³ (collectively "Solar Developers") respectfully submit this

response to the Motion of Southern California Edison Company (U 338-E) for Clarification

regarding Status of Existing Assembly Bill 1969 Feed-in Tariff Program under Decision 12-05-

035, filed on June 21, 2012 (Motion). Solar Developers support SCE's Motion and urge the

- ¹ Silverado Power, LLC is a wholesale solar photovoltaic (PV) development company. Silverado Power currently has mid- and late-stage PV developments in seven of the most active renewable energy markets in the United States, including 130 projects in California, which range in capacity from 1 to 400 MW.
- ² SunPower Corporation designs, manufactures and delivers the highest efficiency, highest reliability solar panels and systems available today. Residential, business, government and utility customers rely on the company's quarter century of experience and guaranteed performance to provide maximum return on investment throughout the life of the solar system.
- ³ ImMODO International Corporation is a wholly-owned subsidiary of ImMODO Solar S.A. of Spain, which has developed PV projects around the world. Within the U.S., ImMODO International Corporation has focused on the AB 1969 feed-in tariff program, including several projects in development for SCE's CREST program. Several of these projects have completed interconnection studies as of May 24, 2012, for which the company is awaiting approval to sign power purchase agreements with SCE.

SOLAR DEVELOPERS' RESPONSE TO SCE MOTION



Commission to expeditiously issue a ruling clarifying the date through which applications may be submitted under the existing Assembly Bill (AB) 1969 feed-in tariff program.

In its Motion, Southern California Edison Company (SCE) seeks clarification regarding the status of the existing AB 1969 feed-in tariff (FiT) program during the transition to a replacement FiT program under Decision (D.12-05-035), which among other things adopts a modified pricing mechanism called the Renewable Market Adjusting Tariff (Re-MAT). Decision 12-05-035 is the first of two decisions the Commission must issue to implement a replacement FiT program.⁴ The second decision will approve tariffs and standard contracts that implement many of the program details decided in D.12-05-035. Although SCE's Motion focuses on its existing AB 1969 FiT program, known as the California Renewable Energy Small Tariff (CREST), Pacific Gas & Electric Company (PG&E) and San Diego Gas & Electric Company (SDG&E) also have AB 1969 FiT programs that will likely be affected by a ruling issued in response to SCE's Motion.

Solar Developers agree with SCE's assessment that "[t]he modification and replacement of the existing AB 1969 tariffs, including SCE's CREST, will likely not occur for several months."⁵ We also agree with SCE that D.12-05-035 is "ambiguous as to whether the Commission intends to close the existing AB 1969 program before the new Re-MAT program is in place."⁶ As SCE notes, the ambiguity with regard to the closure of the AB 1969 program and the proposal for the immediate effectiveness of the new FiT rules were not in the original Proposed Decision mailed to parties, and were only included in a revised Proposed Decision on

⁴ SCE Motion at 1.

⁵ SCE Motion at 3.

⁶ *Id.* at 2.

May 23, 2012, the day before the Commission voted on D.12-05-035.⁷ In fact, as SCE states, the proposal for immediate effectiveness of the new FiT rules is at odds with language from the original Proposed Decision that remains in D.12-05-035, which implies that the AB 1969 programs and associated tariffs will remain in effect until replaced by new tariffs responsive to the new rules.⁸

Although the Commission did comply with Rule 15.3(a) by making the revised Proposed Decision available a day before the Commission meeting, market participants lacked adequate notice regarding the precise date when the AB 1969 programs would close and the revised FiT rules would go into effect.⁹ A fundamental requirement of due process is adequate notice, which should be reasonably calculated to provide necessary information in a timely fashion.¹⁰ With such a significant change in the decision's language so late in the process, the Commission has not given adequate notice to market participants regarding the precise date when the AB 1969 programs will close and the revised FiT rules will go into effect. This lack of notice and resulting ambiguity surrounding the status of the existing FiT programs has created substantial market uncertainty.

See Proposed Decision of ALJ DeAngelis, Revision 1 (Redlined Version); see also SCE Motion 2-3.
See D 12 05 025 st On herizo T 1 ("The Completion of the set of t

See D.12-05-035 at Ordering ¶ 1 ("The Commission will review these [tariffs and standard contract] provisions and, in a separate decision accept, reject, or modify the provisions. Related FiT tariff modifications will also be addressed in this separate decision."); see also SCE Motion at 3-4.

⁹ Solar Developers agree with the Decision that "generators had ample notice that the rules would change." D.12-05-035 at 103. However, that is a different issue than whether generators had ample notice of <u>the date on which</u> the rules would change.

¹⁰ See, e.g., Milliken v. Meyer, 311 U.S. 457, 463 (1940).



off date of June 30, 2012 for complete applications to be submitted that meet the AB 1969 eligibility requirements. This is a reasonable and fair solution and SCE's Motion has provided adequate notice for this action.¹¹ However, Solar Developers would also support a longer extension to allow applications to be submitted under the existing AB 1969 program until tariffs and contracts implementing the new FiT rules are approved. This would provide greater continuity in shifting to new program rules.

Solar Developers also believe SCE's proposal for a prospective AB 1969 cut-off date must necessarily extend to PG&E and SDG&E. All of the IOUs' current and prospective FiT participants have faced ambiguity and lack of notice resulting from D.12-05-035. Therefore, we recommend that the Commission adopt the same end date for all three IOUs' AB 1969 programs.

Respectfully submitted this 26th day of June, 2012,

/s/ Kevin T. Fox

Kevin T. Fox KEYES, FOX & WIEDMAN LLP Attorney for Silverado Power LLC

/s/ Joseph F. Wiedman

Joseph F. Wiedman KEYES, FOX & WIEDMAN LLP Attorney for SunPower Corporation

/s/ Jason B. Keyes

Jason B. Keyes KEYES, FOX & WIEDMAN LLP Attorney for ImMODO International Corporation

SOLAR DEVELOPERS' RESPONSE TO SCE MOTION



VERIFICATION

I am the attorney for Silverado Power LLC in this matter. Silverado Power LLC is absent from the County of Alameda, where my office is located, and under Rule 1.11(d) of the Commission's Rules of Practice and Procedure, I am submitting this verification on behalf of Silverado Power LLC for that reason. I have read the attached "**RESPONSE OF SILVERADO POWER LLC, SUNPOWER CORPORATION AND IMMODO INTERNATIONAL CORPORATION TO THE MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) FOR CLARIFICATION REGARDING STATUS OF EXISTING ASSEMBLY BILL 1969 FEED-IN TARIFF PROGRAM UNDER DECISION 12-05-035."** I am informed and believe, and on that ground allege, that the matters stated in this document are true.

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

Executed this 26th day of June, 2012, at Oakland, California.

/s/ Kevin T. Fox

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

Attorney for Silverado Power LLC



VERIFICATION

I am the attorney for SunPower Corporation in this matter. SunPower Corporation is absent from the County of Alameda, where my office is located, and under Rule 1.11(d) of the Commission's Rules of Practice and Procedure, I am submitting this verification on behalf of SunPower Corporation for that reason. I have read the attached "**RESPONSE OF SILVERADO POWER LLC, SUNPOWER CORPORATION AND IMMODO INTERNATIONAL CORPORATION TO THE MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) FOR CLARIFICATION REGARDING STATUS OF EXISTING ASSEMBLY BILL 1969 FEED-IN TARIFF PROGRAM UNDER DECISION 12-05-035."** I am informed and believe, and on that ground allege, that the matters stated in this document are true.

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

Executed this 26th day of June, 2012, at Oakland, California.

/s/ Joseph F. Wiedman

Joseph F. Wiedman KEYES, FOX & WIEDMAN LLP 436 14th Street, Suite 1305 Oakland, CA 94612 Telephone: (510) 314-8202 E-mail: jwiedman@keyesandfox.com

Attorney for SunPower Corporation



VERIFICATION

I am the attorney for ImMODO International Corporation in this matter. ImMODO International Corporation is absent from the County of Alameda, where my office is located, and under Rule 1.11(d) of the Commission's Rules of Practice and Procedure, I am submitting this verification on behalf of ImMODO International Corporation for that reason. I have read the attached "**RESPONSE OF SILVERADO POWER LLC, SUNPOWER CORPORATION AND IMMODO INTERNATIONAL CORPORATION TO THE MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) FOR CLARIFICATION REGARDING STATUS OF EXISTING ASSEMBLY BILL 1969 FEED-IN TARIFF PROGRAM UNDER DECISION 12-05-035."** I am informed and believe, and on that ground allege, that the matters stated in this document are true.

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

Executed this 26th day of June, 2012, at Oakland, California.

/s/ Jason B. Keyes

Jason B. Keyes KEYES, FOX & WIEDMAN LLP 436 14th Street, Suite 1305 Oakland, CA 94612 Telephone: (510) 314-8203 E-mail: jkeyes@keyesandfox.com

Attorney for ImMODO International Corporation